Arbitration CAS 2011/A/2586 William Lanes de Lima v. Fédération Internationale de Football Association (FIFA) & Real Betis Balompié, award of 3 October 2012

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Efraim Barak (Israel)

Football
Closing of contractual proceedings as a consequence of the initiation of insolvency proceedings
Form of a decision
Competence to decide on the jurisdiction of the FIFA decision making bodies
Referral of the dispute to the appropriate FIFA dispute resolution body

1. **A letter sent on behalf of FIFA's *"service and decision-making bodies,"* explicitly stating that the FIFA Dispute Resolution Chamber (DRC) *"cannot deal with cases of clubs which are in a bankruptcy proceeding"* and not referring to any internal remedies (for example, the possibility to ask for a "formal" decision on the same subject), makes clear that FIFA would only reconsider its position not to intervene if it somehow turned out that the club was not in bankruptcy proceedings. It is therefore a legally binding decision.**

2. **An administrative body of FIFA such as the FIFA Players' Status general secretariat is not competent to decide on the question of jurisdiction of the Players' Status Committee or of the DRC. In this respect, a letter from the FIFA Players' Status general secretariat whereby a player was informed that the FIFA decision making bodies could not deal with cases of clubs which were in a bankruptcy proceedings does not comply with the principles of the FIFA regulations which ensure that all parties involved are granted a fair procedure. To ensure a fair procedure, a party that is subject to jurisdiction of FIFA has the right to be given the opportunity to bring his full arguments and pleadings to the appropriate judicial body before a final decision is taken.**

3. **In keeping with Article R57 of the CAS Code and given the importance of the competent body of FIFA deciding in the first instance on its own jurisdiction, the player's prayer for relief relating to the jurisdiction of FIFA shall not be admitted but the case should instead be referred back to the appropriate FIFA dispute resolution body to decide – at least in first instance – whether FIFA's allegedly valid practice of closing cases because clubs are subject to bankruptcy proceedings is in compliance with its own Statutes, rules and regulations.**

I. THE PARTIES

1. William Lanes de Lima (the "Appellant" or the "Player"), is an Italian professional football player born on February 10, 1985. After spending three seasons in Brazil playing for Atlético Mineiro, he signed a five-year contract with the Spanish club Real Betis Balompié in 2007.

2. The Fédération Internationale de Football Association (FIFA) (the "First Respondent") is the global governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players around the world. FIFA is an association established under Swiss law with headquarters in Zurich, Switzerland.

3. Real Betis Balompié (the "Second Respondent" or the "Club") is a professional football club based in Sevilla, Spain, and registered with the Royal Spanish Federation of Football, which in turn is affiliated to FIFA. FIFA and the Club are together referred to as the "Respondents", and the Appellant and the Respondents are together referred to as the "Parties".

II. FACTUAL BACKGROUND

4. On August 13, 2007, the Player signed an employment contract with the Club for five seasons. The contract was renewed on May 16, 2008. During an official match against Barcelona F.C. in March 2009, the Player suffered an ankle injury and was injured for the remainder of the season.

5. In August 2009, the Club opened negotiations with the Brazilian football club C.R. Flamengo ("Flamengo") for a possible transfer of the Player on a loan basis. On August 12, 2009, the Club and Flamengo signed an agreement according to which the Player would be loaned to Flamengo for the duration of one season.

6. However, on August 21, 2009, the Player found out that he had failed the medical test conducted by Flamengo. On August 26, 2009, the Player notified the Club of the failed medical examination, and explained that Flamengo refused to sign his employment contract. On August 28, 2009, Flamengo notified the Club that the transfer could not go ahead. However, according to the Club, the transfer had already been effected, and it was now Flamengo's responsibility to pay the Player's salaries and medical costs.

III. PROCEDURAL BACKGROUND

7. The Player and the Club did not agree on whether the transfer was subject to the Player passing the medical test. Following a few months without salary and no reimbursement for his medical expenses, the Player unilaterally terminated his employment contract with the Club. As the Club did not accept the unilateral termination, the Player filed a claim with the FIFA Dispute Resolution Chamber ("DRC") on November 14, 2009, asking, *inter alia*, for confirmation that he could validly terminate his employment contract, and requesting

payment of €9,200 in outstanding salaries, €50,000 in medical costs, and €1,248,000 in damages.

8. On December 7, 2009, Mr. Bonnet, legal counsel of the Players' Status acting on behalf of the DRC, informed the Club about the claim lodged by the Player. The Club filed its answer on December 22, 2009, and, on January 26, 2010, the Club informed FIFA that it had also lodged a claim against the Player before the Spanish Ordinary Courts in Seville.

9. On March 16, 2011, the Spanish Football Association informed FIFA that the Club had filed for bankruptcy on January 14, 2011. By letter of September 6, 2011, the FIFA Players Status' general secretariat informed the Player of the following:

"we wish to inform you that in accordance with the annexed decision passed by the 'Juzgado de la Mercantil N.1' of Sevilla, Spain, on 14 January 2011, the Spanish club, Real Betis Balompiè, appears to have been put under administration. […]

On the basis of the aforementioned decision, we must inform you that, as a general rule, our service and decision-making bodies (ie. The Players' Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases of clubs which are in a bankruptcy proceeding, i.e. inter alia under administration.

As a consequence, we regret having to inform you that we do not appear to be in a position to further proceed with the investigation in the present case.

We therefore kindly invite you to contact the RFEF directly and immediately, so as to receive indications with regard to the competent authorities to address in order to have your alleged rights preserved.

Finally, we would like to add that our statements made above are based on the information we received from the RFEF only and hence are of a general nature and this without prejudice whatsoever".

10. This letter, which forms the basis of the current proceedings, will be referred to as the "FIFA Letter".

IV. PROCEEDINGS BEFORE THE CAS

11. Following receipt of the FIFA Letter, the Player filed a Statement of Appeal pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") on September 27, 2011. The Appellant appointed Mr. Quentin Byrne-Sutton as arbitrator. The Player filed his Appeal Brief on October 10, 2011, which contained the following requests for relief:

FIRST – To confirm that the decision forwarded by FIFA does not attend the provisions as stated in the various regulations of FIFA as neither as the well-established jurisprudence issued by the CAS since the FIFA general secretariat (Players' Status) is not competent to decide questions of jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber;

SECOND – To also confirm that the decision provided by the FIFA general secretariat (Players' Status) does not attend the provisions as stated in the various regulations of FIFA, in particular, Art. 14, par. 4, lit

f) and h) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber;

THIRD – To uphold that the various regulations of FIFA does not contemplate any reason nor provision which forbids the FIFA arbitration bodies to deliberate over cases in which one of the parties is under intervention of a judicial appointed authority;

FOURTH – To declare that any club, including those under intervention of a judicial appointed authority, registered before the Football Association and, therefore, member of FIFA, must strictly comply with the provisions as stated in Art. 13, par. 1 of the FIFA Statutes;

FIFTH – To order the FIFA Players' Status competent to deal with the claim lodged by the Appellant on November 14th, 2009 and, in such case, order the reopening of the investigation phase, as well as that only the Dispute Resolution Chamber detains jurisdiction to deliberate in the case at hand; and

SIXTH – To determine the reimbursement by FIFA of the sum spent by the Appellant as legal expenses, in case, EUR 15,000 (fifteen thousand Euros) added to any and all CAS administrative and procedural costs eventually incurred by the Appellant.

12. By letter of October 14, 2011, the First Respondent requested that the current proceedings be suspended until a decision was taken in case CAS 2011/A/2343, because, according to the First Respondent, that case concerned *"the exact same situation"* and *"the exact same core issues"*. Following the Player's consent, the CAS Court Office informed the Parties by letter of October 17, 2011 that the case would be suspended until an award was rendered in case CAS 2011/A/2343.

13. On March 2, 2012, the CAS Court Office informed the Parties that an award had been rendered in case CAS 2011/A/2343 on the previous day, and, as a result, that the suspension was lifted. The Player requested a copy of the award. However, the First Respondent requested the deadline for a further suspension until *"the question of the confidentiality of the award rendered in case CAS 2011/A/2343"* was clarified. The Player again agreed to a suspension. By letter of March 15, 2012, Counsel to CAS informed the Parties that the award in case CAS 2011/A/2343 remained confidential following agreement of the parties in that case.

14. By letter of March 12, 2012, the First Respondent appointed Mr. Efraim Barak as arbitrator. By letter of April 13, 2012, the CAS Court Office informed the Parties that Mr. Romano Subiotto QC had been appointed President of the Panel.

15. By letter of April 18, 2012, the First Respondent requested that the Club was also called as a respondent, given that the initial dispute before FIFA was between the Player and the Club. By letter of April 25, 2012, the Appellant asked the Panel to dismiss the request. On May 2, 2012, the Club filed a position on intervention. By letter of May 24, 2012, the CAS Court Office informed the Parties of the Panel's decision to have the Club join as a party to the proceedings for reasons of procedural efficiency.

16. The First Respondent filed its Response on May 16, 2012, requesting the CAS *"primarily, to declare the present appeal inadmissible and, subsidiarily, that the present appeal be rejected. Finally, we request for all costs related to the present procedure as well as the legal expenses of the Respondent to be borne by the*

Appellant". By letter of May 29, 2012, the First Respondent indicated that it did not find it necessary for a hearing to be held.

17. The Appellant filed a statement in response to the submission of the Second Respondent on June 5, 2012, and the First Respondent filed a statement in response to the submission of the Second Respondent on June 8, 2012.

18. The Club sent an additional submission on June 8, 2012. On the same day, the CAS Court Office explained that this submission was not solicited by CAS, and asked the Appellant and the First Respondent to agree or object to the admissibility of the additional submission. The Appellant objected to the admissibility of the additional submission of the Second Respondent by letter of June 11, 2012, and the First Respondent indicated that it found the additional submission of the Second Respondent irrelevant by letter of June 12, 2012. The CAS Court Office informed the Parties that the Panel had decided to declare inadmissible the additional submission filed by the Second Respondent by letter of June 15, 2012.

19. By its letter of June 11, 2012, the Appellant also requested the CAS for a further round of submissions. The CAS Court Office asked the Appellant for the reasons for such request by letter of June 15, 2012. The Appellant explained, by letter of June 22, 2012, that it wanted to present the arguments from the expert on Spanish law mentioned in his Appeal Brief, and should be given an opportunity to respond to the arguments raised in FIFA's Response. By letter of June 27, 2012, the CAS Court Office informed the Parties that the Panel had decided, pursuant to Article R56 of the Code and taking into account the particularities of the case (involving, *inter alia*, an understanding of the legal context in Spain), to grant a second round of submissions.

20. The Appellant filed his Additional Submission on July 4, 2012. The First Responded filed its Additional Submission on July 18, 2012. The Second Respondent did not file an Additional Submission.

21. By letter of August 20, 2012, the CAS Court Office informed the Parties that the Panel had decided to render an award on the basis of the written submissions only, pursuant to Article R57 of the Code.

V. ADMMISSIBILITY, JURISDICTION AND APPLICABLE LAW

A. ADMISSIBILITY

22. Referring to Article R47 of the Code and Article 63 of the FIFA Statutes, which both provide that an appeal can only be lodged against final decisions, FIFA claims that the appeal is inadmissible because the FIFA Letter is not a decision. According to FIFA, its intention when sending such letters is only to inform all parties involved of the fact that a party is in bankruptcy proceedings and of the related consequences.

23. FIFA also explains in such letters that it can no longer intervene in the matter, and refers the parties to the appropriate forum. However, the FIFA Letter does not deal with the contents of the Appellant's original request, and states that it is without prejudice, which according to FIFA should be read that a decision can still be taken at a later stage. Finally, the letter is signed by members of the FIFA Administration of the Player's Status Committee, and not by the appropriate legal bodies that can take formal decisions.

24. FIFA concluded: *"Should the Appellant have wished to obtain a formal and binding decision of said FIFA's deciding body, he was at liberty to request such a decision in writing and that, on the other hand, should the relevant deciding body have been called to pass a decision with regard to the Appellant's claim, such decision would have been limited to competence-related considerations only"*.

25. The Appellant points out that FIFA elsewhere in its response notes that it has used such letters to close at least 70 procedures in which one of the parties had become subject to bankruptcy proceedings at least since 2004. According to the Appellant, this in itself evidences that FIFA uses these letters to formally close proceedings.

26. The Appellant also refers to CAS 2011/A/2343, for which, as explained above, the current proceedings were suspended because according to FIFA it concerned *"the exact same situation"* and *"the exact same core issues"*. While the parties in that case – including FIFA – agreed to keep the award confidential, FIFA did refer to it in its Additional Submission, explaining that *"the situation at hand was not identical to the present one since the letter challenged before CAS had been issued by FIFA via its Disciplinary and Governance body, and not the FIFA Administration related to the Dispute Resolution Chamber"*.

27. The Swiss Federal Tribunal has defined a "decision" as follows:

"the decision is an act of individual sovereignty to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision (cf. ATF 101 Ia 73)".

28. The FIFA Letter explains in unequivocal terms that FIFA can no longer intervene in the procedure between the Appellant and the Second Respondent. While signed by the FIFA Administration of the Player's Status Committee, the FIFA Letter is sent on behalf of FIFA's *"service and decision-making bodies"*, and explicitly states that the FIFA DRC *"cannot deal with cases of clubs which are in a bankruptcy proceeding"*. The FIFA Letter does not refer to any internal remedies (for example, the possibility to ask for a "formal" decision on the same subject), but refers the Appellant to the Spanish Football Association to receive instructions on *"the competent authorities"*.

29. FIFA's statements that it *"appears to be"* not in a situation to intervene and that this position is *"without prejudice"* merely make the FIFA Letter conditional upon the Second Respondent actually being in bankruptcy proceedings (which was never contested by either the Appellant or FIFA itself). Contrary to what FIFA argues, the Panel does not read these statements as an invitation for the Appellant to ask for a "formal" decision. Rather, it makes clear that FIFA would only reconsider its position not to intervene if it somehow turned out that the Club

was not in bankruptcy proceedings. Elsewhere in its Response, FIFA itself even argues that *"with regard to the closure of procedures in particular relating to contractual disputes in which one of the parties was put under administration or declared bankrupt"* its *"long-standing practice is legally binding"*.

30. On the basis of the foregoing, the Panel concludes that the FIFA Letter was a legally binding decision. As there were no internal remedies available, and since the Appellant filed his Statement of Appeal within the prescribed deadline, the Appeal is admissible.

B. JURISDICTION

31. Article R47 of the Code provides as follows:

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

32. Articles 63 of the 2011 FIFA Statutes provide that final decisions by FIFA's legal bodies may be appealed to CAS. Taking into account that the Panel has found the FIFA Letter to be a final decision by FIFA, the Panel concludes that it has jurisdiction to hear the dispute.

C. APPLICABLE LAW

33. Article R58 of the Code provides as follows:

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

34. Article 62(2) of the 2011 FIFA Statutes provide as follows:

"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

35. There is no dispute as to the applicability of FIFA regulations and Swiss law.

VI. PROCEDURAL ISSUES

36. In its Additional Submission, FIFA claimed that its right to be heard had been violated because it was not consulted on the second round of submissions.

37. FIFA had informed the CAS Court Office that it did not find it necessary for a hearing to be held. The Appellant, however, requested a hearing unless it was not given the possibility for a second round of submission.

38. For reasons of procedural efficiency, the Panel decided to consider the Appellant's request and asked him to provide reasons why he wished a further round of submissions. The Appellant responded that he had introduced an expert in Spanish law in his Appeal Brief to be cross-examined during the hearing, and that he still wanted to *"supply the Panel with important data about Spanish law",* in particular to demonstrate that FIFA did not need to decline jurisdiction in the current case.

39. As mentioned above, after careful deliberation, the Panel decided, pursuant to Article R56 of the Code and taking into account the particularities of the case (involving, *inter alia*, an understanding of the legal context in Spain), to grant a second round of submissions.

40. In doing so, the Panel took care to allow FIFA to make a submission and have the last word on the subject, thereby respecting equal treatment and FIFA's right to be heard, while taking into account the fact that FIFA did not think a hearing was necessary, and the Appellant agreed to waive the hearing if the Panel allowed additional submissions. FIFA confirmed that its right to be heard has been respected by signing the order of procedure on August 27, 2012.

VII. THE MERITS

41. The following refers to the substance of the Parties' allegations and arguments without listing them exhaustively in detail. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments and evidence on record, whether or not expressly referred to.

42. The Appellant's requests can essentially be captured in two groups: First, the Appellant challenges the fact that the FIFA Letter – in which FIFA declined jurisdiction – was sent by an administrative body of FIFA, which does not have the authority to decide on the jurisdiction of the Players' Status Committee or FIFA DCR. Second, the Appellant requests the CAS to confirm that FIFA had jurisdiction, despite the fact that the Club was in bankruptcy proceedings.

A. PROCEDURE BEFORE FIFA

43. Referring to various FIFA regulations, including Articles 22 and 24 of the FIFA Regulations on the Status and Transfer of Players and Articles 3 and 14 of the FIFA Rules governing the procedures of the Players' Status and the Dispute Resolution Chamber, the Appellant claims that the FIFA Players' Status general secretariat does not have the competence to decide on the jurisdiction of the FIFA DRC.

44. The Appellant also refers to the award in CAS 2007/A/1251, in which the Panel concluded that *"FIFA has a clear system whereby its general secretariat has no authority to decide on issues of competence but must dispatch the claims to the DRC and the PSC according to their respective scope of jurisdiction under the rules and regulations"*. Moreover, in CAS 2007/A/1298, 1299 & 1300, the Panel already found that the FIFA rules provide that decisions of the FIFA DRC must contain reasons, and that

FIFA must correctly apply its own regulations by meeting the formal requirements contained therein.

45. FIFA argues that its approach is both correct and necessary. Relying on the principle of the autonomy of associations, FIFA explains that it has followed the practice to close cases by means of a simple later mainly for practical reasons. For example, FIFA received over 1889 claims in 2011, and therefore needs to deal with these cases efficiently and effectively. Moreover, these claims originate from many countries across the globe, each with its own legal structure, which means that FIFA needs to apply a uniform practice that it can use globally. Also, FIFA says it sends the letter because this would be faster, and, given the financial considerations at stake, *"the time factor can be of utmost importance"*.

46. The Panel is of the opinion that a decision with such important consequences for the parties involved in the proceedings must be taken by the authorized and competent judicial body rather than by the secretariat. To ensure a fair procedure, a party that is subject to jurisdiction of FIFA has the right to be given the opportunity to bring his full arguments and pleadings to the appropriate judicial body before a final decision is taken.

47. As noted before, the Panel does not accept FIFA's argument that the Appellant could still resort to the ordinary procedure before the FIFA DRC. The FIFA Letter unequivocally states that FIFA cannot take any further action, and that the Appellant should consult with the Spanish Football Association to learn about alternative remedies.

48. Particularly relevant in this respect – and this may distinguish the current case from similar cases – is the Appellant's undisputed claim that, under Spanish labor law, employment disputes should be filed within one year. Since FIFA only declined jurisdiction in September 2011, *i.e.*, almost two years after the Appellant lodged its complaint (without any explanation for this long delay), the Appellant could no longer file his claim in an ordinary court. FIFA's decision to close the file without a proper trial could, therefore, lead to a denial of justice. At the very least, the FIFA Letter could have mentioned that it was only an administrative notice, and refer the Parties to the appropriate FIFA dispute resolution bodies for a formal trial and decision.

49. To conclude, the Panel agrees with the Appellant that an administrative body of FIFA such as the FIFA Players' Status general secretariat is not competent to decide on the question of jurisdiction of the Players' Status Committee or the FIFA DRC, and that the FIFA Letter does not comply with the principles of the FIFA Statutes and Regulations which ensure that all parties involved are granted a fair procedure. The Appellant's requests for relief in this respect are therefore upheld, and the Panel orders FIFA to take a new decision on the matter.

B. JURISDICTION OF FIFA

50. As noted by the First Respondent in its submission of June 8, 2012, it is uncontested that the Club was in bankruptcy proceedings at the time the FIFA Letter was communicated to the Player (although it is noteworthy that for a period of over one year after the Appellant filed its claim with the FIFA DRC on 14 November 2009 the Club was not yet in bankruptcy

proceedings – since the latter filed for bankruptcy on 14 January 2011 - and there is no submission or explanation by FIFA regarding why its decision could not have been made and communicated to the Appellant within that year).

51. The Appellant argues that FIFA cannot deny jurisdiction on the basis of the Club being in bankruptcy proceedings simply because there is nothing in FIFA's statutes to this effect. Moreover, with reference to CAS 2008/A/1622, 1623 & 1624, the Appellant argues that FIFA should be held liable for this loophole because it failed to clarify or codify the issue.

52. According to FIFA, the practice to close proceedings when one of the parties becomes subject to bankruptcy proceedings has acquired the status of customary association law (*"Vereinsübing"*). FIFA refers to the award in CAS 2008/A/1622, 1623 & 1624, in which the Panel found that, under specific circumstances, customary law can indeed represent a valid set of rules under Swiss association law. FIFA argues that the criteria for establishing that its decision-making practice has become customary law are met, because (i) its regulations contain a loophole, since they do not deal with the situation in which a party is in a bankruptcy procedure, (ii) it has constantly and consistently applied its practice at least since 2004 (*inveterata consuetudo)*, and (iii) its members are convinced that this practice is legally binding since no one has contested the practice until one instance in 2011 (*opinio necessitatis*).

53. FIFA also claims that in cases in which one of the parties is in bankruptcy proceedings, national law often prevents it from taking a decision on the merits of an issue. In Spain, for example, Article 8 of the Bankruptcy Act provides that the judge presiding over the proceedings is exclusively competent. The Second Respondent claims that Spanish law prevents labor disputes from being arbitrated. It also refers to Articles 51 and 52 of the Bankruptcy Act, which would grant exclusive competence to the judge presiding over the bankruptcy proceedings.

54. The Appellant counters these arguments by saying that both the Player and the Club have willingly subjected themselves to the jurisdiction of FIFA, that the FIFA regulations shall always prevail over Spanish law, and, therefore, that Spanish law should be set aside. The Appellant furthermore refers to Article 517 of the *Ley de Enjuiciamiento* and to the New York Convention on Arbitration, according to which an award by CAS would be fully enforceable in Spain. FIFA maintains, however, that FIFA remains subject to Swiss law, and FIFA's members (including the Club) remain subject to certain obligations under national legislation in the country in which they are registered.

55. In keeping with Article R57 of the Code and given the importance of the competent body of FIFA deciding in the first instance on its own jurisdiction, the Panel shall not admit the Appellant's prayer for relief relating to the jurisdiction of FIFA but shall instead refer the case back to the appropriate FIFA dispute resolution body to decide – at least in first instance – whether FIFA's allegedly valid practice of closing cases because clubs are subject to bankruptcy proceedings is in compliance with its own Statues, rules and regulations and may be applied in the circumstances of this case.

56. In making that decision, the competent FIFA dispute resolution body will need to carefully examine, *inter alia,* Swiss law on sports associations in order to determine if and to what extent the present FIFA Regulations, which ignore the situation, contain a lacuna, or otherwise, whether it is an implicit norm indicating that there was no intention of FIFA to close the proceedings in such cases (comparing to this effect the wording of article 107(b) of the FIFA Disciplinary Code where it is clearly stated that the FIFA Disciplinary Committee may close the proceedings in such cases). Furthermore, if the competent FIFA dispute resolution body will be of the opinion that indeed the silence of the regulations is a lacuna, to what extent and under what conditions any lacuna in its rules and regulations may be filled by a long-standing practice of one of its competent bodies.

57. Additionally, the FIFA DRC is expected to consider whether also other factors, such as the difference between national laws on bankruptcies, as well as the specific circumstances of a club entering into bankruptcy proceedings should be taken into account. In doing so, and in respect of this specific case, it should take into account the fact that in this case the Appellant may have been time-barred from joining the bankruptcy proceedings during the long period (over one year) between the time when the Appellant filed its claim with the FIFA DRC and the Club filed for bankruptcy, without the Appellant having benefitted in the meantime from a decision by the FIFA DRC.

58. To conclude, while the Panel understands the Appellant's frustration for the jurisdictional limbo in which he ended up, the Panel finds that the Appellant's requests for relief relating to the jurisdiction of FIFA must be decided in the first instance by the relevant FIFA dispute resolution body.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal by William Lanes de Lima filed on October 10, 2011 is partially upheld.

2. The decision of the FIFA Players' Status general secretariat of September 6, 2011 is set aside.

3. The case shall be referred back to FIFA for a new decision in light of the grounds of the present award.

(…)

7. All other requests are dismissed.