

CAS 2023/A/9670 LOSC Lille v. Sporting Club de Portugal & Fédération Internationale de Football Association (FIFA) & CAS 2023/A/9671 Sporting Club de Portugal v. LOSC Lille

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Chair: Petros C. Mavroidis, Professor of Law at Columbia Law School, New York

Arbitrators: Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland

Olivier Carrard, Attorney-at-Law, Geneva, Switzerland

in the arbitration between

LOSC Lille

Represented by Patricia Moyersoén, Attorney-at-Law, Paris, France, and Marc Cavaliero, Attorney-at-law, Geneva, Switzerland

and

Sporting Clube do Portugal

Represented by Juan de Dios Crespo Perez, Alfonso Leon Lleo, Alessandro Mosca, Gytis Rackauskas, Attorneys-at-law, Valencia, Spain, and Alexandre Zen-Ruffinen, Attorney-at-Law, Neuchâtel, Switzerland, as well as Amandio Jose Pereira Novais, Head of Sports Legal, Sporting, Lisbon, Portugal, and Francisco Albuquerque Salgado Zenha, member of the Board of Sporting, Lisbon, Portugal

and

Fédération Internationale de Football Association (FIFA)

Represented by Saverio Spera, Attorney-at-law, FIFA Litigation Department, Zurich, Switzerland

I. THE PARTIES

1. LOSC (Lille Olympique Sporting Club) Lille (hereinafter "LOSC") is a French professional football club participating in Ligue 1, the top division of French football. Its headquarters are in Lille, France.
2. Sporting Clube do Portugal (hereinafter "Sporting") is a Portuguese professional football club participating in the Primeira Liga, the top level of the Portuguese football system. It is headquartered in Lisbon, Portugal.
3. FIFA is the world's football governing body. Its headquarters are in Zurich, Switzerland.

II. FACTS

4. The present dispute is the outcome of two appeals that have been submitted against a decision issued by the FIFA Dispute Resolution Chamber ("FIFA DRC") on 4 April 2023 (Ref. Nr. FPSD-5438). In its appeal (CAS/A/9670) LOSC named Sporting and FIFA as respondents, whereas Sporting in its appeal (CAS/A/9671) named only LOSC as respondent.
5. Following an agreement of all parties involved in the present proceedings, the disputes were consolidated in one dispute as of 26 May 2023.
6. The grounds of the challenged decision of the FIFA DRC (the "Appealed Decision") were communicated to the Parties on 27 April 2023. According to the Appealed Decision, LOSC was requested to pay to Sporting an amount of Euros 16,000,000, with a 5% interest rate per annum, payable as of 9 August 2018. This sum represented the compensation that Sporting should receive as LOSC was, by virtue of Article 17.2 of the FIFA Regulations on Status and Transfer of Players (the "RSTP"), severally liable for the debt that Sporting's ex player Rafael Alexandre da Conceição Leão (hereinafter "Leão") incurred vis-à-vis Sporting, his former employer.
7. To understand thus, the context of the dispute, it was the view of the Panel that a brief detour to the background of the dispute was warranted.
8. Leão had signed his contract tying him to Sporting from the football season 2017-2018 until the end of the season 2021-2022 (the "Employment Contract"). His agreed remuneration varied between Euros 60,000 (the first season) to Euros 80,004 (the last season) in total per season, payable in instalments. Leão would further receive a bonus varying between Euros 20,000 and Euros 100,000 if he played at least 5 games per season (giving him the right to receive the lowest of the two sums) to 35 games or more (which would entitle him to the highest of the two sums).
9. According to the Employment Contract, Leão had the right to terminate the contract. In this case though, he would have to send a termination notice 15 days before the termination would become effective. Furthermore, he could exercise this option within a specified period, i.e. between 15 May and 15 June for each year between 2017-2022

(when he was contractually bound to Sporting), and be liable to pay Sporting Euros 45,000,000.

10. On 14 June 2018 Leão issued his termination letter arguing that Sporting had violated his rights and requested compensation for the damage suffered. *In concreto*, Leão claimed that Sporting did not protect him (as it ought to) when it suffered physical violence following altercations between some players and some fans of Sporting.
11. Subsequently, on 1 August 2018, Leão filed a petition before the Comissão Arbitral Paritária (translated in English as “Parity Arbitral Commission”, hereinafter “CAP”), a Portuguese body competent, inter alia, to adjudicate labour disputes between players and their employers. The CAP held that the letter issued by Leão terminating his Employment Contract with Sporting was valid for “sporting purposes”. The CAP further held that Leão was from that moment onwards free to sign an employment contract with another club. One day later, on 2 August 2018, Leão signed his new employment contract with LOSC.
12. A concatenation of litigations followed. On 17 August 2018, Leão complained before the Tribunal Arbitral do Desporto (the “TAD”), a Portuguese judicial body with its seat in Lisbon, Portugal, which is, in principle, responsible for disputes of national (e.g., Portuguese) dimension. Sporting first submitted its counterclaim on 14 September 2018 before contesting on 31 October 2018 the competence of TAD to adjudicate this dispute. In Sporting’s view, the FIFA DRC was competent to adjudicate, and Sporting submitted a new complaint there requesting the same amount of compensation that it had requested before the TAD, namely Euros 45,292,516 (in line with Article 11 of the Employment Contract that Leão had signed with Sporting).
13. On 20 February 2020, the FIFA DRC decided that it was not competent to adjudicate the dispute submitted to it. It held that Sporting’s claim was inadmissible because of the pending litigation before TAD (*lis pendence*).
14. In the meantime, on 18 March 2019, TAD had already issued its decision, and held that:
 - (a) Sporting should pay Leão the sum of Euros 40,000 as compensation for “its harassment of the Player”; and
 - (b) Leão should pay Sporting Euros 16,500,000 as compensation for breach of contract, as it found the sum embedded in Article 11 of the Employment Contract “manifestly excessive”, and reduced it correspondingly.
15. The exact wording of TAD (based on the translation submitted to the Panel) regarding this last point is as follows (p. 246):

Now, the amount inserted in a € 45,000,000.00 (forty five million) termination clause included in a contract for a player that provides for the earning of approximately € 5,000.00 gross monthly euros, a player that, although promising, only in the - 2017/2018 - sports season became part of the first team squad of the Respondent, cannot but be considered manifestly excessive. In fact,

by establishing the possibility that a player who earns about € 5,000.00 gross monthly can unilaterally terminate the contract and without just cause by paying the € 45,000,000.00, the contract is being shielded, creating a situation of "contractual incarceration", with negative effects on freedom of work and the exercise of the profession.

16. On 3 April 2020, Leão introduced a new complaint this time before the Lisbon Court of Appeals, asking from it to annul the decision of TAD. His request was dismissed.
17. By that time, Leão had already been transferred from LOSC to A.C. Milan, an Italian football club, for the sum of Euros 29,000,000. The transfer had taken place on 30 July 2019.
18. On 6 May 2020, Sporting appealed the FIFA DRC decision of 20 February 2020 before the CAS. Initially, the respondents were Leão, LOSC and FIFA.
19. In its award issued on 21 February 2022, the CAS partially upheld the complaint of Sporting. While it dismissed its request to sanction Leão and LOSC, the CAS award (2020/A/7054) did accept the request for compensation lodged by Sporting. It decided nevertheless, to refer the case back to the FIFA DRC, asking it to decide on the precise amount of compensation.
20. LOSC appealed the CAS Award of 21 February 2022 before the Swiss Federal Tribunal of Switzerland (hereinafter "SFT"), but its appeal was dismissed.
21. On 4 April 2023, the FIFA DRC issued the Appealed Decision. The FIFA DRC was called to decide on the amount of compensation due to Sporting, and held that since LOSC was severally liable (along with Leão) for the payment of the compensation due, it shall be ordered to pay Sporting the sum of Euros 16,500,000. It ruled that a 5% interest per annum shall be added to the above-mentioned sum as of 9 August 2018, the date that LOSC had requested the International Transfer Certificate (the "ITC") of Leão.
22. The present dispute before CAS is the direct outcome of the appeals that both LOSC (CAS/A/9670) and Sporting (CAS/A/9671) have introduced against the Appealed Decision of 4 April 2023.
23. There is no dispute that, in the meantime, the adjudicated sum of Euros 16,500,000 had already been paid to Sporting. First, Sporting complained against Leão before the competent court in Milan and obtained gain of cause. Leão paid the sum he was ordered to pay. The remainder was paid by LOSC, as it was found to be severally liable by the CAS Panel of the previous CAS proceedings (CAS/A/7054).
24. Still, the two appeals were lodged because on the one hand, Sporting believed that its damage extended beyond the sum of Euros 16,500,000 that the FIFA DRC had ordered LOSC to pay. Sporting claimed that its damage equaled the benefit of LOSC. LOSC had transferred Leão to A.C. Milan on 30 July 2019 for Euros 29,000,000. Furthermore, Sporting claimed that the original transfer agreement had been re-negotiated subsequently, and the agreed amount between LOSC and A.C. Milan substantially

exceeded the above-mentioned sum. Sporting thus, was requesting from this CAS Panel to adjudicate it a sum well above and beyond the Euros 16,500,000 that it had already received.

25. On the other hand, LOSC had effectuated the payment and the interest rate of 5% p.a as of 9 August 2018, covering thus the totality of the sum that FIFA DRC had adjudicated in favour of Sporting, under full reservation of its rights and, accordingly, without prejudice to its right to contest the FIFA DRC quantification. Consequently, it lodged an appeal before CAS asking this Panel to revise downwards the sum that the FIFA DRC had adjudicated.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. LOSC submitted its Statement of Appeal in CAS 2023/A/9670 on 17 May 2023, and its Appeal Brief on 20 September 2023. Following multiple requests for extension of deadline, to which all disputing parties agreed, Sporting submitted its Answer on 20 December 2023, and FIFA on 21 December 2023.
27. Sporting submitted its Statement of Appeal in CAS 20223/A/9671 on 18 May 2023, and its Appeal Brief on 21 September 2023. LOSC submitted its Answer on 20 December 2013.
28. On 27 June 2023, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:
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|-------------|---|
| Chair: | Petros C. Mavroidis, Professor of Law at Columbia Law School, New York City |
| Arbitrator: | Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland |
| Arbitrator: | Olivier Carrard, Attorney-at-Law, Geneva, Switzerland |
29. Sporting tabled various requests addressed to the Panel regarding the production of documents that allegedly were in the possession of LOSC. The Panel took successive decisions in this respect:
- i.* On 10 July 2023, the Panel asked LOSC to produce the agreement that it had signed with A.C. Milan regarding the transfer of Leão from the former to the latter. The agreement had been signed on 30 July 2019, and it was modified on 8 May 2023. LOSC acceded to the request and submitted the information requested on 24 July 2023;
 - ii.* Sporting issued a new request to the Panel asking for the production of additional documents in the possession of both LOSC and A.C. Milan. The Panel issued a new decision on 23 January 2024. It limited its request though, to one addressee, namely LOSC. A.C. Milan being not part to the present proceedings, the Panel held that it was not appropriate to submit a request to this effect. LOSC responded that it had

already produced all documents in its possession, and that there was nothing new to add on this core;

- iii.* On 8 February 2024, following a new request by Sporting, the Panel adopted a new decision. This time it held that unless LOSC had something to add within the next seven days by means of production of new documents, it would consider that this issue was closed. LOSC repeated its prior response;
 - iv.* Sporting nonetheless, tabled a new request widening the scope of its previous submissions. It was asking for any documents relating to the transfer of Leão to third clubs. It was not confining its request to the production of formal agreements. The Panel issued a new decision dated 29 February, asking from LOSC the production of any additional documents regarding the subject-matter as defined by Sporting in its possession. LOSC repeated its previous response;
 - v.* On 4 March 2024, the Panel issued a final decision on the matter stating that it considered that LOSC had responded to the questions asked by Sporting.
30. On 22 January 2024 a case management conference was held between the disputing parties and the Panel to clarify the status of the proceedings, discuss any pending matters and clarify the procedure that would be followed during the upcoming hearing. Following the discussions, the Panel issued a Hearing Schedule that corresponded to the requests submitted by all Parties. The Hearing Schedule met the approval of the Parties, and was re-confirmed during the hearing.
 31. Sporting, LOSC, and FIFA signed the Order of Procedure before 25 January 2024 as they had been requested by CAS.
 32. On 26 March 2024, a hearing was held at the CAS headquarters in Lausanne, Switzerland. In addition to the members of the Panel, Mr Antonio de Quesada, Head of Arbitration attended the hearing.
 - LOSC was represented by Ms. Patricia Moyersoén and Mr. Marc Cavaliero, Attorneys-at-law, in Paris, France, and Geneva, Switzerland, respectively;
 - Sporting was represented by Mrs. Juan de Dios Crespo Perez, Alfonso Leon Lleo, Alessandro Mosca, Gytis Rackauskas, Attorneys-at-law, Valencia, Spain, Alexandre Zen-Ruffinen, Attorney-at-Law, Neuchâtel, Switzerland, Amandio Jose Pereira Novais, Head of Sports Legal, Sporting, Lisbon, Portugal;
 - FIFA was represented by Mr. Saverio Spera, Attorney-at-law, Member of the Litigation Department FIFA, Zurich, Switzerland.
 33. In addition, Mr Francisco Albuquerque Salgado Zenha, member of the Board of Sporting, followed the proceedings via Webex.
 34. Professor Thomas Probst (University of Fribourg, Switzerland) appeared as expert witness before the Panel at the request of LOSC.

35. Upon request by the Chair, the Parties confirmed that they had no objection with regard to the composition of the Panel, nor to the manner in which the process had been conducted during the period leading to the hearing. At the end of the hearing, all Parties explicitly confirmed that their right to be heard had been fully observed throughout the arbitration proceedings.
36. On 9 October 2024, LOSC requested the Panel to consider the decision rendered by the CJUE in the case C-650/22.
37. On the same date, the Panel invited all the Parties to file their comments on the decision rendered by the CJUE in the case C-650/22. Furthermore, on 21 October 2024, the Panel advised after having heard all Parties on this issue, it will express in the Award its position on any possible effects of such CJUE decision in this matter.
38. On 31 October and 4 November 2024, the Parties filed their written submissions regarding any possible effects of such CJUE decision in this matter.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

39. The following section summarises the Parties' main arguments in support of their respective requests for relief. Even though the Panel has examined the full record submitted by the Parties to the dispute, it will present in what follows only the claims and arguments which, in its view, were relevant in deciding the issues before it.

A. LOSC

40. At the outset, LOSC claimed that Sporting had violated the principle of equal treatment, by treating players similarly situated (like Leão on the one hand, and Rubens Ribeiro on the other) in drastically different manner.
41. It then claimed that the amount of compensation that LOSC should be called to pay eventually was in function of the amount of compensation that Leão himself was liable for. This in LOSC's view was the only sustainable understanding of the obligations embedded in Article 17.2 RSTP.
42. This point was further elaborated through the expert testimony of Professor Thomas Probst, who submitted a written expertise which he also orally explained before the Panel at the hearing. His comments offered a comprehensive analysis of Article 17 RSTP read in the context of the relevant provisions of Swiss Code of Obligations ("CO") and particularly Articles 143 and 144 CO. The key points of his testimony are reproduced here:
 - the legal institution of joint and several liability presupposes the existence of several debtors to the same creditor;
 - there is nonetheless, one debt that the creditor can claim from the different debtors either in whole, or in part;

- it is up to the creditor to exercise discretion as it considers most effective in order to recover the debt. There is no necessary sequence, in the sense that the creditor does not have to follow a particular hierarchy requesting payment from a specific debtor first before turning to the next in case of non-satisfaction;
- there is on the other hand, a clear case of hierarchy between Articles 17.1 and 17.2 RSTP. The obligation of debtors severally liable to the debt is contingent upon a finding that there has been breach of contract. In other words, absence of a finding to this effect should *ipso facto* lead to a finding that there is no several liability;
- liability under Article 17.2 RSTP should be understood thus, as “accessory” as opposed to “subsidiary” liability. The latter concept is well-known for example, in Swiss Company Law: according to Article 568.3 CO, when the assets of a company do not suffice for the payment of a debt, the shareholders must cover for the remaining sums. In this case, shareholders have the right to contest the sums due. Conversely, in the case of Article 17.2 RSTP, LOSC (in the present case) has no right to question the legitimacy of the termination of the contract between Leão and Sporting. Its involvement in terms of several liability is thus contingent on a finding that Leão is liable to Sporting because of unlawful breach of contract;
- LOSC cannot be considered as debtor vis-à-vis Sporting unless it can be shown that it has incited Leão to breach his contract with Sporting. In the expert witness’s knowledge, no such claim had been presented;
- LOSC could equally be considered liable if it has enriched unjustifiably as a result of Leão moving to LOSC following the termination of his contract with Sporting, and being transferred to A.C. Milan soon thereafter. But “unjust enrichment” in Swiss Law requires the absence of a quid pro quo. Indeed, an entity has enriched unjustifiably because of the very absence of a quid pro quo. But this is not the case as far as LOSC is concerned. The transfer of Leão from LOSC to A.C. Milan involves a quid pro quo, as LOSC transferred the player against the payment of a sum agreed between the two clubs;
- Swiss Law exhibits a very cautious attitude concerning future damages. It is of course clear that *damnum emergens* (actual loss) must be restituted to its rightful owner. It is equally clear that *lucrum cessans* (ceasing gains) must be restituted as well. But gains must be anticipated. Gains that might or might not occur depending on additional factors are not to be restituted under Swiss Law, which adopts a very cautious attitude towards *per te de chance*. The key question is whether gains could have been reasonably anticipated at the moment when the event giving rise to the obligation to compensate occurred. At the moment when Leão moved to LOSC, the transfer to A.C. Milan (or to any club for that matter) was a mere hypothetical possibility. Sporting cannot be compensated for that under Swiss Law;
- finally, while the SFT has admitted to the consistency of Article 17.2 RSTP

with the Swiss public order (policy), the expert witness maintained his doubts that this was indeed the case.

43. LOSC re-iterated at this stage, that its payment of the sum ordered by DRC had been effectuated without prejudice to its right to challenge its lawfulness. Leaning on the expert testimony of Professor Thomas Probst, it questioned whether it was liable at all, as the liability of Leão had not been established by CAS (in the procedure 2020/A/7054). LOSC maintained that Sporting had not even nominated Leão as a respondent neither in its litigation before the FIFA DRC nor in the present litigation before CAS. Omitting Leão from the list of respondents necessarily entailed that LOSC was not liable anymore.
44. To find accordingly, this Panel would have to set aside a claim by Sporting to the effect that the Panel's scope of review was limited to fixing the amount of compensation due. LOSC totally disagreed with this view. In its view, nothing stopped this Panel from entertaining a comprehensive review of the case *ab initio*, and thus review the question whether Leão was liable to compensate Sporting in the first place.
45. LOSC also took issue with the quantification of the damage, in the unlikely (in its view) case that the Panel were to agree with Sporting that LOSC was liable to pay compensation after all. In its view, Article 11 of the Employment Contract that Leão had signed with Sporting was manifestly disproportional, and for this reason should be set aside. Leão, in case of termination of contract, would be called to pay Sporting a compensation which corresponded to over 600 times the amount of his remuneration.
46. Furthermore, Sporting did not establish what its damage actually was. It was simply equating LOSC's profit to its damage, claiming that LOSC would have to pay it the amount that it had received from A.C. Milan or a substantial part thereof. But as established by Professor Thomas Probst, Sporting could not lawfully do that, as under Swiss Law *perte de chance* could not form part of a compensation package.
47. In this context, LOSC refuted the claim by Sporting that it was in possession of documents signed between it and A.C. Milan beyond what it had already submitted to CAS (e.g., the original agreement of 30 July 2019 concerning the transfer of Leão, and the agreement between the same two parties of 8 May 2023 modifying the original agreement).
48. LOSC re-iterated that its main claim remained that it was not liable at all, and all its arguments regarding the lack of quantification of damage by Sporting were made in the alternative, assuming the Panel had accepted LOSC's liability. But LOSC maintained that for the reasons mentioned above, it was not liable at all.
49. Had the Panel decided to proceed in this way, then, in LOSC's view, it should have dismissed the claim by Sporting and find that LOSC was not liable at all. All this, even irrespective of the lawfulness of Leão's termination of contract. The Panel in fact would have been presented itself with two alternatives:

- to either declare its lack of competence to adjudicate the present dispute; or

- to declare the claim by Sporting inadmissible.

50. In conclusion, LOSC, when acting as Appellant (CAS/A/9670), submitted the following prayers for relief:

If the present CAS Panel decides to order LOSC to bear joint and several liability on the basis of article 17.2 of the RSTP (quod non), such compensation should be reduced to zero.

And in any case, if the present CAS Panel were to consider that LOSC should be liable for any compensation to Sporting, said compensation will not be increased by any interests on late payment since the purpose of a compensation is to repair a damage not to pay an overdue.

When acting as Respondent (CAS/A/9671), LOSC requests from the Panel:

to dismiss Sporting Appeal in the referred matter CAS 2023/A/9671;

to issue a decision in line with the LOSC's Prayers for Relief submitted with its Appeal Brief in CAS 2023/A/9670;

to fix a sum to be paid by the Appellant, in order to contribute to the payment of the Respondent's legal fees and costs in the amount of CHF 70.000 (seventy thousand Swiss francs);

to order the Appellant to bear any and all CAS administration costs and arbitrator's fee.

B. Sporting

51. Sporting first refuted LOSC's claim that it was practicing unequal treatment towards its players. LOSC had compared the treatment towards Leão to that reserved to Rubens Ribeiro. Even though there were noticeable differences between the two cases anyway, Sporting argued that in fact, nine players had been involved during the same events along with Leão. The fracas was the result of altercations between some Sporting fans and a few players. Leão was the only one who had decided to take the route towards exit. The remaining players either returned and left later, or negotiated a transfer in amicable terms from which all interested parties had profited. Leão chose to leave, damaging thus Sporting who had reasonably expected him to stay and fulfil his potential in Lisbon, and not opt to ply his trade elsewhere having breached his contract first.
52. The system of the RSTP was geared towards protecting contractual stability. To this effect, Sporting underlined the pivotal role of Article 13 of RSTP which is entitled "Respect of Contract" and reads:

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Leão's breach of contract was the cause of the debt, the level of which was in dispute.

53. The heart of the dispute, in Sporting's line of thinking, was a disagreement between it and LOSC regarding the amount of lawful compensation that LOSC should pay Sporting. LOSC had profited far and beyond the Euros 16,500,000 (plus 5% interest rate p.a.), and the time had come for it to pay those lawfully entitled to receive compensation.
54. Sporting made four foundational points to substantiate its claim for compensation:
 - (a) There was one debt, and one debt only, that originating in the breach of the Employment Contract by Leão;
 - (b) LOSC and Leão were severally liable to pay the debt;
 - (c) It had already enforced its claim against Leão before the competent Tribunal in Milan, and had been partially satisfied;
 - (d) Its claim concerned the remainder of the compensation due which, in its view, was not and should not have been limited to the amount adjudicated by the FIFA DRC.
55. Consequently, there was no dispute anymore as to *whether* LOSC was liable to pay. LOSC had already paid a certain sum, and this payment in and of itself was proof enough that LOSC had accepted its debt towards Sporting. The only remaining issue concerned the *level* of the debt. While the originally adjudicated sum by the FIFA DRC had been paid, Sporting was of the view that the FIFA DRC had under-estimated the total amount due, and, consequently, LOSC should be asked to pay an additional sum of money to be defined by this Panel.
56. The total amount of lawful compensation grossly exceeded the amount granted to Sporting by the FIFA DRC. This was the case, since the damage of Sporting had to be defined by reference to the profit made by LOSC.
57. Sporting reminded the Panel of its multiple attempts to obtain from LOSC documentation that would allow it to quantify precisely the damage that it had suffered. LOSC had consistently responded that there were no documents beyond what it had already submitted to the Panel. But Sporting thought otherwise.
58. To start, LOSC had re-negotiated its agreement of 30 July 2019 with A.C. Milan pertaining to the transfer of Leão. On 8 May 2023, that is after the Appealed Decision had been issued, LOSC and A.C. Milan had signed a modification of the original agreement regarding the transfer of Leão (of 30 July 2019). LOSC, by virtue of this new agreement, received an additional payment of Euros 18,000,000 from A.C. Milan. It was further stipulated that it would be receiving additional "sell-on" fees, in case Leão would be transferred in the future by A.C. Milan to another football club. The amount of compensation that LOSC would be entitled to, varied, and depended on the total

amount of transfer: the higher the amount of transfer, the higher the compensation for LOSC.

59. Responding to a question by the Panel, Sporting held that the agreement of 8 May 2023 (which post-dated the Appealed Decision), and any other subsequent transfer agreement of Leão, had been properly submitted before this Panel.
60. The reason was the wording of Article 17.1 of RSTP itself, which in the relevant part reads as follows:

"[...] compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, [...]" [emphasis added].
61. The underlined terms should leave no one in doubt that the list that follows is of indicative nature. As a result, the adjudicator remained free to add criteria which, in its judgment, could appropriately be taken into account in order to specify the amount of compensation due in any given case.
62. Sporting maintained that there were additional documents exchanged between LOSC and A.C. Milan, which LOSC should submit to the CAS Panel. In two separate requests submitted to the Panel, Sporting requested the production of those documents. Following a request by the Panel to this effect, LOSC responded that no document beyond the agreement between it and A.C. Milan of 8 May 2023 existed.
63. One day before the hearing, on 25 March 2024, Sporting submitted to the Panel an internal document of A.C. Milan (dated 7 October 2023), which made reference to the agreement signed with LOSC and the modified agreement as well.
64. When it comes to specifying the amount of compensation due, Sporting argued that the Panel had discretion to apply the criteria mentioned in the body of Article 17.1 RSTP (as well as other relevant in its view criteria) in order to fix the amount. In the present case, it was clear in Sporting view that the sum that had been adjudicated in its favour by the FIFA DRC was manifestly low.
65. Sporting claimed that the upper bound should be that resulting from the profit that LOSC had derived from the player. As a matter of fact, LOSC had already received Euros 47,000,000 from the transfer of Leão to A.C. Milan. Sporting argued that while this sum was certain (as it had been reflected in the agreement between LOSC and A.C. Milan of 30 July 2019, as modified by their agreement of 8 May 2023), there were probably additional modifications of the original agreement as well. There were persisting comments regarding the transfer of Leão from A.C. Milan to another club, and LOSC would have been profiting from it.
66. Euros 47,000,000 consisted of the upper bound of additional compensation that Sporting was entitled to. The Panel retained of course, discretion as to the eventual sum to be

adjudicated. Undeniably though, the profit of LOSC by far exceeded the damage that Sporting had already suffered.

67. The Panel had been mandated to examine the above, and nothing beyond that. Its scope of review extended to claims and arguments regarding the amount of compensation due. This was the natural consequence of the fact that the present litigation was the result of two appeals lodged against the Appealed Decision that fixed the amount of compensation due to Sporting. The jurisdictional link of the present litigation thus established, prohibited the Panel from moving to other questions, as asked by LOSC to do.
68. The Panel could not for example, re-evaluate the lawfulness of Leão's termination of the contract. The Award CAS 2020/A/7054 had established as much, and referred the case back to the FIFA DRC for the latter to fix the amount of compensation only.
69. In conclusion, Sporting, when acting as Appellant (CAS/A/9671), requests from the Panel:

1. to accept this appeal against the decision of the Dispute Resolution Chamber of the FIFA Football Tribunal with the Ref. FPSD-5438, passed in Zurich on the 4th of April 2023 and notified with grounds to the Parties on the 27th of April 2023;

2. to confirm the Decision, except for its item 5 of the operative part, which should be set aside, and to issue a new decision in this part, ruling as follows:

“5.1. The Respondent, LOSC Lille, shall pay to Sporting the additional compensation in the amount of EUR 30,500,000, plus interest of 5% p.a. on said amount as from 9 August 2018 until the date of effective payment.

5.2. The Respondent, LOSC Lille, shall pay to Sporting the additional compensation, corresponding to all and any additional amounts receivable from Milan as Sell-on Fee, subject to the provisions of the Transfer Agreement concluded between Milan and LOSC on 30 July 2019 (and amended on 8 May 2023), in case the Player is sold and transferred from Milan to a third club”;

3. to order the FIFA to produce a copy of the complete FIFA DRC case files related to the Decisions with Ref. Nr. 18-02425/mfl-tle and FPSD-5438;

4. to fix a sum to be paid by the Respondent, in order to contribute to the payment of the Appellants' legal fees and costs in the amount of CHF 45,000/- (forty-five thousand Swiss francs);

5. to condemn the Respondent to the payment of the whole CAS administration costs and arbitrators' fees - if any; and

6. to determine any other relief the CAS Panel may deem appropriate.

When acting as Respondent (CAS/A/9670), Sporting requests from the Panel to:

Primarily:

1. to bifurcate the current proceedings with Ref. No. CAS 2023/A/9670 and to issue a Preliminary Award on the inadmissibility of LOSC appeal against the Decision of the Dispute Resolution Chamber of the FIFA Football Tribunal with the Ref. FSPD-5438, passed in Zurich on the 4th of April 2023 and notified with grounds to the Parties on the 27th April 2023 (hereinafter also referred to as – the “Decision”);

2. to declare LOSC appeal against the Decision inadmissible;

Subsidiarily:

3. To dismiss LOSC appeal against the Decision;

In any case:

4. to accept Sporting appeal against the Decision;

4. to confirm the Decision, except for its item 5 of the operative part, which

5. should be set aside, and to issue a new decision in this part, ruling as follows:

“5.1. The Respondent, LOSC Lille, shall pay to Sporting the additional compensation in the amount of EUR 30,500,000, plus interest of 5% p.a. on said amount as from 9 August 2018 until the date of effective payment.

5.2. The Respondent, LOSC Lille, shall pay to Sporting the additional compensation, corresponding to all and any additional amounts receivable from Milan as Sell-on Fee, subject to the provisions of the Transfer Agreement concluded between Milan and LOSC on 30 July 2019 (and amended on 8 May 2023), in case the Player is sold and transferred from Milan to a third club”;

6. to order the FIFA to produce a copy of the complete FIFA DRC case files related to the Decisions with Ref. Nr. 18-02425/mfl-tle and FPSD-5438;

7. to fix a sum to be paid by LOSC, in order to contribute to the payment of Sporting legal fees and costs in the amount of CHF 45,000/- (forty-five thousand Swiss francs);

8. to condemn LOSC to the payment of the whole CAS administration costs and arbitrators' fees - if any; and

9. to determine any other relief the CAS Panel may deem appropriate.

C. FIFA

70. FIFA stated before the Panel that the DRC decision appealed against was limited to the discussion of one issue, namely, the amount of compensation due by LOSC to Sporting. The limited scope was the direct outcome of the decision of the CAS Panel in the previous proceedings (CAS/A/7054), i.e. the decision to refer the dispute back to the FIFA DRC in order for the latter to fix the amount of compensation due.
71. CAS/A/7054 had already pronounced on the joint liability of Leão and LOSC regarding the debt vis-à-vis Sporting (§228 et seq.). That Panel, in other words, had established that LOSC was liable only because Leão had been found to be liable for the debt. The legal basis for this finding was Article 17.2 RSTP.
72. Following this finding, it was clear that LOSC was severally liable for the debt, and the only remaining question was the extent of LOSC' liability. The answer to this question was provided in the Appealed Decision.
73. FIFA further argued that the FIFA DRC fixed the amount of compensation at Euros 16,500,000 guided mainly by practical considerations. The Portuguese tribunal (TAD) had already reached the same amount, and the FIFA DRC aimed at avoiding complicating things by deciding on a different amount. At any rate, the amount that TAD had adjudicated seemed quite reasonable, and there was no major reason to deviate from it.
74. Responding to a question by the Panel regarding the interpretation of Article 17.1 RSTP, FIFA took the view that the wording in this provision was intentional. Its framers intended to limit the amount of compensation due to whatever had been agreed in the first contract following the breach of contract. Amounts that might have been included in subsequent contracts should not be taken into account, because of the uncertainty surrounding the conclusion of subsequent contracts.
75. In conclusion, FIFA requested from the Panel to:
- a) *reject the Appellant's requests for relief;*
 - b) *confirm the Appealed Decision in its entirety;*
 - c) *order the Appellant to bear the full costs of these arbitration proceedings.*

V. JURISDICTION OF THE PANEL

76. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code of Sports-related Arbitration (the "Code") and Article 66 para. 1 of the FIFA Statutes.
77. Article R47 of the Code stipulates:

“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.”

78. Article 57 para. 1 of the FIFA Statutes states:

“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players’ agents.”

79. The present appeals are directed against a decision by the FIFA DRC, a FIFA body. Hence, the competence of CAS to adjudicate the dispute is established.

80. Furthermore, by signing the Order of Procedure, and participating in the proceedings all disputing Parties at the very least acquiesced to the jurisdiction of CAS acknowledging its competence to adjudicate the present dispute (*forum prorogatum*, prorogated jurisdiction).

81. According to Article R57 of the Code, the Panel has full power to review the facts and the law governing the present case, and can also decide the dispute de novo. The Panel may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY OF THE APPEALS

82. In accordance with Article 58 para. 1 of the FIFA Statutes,

“appeals against final decisions passed by FIFA’s legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question.”

83. The Appealed Decision was issued on 4 April 2023, and the grounds were notified on 27 April 2023. The Statements of Appeal were filed in the proper form and within the statutorily permissible 21 days. No Party has raised an objection to this effect. The appeals are thus admissible.

VII. APPLICABLE LAW

84. There is not disagreement between the Parties regarding the applicable law in this dispute.

85. Article R58 of the CAS Code requests from the Panel to 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.”

86. Article 2 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber reads as follows:

“In their application and adjudication of law, the Players’ Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at a national level, as well as the specificity of sport.”

87. Article 3 of the FIFA Procedural Rules reads as follows:

“In their application and adjudication of law, the chambers shall apply the FIFA Statutes and FIFA regulations, whilst taking into account all relevant arrangements, laws, and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.”

88. Finally, Article 57.2 of the FIFA Statutes reads as follows:

“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.”

89. The Panel, in light of the above, decided that it would have recourse to the relevant FIFA regulations, and accessorially and to the extent warranted to Swiss law, in order to resolve the present dispute.

VIII. MERITS

90. Before else, the Panel deemed it appropriate to address the preliminary request in Sporting’s response in CAS/A/9670. Sporting asked from the Panel to bifurcate the proceedings and declare the appeal by LOSC inadmissible. The Panel noted that the heart of Sporting’s claim is that LOSC had accepted the DRC decision and that much was evidenced by the very fact that LOSC had proceeded to the payment of the adjudicated sum. Sporting invoked jurisprudence from CAS and Swiss courts holding that acquiescence barred a party from appealing a decision to which, through its behaviour, it had adhered.
91. LOSC nevertheless, proceeded to make the payment under reservation of its rights and without prejudice to its legal right to contest the well-founded of the FIFA DRC decision. Indeed, in a letter to FIFA dated 12 May 2023, LOSC had made this point clear. In fact, it was LOSC that first appealed to CAS (CAS/A/9670) and then Sporting followed with its own appeal (CAS/A/9671). As there is no doubt that the appeal was filed in the proper form and within the statutory limits, it was judged admissible.

92. Against the above background, the Panel does not see any ground to declare the appeal launched by LOSC inadmissible. With this matter settled, the Panel decided to proceed in the following way:
- a. First, it will explain its scope of review in the present case;
 - b. Then, it will briefly present the core of the request by the disputing Parties, and the anticipated consequences of its decision;
 - c. Based on (a) and (b), it will proceed to fix the amount of compensation due in two steps:
 - i. Explain the methodology for calculation;
 - ii. Provide the number, the precise amount that is, of compensation due.
93. To proceed with this approach, the Panel had to first clarify the allocation of the burden of proof, as well as the standard of review that it would be applying.
94. With respect to the burden of proof, the Panel held that it was for each Appellant to demonstrate the merits of its request. Longstanding CAS jurisprudence has held as much:

“According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.

It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party” (CAS 2016/A/4580, para. 91, with further references to CAS 2015/A/309; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).

95. The particularity of the present case is that two appeals were consolidated in one dispute on 26 May 2023, following the agreement by all Parties involved to proceed with the consolidation. There are thus, two Appellants and three Respondents (as FIFA is a Respondent only in CAS 2023/A/9670). Both Appellants claim that the amount of compensation should be different than the one adjudicated by the FIFA DRC. Accordingly, in the Panel's view, each of the Appellants has the initial burden to make its case and demonstrate that its arguments and evidence hold.
96. The next question is of course how much evidence an Appellant should be required to bring forward before the burden of production of proof shift to the Respondents. This is how the Panel understood the burden of persuasion that a party carrying the burden of proof must assume.
97. The Panel noted that previous CAS panels have used alternatively the terms "comfortable satisfaction". Indeed, it is well admitted that this is the "normal" standard in disputes of civil law nature, like the present one.
98. With this in mind, the Panel proceeded to decide the present dispute.
- a. The Panel's Scope of Review*
99. The Panel proceeded to first discern and distil the meaning of the term "decision" as it has developed in CAS case law, before applying it to the present case.
- i. The Opinions Expressed*
100. The Panel briefly recalls the diverging opinions expressed on this score.
101. Sporting has defended the view that the Panel's mandate is limited in that it cannot extend beyond quantifying the amount of compensation due. LOSC has claimed that the Panel had the competence to also review the *causa* for the compensation due. In this vein, the Panel could review whether Leão had lawfully terminated his contract or not.
- ii. The Panel's Approach*
102. The Panel sided with Sporting on this score. Its mandate is circumscribed by that of the body that has issued the Appealed decision, i.e. the FIFA DRC. The FIFA DRC was asked by the previous CAS Panel to fix the amount of compensation due. The reason for proceeding in this way was that the previous CAS Panel (CAS 2020/A/7054) had not been presented with enough evidence that would allow it to fix the amount itself.
103. As a result, it decided to refer the case to the DRC instructing the disputing parties (§236) to provide evidence before that body regarding the amount of compensation.
104. The present dispute concerns two appeals against a FIFA DRC decision which was strictly confined to discussing the amount of compensation due. While the Panel retained the right to perform a *de novo* review, exercising jurisdiction in this manner

would only allow it to consider arguments not presented before the FIFA DRC but within the jurisdictional ambit of review that circumscribed the DRC's mandate.

105. As the FIFA DRC was asked to review only the amount of compensation due, so would this Panel. In other words, the Panel follows Sporting and FIFA insofar as to agree that the main duty for this Panel is to establish the amount of compensation that LOSC has to pay to Sporting. It is not for this Panel to review and reconsider a previous CAS Award that has become *res judicata* among the Parties.

b. The Diverging Views Presented Regarding the Amount of Compensation Due

106. Sporting requests from this Panel to fix an amount of compensation higher than the amount fixed by the FIFA DRC. To substantiate its claim, Sporting did not do a lot. It satisfied itself to point to two distinct legal bases. First, Article 11 of the Employment Contract. According to this clause, in case of (unjustified) breach of contract, Leão would have to pay to Sporting the sum of Euros 45,000,000. Second, Sporting underlined the benefit that LOSC has received by transferring Leão to A.C. Milan. LOSC has already received Euros 47,000,000, and the sum could be even higher depending on whether Leão is transferred again to another club, and the level of the transfer fee. Besides the two mentioned points, basically no further substantiation of the alleged damage was undertaken by Sporting.

107. LOSC on the other hand, requests from the Panel that the amount of compensation requested by Sporting is reduced to zero.

108. Before deciding the issue, the Panel has to underline the consequences were it to follow one or the other view. If the Panel were to agree with Sporting and fix the amount of compensation above and beyond the amount already adjudicated by DRC, then LOSC would be asked to pay the corresponding amount. Were the Panel on the other hand to agree with the view expressed by LOSC, then Sporting would have to reimburse LOSC for the amounts already received. Were of course the Panel to simply confirm the Appealed Decision, as requested by FIFA, then neither LOSC nor Sporting would be entitled to any (further) amount of money. Recall, it has remained undisputed among the Parties and among Sporting and LOSC in particular, that the sum adjudicated by the FIFA DRC had already been fully paid by LOSC. While the sum of the debt remains in dispute, the source of the debt is not in doubt: it concerns exclusively the breach of the Employment Contract by Leão.

c. Fixing the amount of compensation

109. With this in mind, the Panel proceeded to fix the amount of compensation due.

i. The methodology for calculating the amount

110. How a Panel has to calculate the amount of compensation due is determined by Article 17.1 RSTP which in the relevant parts reads:

In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

111. Before moving to discuss the weight to be given to the criteria mentioned, the Panel wished to re-iterate the relationship between Articles 17.1 and 17.2 of RSTP. It is the latter provision that establishes the liability of LOSC in the present case, as LOSC is the new club that is severally liable for the debt. Recall, Article 17.2 RSTP reads:

If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment.

112. The amount that LOSC will be called to pay is, not exclusively, but also determined by the various “objective criteria” established in Article 17.1 RSTP, namely:
- i.* Remuneration and other benefits under the existing contract;
 - ii.* Remuneration and other benefits under the new contract;
 - iii.* The time remaining on the existing contract up to five years;
 - iv.* Fees and expenses paid or incurred by the former club authorised over the term of the contract; and
 - v.* Whether the contractual breach falls within a protected period.
113. The wording of this provision makes it clear that the list is of indicative nature. The words “these criteria shall include, in particular” leave no doubt in this respect. As a result, the Panel has discretion to add other, appropriate in its view, criteria when quantifying the amount of compensation.
114. Furthermore, the letter of the provision establishes a hierarchy between contractual autonomy and the “objective criteria” mentioned above. Recourse to the calculation of compensation using “objective criteria” is lawful only if no contractual arrangement has been agreed between the interested parties.
115. In the instant case, Article 11 of the Employment Contract linking Leão to Sporting provided for an amount of compensation to be paid in case of breach:

In the event the PLAYER illegitimately terminates the contract, within the legal labour scope, the PLAYER shall be obliged to pay to SPORTING, SAD a

compensation corresponding to the value of the remunerations he should receive until the end of the terminated contract, his registration with a third Club being dependent, within the legal-sports scope, on the payment of the amount of € 45,000,000.00 (forty five million euro) corresponding to the valuation of the PLAYER 's sports participation rights established by the parties in this contract”.

116. This contractual stipulation though, had been found to be “manifestly excessive” and disproportional by TAD. The TAD was applying Portuguese law. Portuguese law is of course the “law of the country concerned”, one of the elements mentioned in the body of Article 17.1 RSTP that the adjudicator must control for when quantifying the amount of compensation due. The Panel has not been provided by the Parties for any reason to substitute its judgment on Portuguese law to that of TAD. Consequently, the Panel would quantify the amount of compensation due through recourse to the “objective criteria” included in the body of Article 17.1 RSTP.
117. Before doing this, the Panel has to recall three important principles. First, a party that is requesting compensation for damage has, among other obligations, the duty to substantiate and provide reliable evidence for the damage suffered. This is true under several laws, and is the same under Article 17 RSTP. Second, the rationale of Article 17 RSTP is to support contractual stability, and to compensate the injured party applying by a compensation of the damage, calculated following the principle of positive interest. However, Article 17 RSTP is not meant to compensate parties, third parties, agents, future clubs, etc. for unpredictable developments that the transfer market can sometimes have. Third, the damage that an injured club can claim corresponds to the value of the services of the player at the moment of the breach.
118. To start with, the Panel noted that the economy of Article 17.1 RSTP strongly hinted towards a limitation in time of the elements that it could take into account. First, this provision refers to remuneration and benefits under “the new and the old contract”. It does not include all future contracts. Both grammatically and contextually, this limitation is telling. The new contract is certain and easy to quantify. Conversely, there is uncertainty regarding even the signing of new contracts, never mind the remuneration and benefits that could be included therein. The value of the services of a certain employee, in football as in other areas of life, is certainly also reflected in the salary that such individual is receiving. Salaries paid later in the career of that individual are in general irrelevant.
119. The Panel noted at this stage the argument raised by Sporting that, since the list of “objective criteria” included in Article 17.1 RSTP is indicative, the Panel could add additional elements such as subsequent contracts. The Panel disagreed that this was warranted in this case. First, this argument misses the meaning and the rationale of Article 17 RSTP. Second, it may be added that there is no evidence on the record that at the moment when Leão breached his contract with Sporting the value of his services was already the one given to them by A.C. Milan. In addition, the contract with LOSC was not a fake nor a bridge contract: The transfer to A.C. Milan was not in the cards at all at that moment. Opening to the possibility to include in the amount of compensation

due the transfer fee from LOSC to A.C. Milan would be tantamount to allowing for the inclusion of speculative elements among the “objective criteria”. It is true, and important, that the list of the objective criteria in Article 17.1 RSTP is open and not exclusive. But it also true that Sporting misconceives how Article 17 RSTP works and, in general, that compensation for a damage looks at the economic position of the parties at the moment of the breach, and not far away in the future.

120. At this stage, the Panel wanted to offer a hypothetical. What if Leão had been transferred to A.C. Milan few years after the litigation had taken place? Could Sporting come back and re-litigate its dispute with LOSC claiming that LOSC has profited from this subsequent contract? This would be quite an unwelcome eventuality, as it would only add uncertainty in the operation of the RSTP. The better arguments thus, lie with a strict interpretation of the term “the new contract”, and against the inclusion of any future contracts when calculating the amount of compensation – as done by CAS in years of jurisprudence.
121. The Panel nevertheless did not want to totally close the door to accounting for subsequent contracts. As mentioned above, it could be for example, that a player that has breached his contract signs a fake contract with a club having already agreed to join a third club immediately thereafter with much improved terms. These cases are known in international football and can be found in CAS jurisprudence as well. However, Sporting did not even argue in this direction as to the present matter and indeed, there is no evidence at all in the record that this was the case of Leão.
122. Sporting did submit various documents (e.g., press clippings) referring to the interest of European clubs to sign Leão for sums exceeding Euros 100,000,000. Similar submissions even if ultimately proved true are for now highly speculative. More to the point, they provide no evidence to the effect that the original transfer to LOSC was “sham”, and/or that it constituted a mere facilitating device to enable subsequent transfers.
123. Finally, always with respect to this first point, the Panel deemed it appropriate to note that the representative of FIFA explicitly agreed at the hearing that the terms “the new contract” constituted a conscious attempt to limit the amount of compensation to whatever remuneration and benefits had been included in that contract, and avoid looking into subsequent, future contracts.
124. Second, Article 17.1 RSTP states that remuneration and benefits of the existing contract can be taken into account only up to five years. A player who was bound to a contract of longer than five years duration will not, in other words, be liable for compensation beyond the first five years. This element as well suggests a limit in time when calculating the amount of compensation due.
125. Always in the same context, the Panel wished to underscore that Sporting could have protected itself better by introducing a “sell-on” clause in the Employment Contract. However, this has not been done. “Sell-on clauses” allow clubs to recuperate sums from subsequent transfers of their former players between the buying- and a third club. Sell-on clauses have been ruled FIFA-consistent in CAS 2020/A/7417 as long as the selling

club does not “influence” subsequent transactions, by promoting (inciting) (a) specific destination(s). Article 17 RSTP is not a substitute for sell-on clauses.

ii. The amount of compensation due

126. With this in mind, the Panel proceeded to fix the amount of compensation due by LOSC to Sporting.
127. The Panel noted that the amounts corresponding to remuneration and benefits for Leão both in his contract with Sporting as well as in his contract with LOSC constitute a fraction only of the amount of compensation that the FIFA DRC has adjudicated. Viewed from this perspective, the amount adjudicated is not small at all. In fact, even when adjusted for the value of his contract with Sporting and/or LOSC, Leão’s contractual remuneration and benefits are a far cry the sum adjudicated by the FIFA DRC. This could indicate that at the moment of the breach of the Employment Contract the value of the services of Leão were rather "low", as reflected by the extremely low salaries paid to him by Sporting and the only marginally higher salaries paid by LOSC.
128. On the other hand, it is clear that Leão was considered a special talent. Even though by the time he left Sporting he was not considered a first-team regular, he had already represented Portugal’s national team in various levels (Under 16, Under 17, Under 19, Under 20). Even though the athletic potential of the player does not figure in the list of “objective criteria” embedded in Article 17.1 RSTP, it is in the Panel’s view an appropriate element to take into account when deciding on the amount of compensation due.
129. Indeed, it is not the case that all players share the same potential. Subjective elements do play a role. And of course, penalties for (unlawful) termination contract tend to be high for young untested players because of the uncertainty regarding their future development. Risk-averse agents, when in doubt, would rather fix a higher than a lower sum. This might help explain the clause in Article 11 of the Employment Contract cited above.
130. Indeed, the fact that Sporting included a fee of Euros 45,000,000 to be paid in case of breach without just cause, is in and of itself indication that it was quite aware of Leão’s potential. It is thus, quite understandable that when fixing the amount of compensation, the Panel should not be totally oblivious to his potential value as otherwise reflected in the Employment Contract.
131. These first two factors mentioned so far are in fact antithetical forces as one argues for a low sum and the other for a higher one. No Party argued that the Panel should account for the timing of the termination of the Employment Contract.
132. In fact, the only additional element that was brought to the attention of the Panel was Sporting’s claim that the Panel should equate LOSC’s benefit to Sporting’s damage. The Panel has already indicated that it was prepared to take this into account as far as the first contract was concerned, e.g., the contract signed between Leão and LOSC. However, Sporting was not able to advance valid legal arguments to support the view that a benefit enjoyed by LOSC as "new club" should correspond to the damage incurred by Sporting

as "old club". The Panel has not been provided with substantiated argument and/or with evidence explaining why the increase of the value of the services of Leão has been a damage for Sporting. In other words, the Panel was not presented with evidence to the effect that Leão's increase in value is the exclusive consequence of his training with Sporting. Rather, the Panel is left with a factual basis suggesting that the value of services of Leão increased thanks to the player's efforts and possibly thanks to LOSC, while he was playing at LOSC.

c. *Overall Conclusion*

133. The Panel was called to fix the amount of compensation that LOSC should pay Sporting. It did not start its work from a clean slate and, admittedly, the Parties did not do a lot to assist the Panel. The Panel was entertaining an appeal against a FIFA DRC decision. The FIFA DRC decision had fixed the amount of compensation at Euros 16,500,000 plus a 5% interest p.a payable as of 9 August 2018 (the date when LOSC requested the issuance of Leão's ITC).

134. The Panel possessed roughly the same evidence submitted before it as did the FIFA DRC. In its view, the FIFA DRC's exercise of discretion was not unreasonable. In fact, none of the Parties were able to bring solid arguments against the line of reasoning adopted by the FIFA DRC. In addition, the Panel saw force in the fact that both TAD and the FIFA DRC ended up with the same amount of compensation, even though the FIFA DRC was not bound by the TAD decision and could have determined a different amount.

135. Indeed, §90 of the DRC decision reads:

In other words, the DRC has not decided that the amount of compensation payable by LOSC should be EUR 16,500,000 because it considered that the claim against LOSC is accessory to the claim against the Player and therefore the amount necessarily had to be the same or because it is bound to the decision pronounced by the TAD and consequently the compensation payable necessarily had to be the same, but rather because having already decided to proportionately reduce the liquidated damages clause to an approximate amount, it considered that the principle that the basis of the new club's liability is the player's liability would be of assistance in determining the specific amount of compensation payable.

136. The Panel found the quantification of damage performed by the FIFA DRC persuasive, and not shaken neither by Sporting nor by LOSC rather unsubstantiated submissions. Considering the arguments raised by the Parties, the evidence submitted and the meaning and the rationale of Article 17 RSTP, the Panel has reached the conclusion that the quantification made by the FIFA DRC shall be upheld. The Panel thus decided that LOSC was liable to pay Sporting compensation of Euros 16,500,000 plus an interest rate of 5% p.a. as of 9 August 2018.

137. In practice, nevertheless, no further payment is necessary, as all disputing parties agree that the sum that the FIFA DRC had adjudicated had already been paid in its totality.

Sporting, when answering an explicit to this effect question by the Panel, confirmed that it was asking for an *additional* amount (to that that had been adjudicated by the DRC), because the amount that DRC adjudicated had already been *received*. The Panel formulated an additional question regarding the debt enforcement procedure before the Milano court. Sporting responded that it would not be continued against Leão or any other party. It confirmed that it had received all the money due, and the Milano procedure had been closed.

138. Consequently, this Panel's decision signals the end of the dispute between Sporting and LOSC regarding the amount of compensation resulting from the debt originating in the breach of the Employment Contract by Leão vis-à-vis Sporting for which LOSC had been held severally liable.
139. Finally, the Panel notes that following the hearing, by letter dated 9 October 2024, LOSC requested from the Panel to account for the decision issued by the CJEU (Court of Justice of the European Union) C-650/22, since in its view it impacted on the resolution of the present dispute. By letters dated 4 November 2024, both Sporting as well as FIFA effectively posited that the Panel should disregard the request submitted by LOSC. It is the Panel's view that, as this dispute is far from being completed, it can have no bearing on the outcome of the present dispute. The Panel so ordered.

IX. CONCLUSION

140. In conclusion, the Panel decided to reject both appeals in their entirety and confirm the Appealed Decision, highlighting only the fact that in the meantime the payment of the amount granted to Sporting has been paid.
141. The present conclusion, finally, makes it unnecessary for the Panel to consider any further prayers made by the Parties. Accordingly, any and all further requests shall be dismissed.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed on 20 September 2023 by LOSC and on 21 September 2023 by Sporting are dismissed.
2. The decision issued on 4 April 2023 by the Dispute Resolution Chambre of FIFA is confirmed in its entirety except for its Point 4 which, in light of the Panel's findings, has become moot.
3. (...).
4. (...).
5. (...).
6. Any other and further claims are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 13 November 2024

THE COURT OF ARBITRATION FOR SPORT

Petros C. Mavroidis
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Olivier Carrard
Arbitrator