



Arbitration CAS 2013/A/3269 Clube Desportivo Nacional v. Clube de Regatas Brasil, award of 6 May 2014

Panel: Mr Fabio Iudica (Italy), President; Mr Rui Botica Santos (Portugal); Mr Ken Lalo (Israel)

Football

Loan agreement

Validity of the loan agreement

Unjust enrichment

1. **A loan agreement which was concluded between and bears the signature of all the parties to the agreement is valid and binding between the parties.**
2. **Article 62 of the Swiss Code of Obligations states that a person who has enriched himself without just cause at the expense of another is obligated to make restitution. In particular, restitution is owed for money benefits obtained for no valid reason whatsoever, for a reason that did not transpire or for a reason that subsequently ceased to exist.**

I. INTRODUCTION

1. This appeal is brought by Clube Desportivo Nacional (hereinafter also referred to as “the Portuguese Club” or the “Appellant” or “Clube Desportivo”) against the decision rendered by the Single Judge of FIFA Players’ Status Committee (hereinafter referred to as the “PSC”) on 21 January 2013 regarding a contractual dispute between Clube Desportivo and Clube de Regatas Brasil (hereinafter also referred to as the “Brazilian Club” or the “Respondent” or “Clube de Regatas”) (collectively, the “Parties”) and relating to the loan of the Brazilian player R. (hereinafter also referred to as the “Appealed Decision”).

II. THE PARTIES

2. Clube Desportivo Nacional is a football club affiliated to the Portuguese Football Federation and having its headquarters in Funchal, Portugal.
3. Clube de Regatas Brasil is a football club affiliated to the Brazilian Football Federation, with registered office in Alagoas, Maceió, Brazil.

III. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Appellant's written submissions, the Parties' pleadings at the hearing, and relevant documentation produced in the present proceedings and on the finding of facts made by the Single Judge of the FIFA PSC. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 11 July 2006, the Appellant signed an employment contract with the football player R. (hereinafter referred to as the "Player"), valid until the end of the sporting season 2010/2011.
6. Under the said employment contract, the Appellant undertook to pay the Player a signing fee as well as monthly remuneration of EUR 7.538,64 for 14 months during each of the five (5) sporting seasons specified in the contract.
7. On 25 August 2008, the Appellant and the Respondent concluded an "*Agreement for the temporary transfer of contractual, federation and financial rights of a professional Footballer*" regarding the Player (hereinafter referred to as the "Loan Agreement"). A copy of the Loan Agreement produced by the Appellant bears the signatures of the Portuguese Club, the Brazilian Club and the Player.
8. Under the Loan Agreement, the Appellant transferred the rights of the Player, on a loan free basis, to the Brazilian Club, until 31 December 2008. In fact, Clause III of the Loan Agreement established that the transferee shall not pay anything to the transferor for the relevant temporary transfer.
9. As to the general conditions governing the loan, Clause IV of the Loan Agreement reads as follows: "*1. The parties to this agreement including and particularly the CONSENTING PLAYER, declare and agree that the TRANSFEROR shall not be required to pay any amount in relation to this transfer to the CONSENTING PLAYER and the CONSENTING PLAYER declares that the TRANSFEROR has complied fully and timeously with its legal and contractual obligations to him. 2. During the transfer period referred to in point 1 of clause II – SUBJECT MATTER, the TRANSFEREE shall pay the player's salary in full, personal and employment accident insurance and air travel. 3. The TRANSFEREE shall be responsible for the accommodation of the CONSENTING PLAYER and his family in an apartment*".
10. Under Clause VI, the Parties also agreed that, in case of breach of the Loan Agreement, the transferee shall pay to the transferor the sum of EUR 250.000,00 as fixed minimum amount of damages "*in the event of the transfer of the CONSENTING PLAYER, without the express consent of the TRANSFEROR, and without prejudice to such greater sum as may be adjudged as due in respect of the CONSENTING PLAYER'S contractual, federation and financial rights*". According to point 2 of Clause VI, the same shall apply in the event of the loss, by the transferee, of the relevant rights to the Player during the contractual period. Moreover, point 3 of the said Clause established that "*Breach of any of the conditions imposed by the TRANSFEROR on the TRANSFEREE by this agreement, which enables, or does not enables, the release of the CONSENTING PLAYER to another sports*

association, with or without just cause, shall also render the TRANSFEREE immediately liable to pay the abovementioned sum to the TRANSFEROR”.

11. On 2 September 2008, the Portuguese Football Federation issued the International Transfer Certificate (ITC) in favour of the Brazilian Football Federation with respect to the temporary transfer of the Player from Clube Desportivo to Club de Regatas.
12. According to a facsimile letter addressed to the Respondent and dated 15 December 2008, the Player wrote to the legal representative of the Respondent complaining about the failure of the Brazilian Club to pay his remuneration according to the Loan Agreement. The relevant parts of the letter read as follows: *“You have however, at no time, honoured the commitment assumed and have not made any payment to me. Accordingly, I cannot continue to honour my commitments. I therefore request that I be sent an air ticket so that I can return to my original club, Clube Desportivo Nacional”.*
13. A facsimile report dated 19 June 2009 also shows that on that day, the Appellant wrote to the Respondent with regard to the Loan Agreement, maintaining that the Brazilian Club had not fulfilled its obligations towards the Player and that, therefore, the Portuguese Club was going to seek redress before FIFA *“because of the increased costs in respect of the athlete, which should have been borne by you, and indirectly because of the professional devaluation, lack of performance/training frequency/playing of the Player”.*
14. On 18 September 2009, the Portuguese Club lodged a claim with FIFA against the Respondent for breach of contract, stating that the latter had failed to fulfil its financial obligations towards the Player with respect to the Loan Agreement. As a consequence, Clube Desportivo requested that Clube de Regatas be condemned to pay the following items:
 - EUR 250.000,00 as compensation under Clause VI, points 1 and 3 of the Loan Agreement;
 - EUR 30.154,56 (EUR 7.538,64x4) as reimbursement of 4 monthly salaries (from September 2008 until December 2008), which were allegedly due by the Brazilian club to the Player;
 - an undefined amount for travel expenses and accommodation;
 - interest at the rate of 5% per annum from 1 January 2009 until effective payment; and
 - procedural costs.
15. In this context, the Portuguese Club maintained that, given the Respondent’s failure, it was compelled to assume the payment of the outstanding salaries of the Player and to bear all the other relevant costs of the Player, in order to prevent the Player from unilaterally terminating the employment contract concluded between the Portuguese Club and the Player, with all the further adverse consequences that such a termination may entail.
16. With regard to the Respondent’s position before the FIFA PSC, in essence, the Brazilian Club rejected the claim lodged by Clube Desportivo, contesting that it had not even signed the Loan Agreement. In addition, the Respondent maintained that it concluded a different employment

contract with the Player on 22 August 2008, for a monthly salary of BRL 1.500 (approximately corresponding to EUR 470,000), thus objecting to the request for reimbursement of the amounts claimed by the Portuguese Club.

17. On 21 January 2013, the Single Judge of the FIFA PSC rejected the claim lodged by Clube Desportivo in full.

IV. SUMMARY OF THE APPEALED DECISION

18. The grounds of the Appealed Decision is summarized as follows:
19. As an initial matter, the Single Judge noted that, irrespective of the allegations of the Brazilian Club, the Loan Agreement bore the signatures of all the Parties to the contract and that there was no evidence which could lead to rule out the authenticity of the signature by the Brazilian Club on the Loan Agreement. Moreover, the Respondent had not contested such authenticity, but simply alleged to have not signed the Loan Agreement. As such, the Single Judge deemed that on 25 August 2008, the Appellant and the Respondent had in fact concluded the Loan Agreement for the temporary transfer of the Player.
20. With regard to the request for damages and reimbursement of costs and expenses made by the Portuguese Club, the Single Judge was of the opinion that, with respect to the outstanding salaries, the relevant obligation only concerned the Player and the Respondent in relation to their employment agreement, and for that reason the claim for reimbursement by the Portuguese Club was unjustified: *“In this context, the Single Judge was keen to underline that any claim for non-fulfilment of the terms of the employment contract between the Respondent and the player should have been lodged by either the former or the latter and not by the Claimant”* (Appealed Decision, par 11).
21. In relation to the Appellant’s request for EUR 250.000,00 as compensation for damages based on Clause VI, point 1 and 3 of the Loan Agreement, the Single Judge rejected the claim, holding that the relevant Clause was only applicable *“in case of a transfer of the player from the Respondent to another club without the consent of the Claimant and/or if any other action exercised by the Respondent would affect the Claimant’s right over the player”* (Appealed Decision, par 13).
22. In consideration of the above, the Single Judge concluded that, in view of the fact that the Player was not transferred to any other club during the loan period and that he also came back to the Appellant at the end of the loan, the Portuguese Club was not entitled to receive any compensation for alleged damages.
23. The Appealed Decision was notified to the Appellant on 8 July 2013 and to the Respondent, through the Brazilian Football Confederation, on 9 July 2013.

V. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 29 July 2013, Clube Desportivo filed an appeal before the CAS with respect to the Appealed Decision by submitting a Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”). By the same Statement of Appeal, the Appellant appointed Mr Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as arbitrator in the present proceedings. The Appellant chose English as the language of the present appeal arbitration.
25. According to Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 7 August 2013.
26. By letter dated 11 September 2013, the CAS Court Office informed the Parties that, since the Respondent had failed to appoint its arbitrator within the due time limit, it was for the President of the CAS Appeal Arbitration Division or his Deputy to proceed with the appointment *in lieu* of the Respondent.
27. On 20 September 2013, the CAS Court Office informed the Parties that the Respondent also failed to file its Answer within the time limit according to the CAS Code.
28. By letter dated 30 September 2013, the Parties were informed that Mr. Ken Lalo, Attorney-at-law in Gan-Yoshiyya, Israel, had been appointed as arbitrator *in lieu* of the Respondent.
29. By letter dated 18 October 2013, the CAS Court Office informed the Parties that the Panel appointed to decide the present case was constituted as follows:

President: Mr. Fabio Iudica, Attorney at-law in Milan, Italy

Arbitrators: Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal

Mr. Ken Lalo, Attorney-at-law in Gan-Yoshiyya, Israel
30. By letter dated 1 November 2013, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present proceedings on 17 December 2013 in Lausanne.
31. Upon request of the CAS Court Office to the Parties, the Respondent informed that Mr. Osvaldo Sestario Filho and Mrs. Renata Eliza De Oliveira (legal counsels) would represent the Brazilian Club at the hearing, with the assistance of an interpreter, while the Appellant indicated the following witnesses: Mr. Rui Alves and Mrs. Margarida Camacho and Mr. R. who would be present by videoconference.
32. On 11 December 2013, the Order of Procedure was transmitted to the Parties and was then signed and returned to the CAS Court Office by the Appellant on 11 December 2013 and by the Respondent on 12 December 2013. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS.

VI. HEARING

33. On 17 December 2013, a hearing was held at the CAS Headquarters in Lausanne.
34. The following persons attended the hearing:

For the Appellant, Mr. Gonçalo Almeida (legal counsel), and Mrs. Margarida Camacho (witness).

For the Respondent, Mr. Osvaldo Sestario Filho and Mrs. Renata Eliza De Oliveira (legal counsels).
35. Mr. Brent Nowicki, Legal Counsel to the CAS, assisted the Panel at the hearing.
36. At the beginning of the hearing, the Parties confirmed that they did not have any objection to the formation of the Panel, or to the jurisdiction of CAS.
37. Mrs. Margarida Camacho, a member of the Board of Directors and legal representative of the Portuguese Club, acted as the internal legal counsel of the Portuguese Club at the time the Player was loaned to the Brazilian Club. Mrs. Camacho attested that she had personally drafted the Loan Agreement and that she was present when the President of the Appellant had signed the Loan Agreement. She affirmed that after the signing by the Appellant, the Loan Agreement was forwarded to the Brazilian Club by facsimile and was then returned to the Appellant with the signature of the legal representative of the Respondent.
38. As to the penalty clause, Mrs. Camacho asserted that the purpose envisaged by the Parties thereby was to protect the Portuguese Club and to prevent the possibility of the Player leaving the Brazilian Club as a free agent. Mrs. Camacho further attested that she had been aware of the fact that the Respondent failed to pay the Player's salaries, cost of air tickets and accommodation in Brazil, and that the Appellant paid the relevant salaries *in lieu* of the Respondent. Answering a question by the Panel, Mrs. Camacho rejected the assumption that the penalty clause was related to the free nature of the Loan Agreement, contrary to the Appellant's claim that the relevant clause was specifically stipulated by the Parties in order to secure compensation to the Appellant in case of breach by the Respondent, mainly taking into consideration that the loan was settled on a free basis.
39. During the hearing, the Parties were requested to answer the questions posed by the Panel and were granted the opportunity to present their oral arguments.
40. At the conclusion of the hearing, the Parties explicitly agreed that their rights to be heard and to be treated equally in the arbitration proceeding had been fully observed. The Parties were also satisfied that due process had been fully observed.
41. After the hearing, since the Panel noticed that the Appellant failed to produce documentary evidence relating to the alleged payment of the Player's salaries by the Appellant, *in lieu* of the Respondent, Clube Desportivo was invited to file with the CAS Court Office all documentary

evidence supporting its alleged payment of the Player's outstanding salaries in the amount of EUR 30.154,56.

42. On 10 February 2014, within the time limit granted by the CAS Court Office, the Appellant submitted copy of the agreement concluded with the Player for the payment of his outstanding salaries and copy of the relevant three cheques issued in favour of the Player in the total amount of EUR 25.194,21 together with copy of a further cheque in the amount of EUR 8.000,00 which refers to the compensation for "revocation" allegedly paid to the Player as a consequence of the breach of the Loan Agreement by the Respondent.
43. By letter dated 27 February 2014, the Respondent contested the documents submitted by the Appellant, at the invitation of the Panel, following the hearing and asked the Panel to reject them.

VII. SUBMISSIONS OF THE PARTIES

44. The following outline is a summary of the main position of the Appellant and the Respondent and does not comprise each and every contention put forward by the Parties. In this respect, since the Respondent failed to file an Answer in these proceedings, the Panel took into consideration the written submission of the Appellant and the oral arguments submitted by Appellant and Respondent at the hearing. The Panel has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the summary which follows. The relevant written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

45. The Appellant made a number of submissions, in its Statement of Appeal, in its Appeal Brief and at the hearing. These can be summarized as follows:
46. The Appellant maintains that the Loan Agreement was concluded between the Parties since it was signed by both Clube Desportivo, Clube the Regatas and the Player. Therefore, the Loan Agreement was perfectly valid and binding between the Parties. This fact is also confirmed by the documents in the file, and, in particular, by the correspondence between the Appellant and the Portuguese Football Federation which proves that an ITC was released by the latter with regard to the temporary transfer of the Player to the Brazilian Club, based on the Loan Agreement.
47. Considering the above, the Appellant argues that the Brazilian Club is responsible for breach of contract towards Clube Desportivo, since it failed to pay the salaries due to the Player during the loan period, in addition to other expenses for accommodation and flight tickets as set forth under Clause IV of the Loan Agreement.
48. According to the Appellant's position, by failing to fulfil the obligations with respect to the Player's salary and relevant costs, *"the Respondent has committed serious contractual breaches, having*

consequently caused several financial, image and sporting rights to the Appellant and creating serious risks for the latter to permanently lose the player without any compensation”.

49. As a consequence, the Appellant argues that the penalty clause set forth under Clause VI of the Loan Agreement applies and that the Appellant ought to be awarded the sum of EUR 250.000,00, being the minimum amount agreed by the Parties as a compensation for any breach of the contractual obligations by the transferee (the Respondent).
50. In this respect, the Appellant claims that the Single Judge was wrong in finding that Clause VI only applies in case of the Player’s transfer from the Respondent to another club (without the consent of the Appellant).
51. On the contrary, the Appellant argues that the wording of the relevant point 3 of Clause VI (*“breach of any of the conditions which enables, or does not enables the release of the consenting player to another sports association, with or without just cause”*) suggests that any violation by the Respondent of its obligations under the Loan Agreement should trigger the application of the compensation clause, irrespective of the transfer of the Player to another sports association.
52. In this regard, the Appellant also maintains that the free nature of the Loan Agreement was only justified on the assumption that the Respondent would comply with its obligations towards the Player under Clause IV of the Loan Agreement (salaries, flight tickets, insurance and accommodation): *“Nevertheless, the free nature of the transfer was conditioned to the Respondent’s absolute compliance towards the payment of the player’s salaries, personal and professional insurance, accommodation and flight tickets during the entire loan period”*. The Appellant argues that the free nature of the Loan Agreement was the main reason for stipulating the penalty clause, and that in case of breach of the said obligations the Respondent should at least be condemned to pay the minimum compensation set forth under Clause VI of the Loan Agreement.
53. Moreover, the Appellant argues that it should be awarded the amount of EUR 250.000,00 as fixed amount, independently of the exact amount of damages actually sustained, taking into consideration the risks that the breaches committed by the Respondent could have implied: *“As a matter of fact, in the case under analysis, it would have been possible to have the player granted just cause for terminating his employment contract due to the outstanding remuneration for the entire loan period”*. As the validity of such a provision is also confirmed by Article 160 *et seq.* of the Swiss Code of Obligations, the Appellant believes that the application of the penalty clause is undisputable.
54. As a second request, the Appellant claims the reimbursement of the relevant expenses allegedly incurred with reference to the outstanding salaries of the Player (4 monthly salaries from September until and including December 2008, in the total amount of EUR 30.154,56), air tickets (EUR 1.477,29), costs of the Player’s accommodation in Brazil (EUR 3.634,33) and compensation to the Player for “revocation” (EUR 8.000,00).
55. In this regard, the Appellant alleges that, due to the Respondent’s breach of contract, it was forced to pay the outstanding salaries of the Player and all other relevant costs, in substitution of the Respondent, in order to prevent the Player from unilaterally terminating the employment contract, and to avoid further damages. Contrary to the conclusions of the Single Judge in the

Appealed Decision, the Portuguese Club, as a party to the Loan Agreement, had an interest in the relationship between the Respondent and the Player and is, therefore, entitled to such a reimbursement.

56. With specific regard to the Player's remuneration, the Appellant argues that under the Loan Agreement, the Respondent was obliged to pay the amount agreed in the employment contract concluded between the Player and Clube Desportivo, i.e. the sum of EUR 7.538,64 per month.
57. In its Appeal Brief, the Appellant submitted the following prayers for relief:

"1. Entirely cancel the appealed decision;

2. Establish that the Respondent has unlawfully breached the Agreement;

3. Condemn the Respondent to pay to the Appellant, as compensation for its serious contractual breaches, the contractually stipulated penalty amount of € 250.000,00 (two hundred and fifty thousand Euros);

4. Subsidiary, in case the Panel deems that the amount established as a penalty clause is clearly disproportionate and legally unacceptable, adjust such amount to a lower one that it deems as appropriate, particularly taking into account the free basis of the transfer and the damages suffered by the Appellant, as well as the real risks that it effectively took as a consequence of the Respondent's contractual breaches (e.g. the possibility for the player to have contractually terminated his employment contract with the Appellant);

5. Establish that the Respondent is liable to reimburse the Appellant for all the payments that the latter has made to the player in its substitution, amounting to € 43.266,18 (Forty three thousand two hundred and sixty six Euros and eighteen cents);

6. Condemn the Respondent to pay the Appellant default interest at the rate of 5% p.a. over the due amount as from 1 January 2009 until its effective payment;

7. Condemn the Respondent to bear all the proceeding costs incurred in the present procedure, as well as to contribute to support the expenses incurred by the Appellant (e.g. travel, accommodation and legal assistance) in a minimum amount of CHF 15.000,00 (fifteen thousand Swiss Francs)".

B. Respondent's Submissions and Requests for Relief

58. The Respondent failed to submit an Answer, but its position in the present appeal arbitration may be drawn from its relevant oral submissions at the hearing and can be summarized as follows:
59. In essence, the Respondent maintains that even had the Loan Agreement been signed by Clube Desportivo (which fact is, however, denied by the Respondent), the Appellant's request for compensation under the penalty clause of the Loan Agreement should be denied, failing the conditions for its application. In fact, according to the Respondent, the Single Judge correctly established that compensation for damages under Clause VI could only be awarded had the Respondent transferred the Player to a third Club without the consent of the Appellant, or in

case that any other action by the Respondent during the loan period would have affected the Appellant's rights over the Player.

60. Besides the foregoing, the penalty clause is disproportionate, since the Appellant did not suffer any damages which could justify the request for compensation and, moreover, it still had the availability of the Player in its club.
61. In addition, the Respondent denies that the Appellant incurred any costs or financial damages in connection with the Loan Agreement.
62. Finally, the Respondent claims that the request for reimbursement of costs submitted by the Appellant is in any case unjustified in its amount. In this respect, the Respondent maintains that it was not bound by the salary agreed upon between the Player and the Portuguese Club in their employment contract, since the Player concluded a different employment contract with the Brazilian Club which set forth a different (lower) remuneration.

VIII. CAS JURISDICTION

63. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the CAS Code (Edition 2013), which reads as follows: *"An Appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body"*.
64. The Appellant relies on Articles 66 and 67 of the FIFA Statutes and the Respondent does not object to the jurisdiction of the CAS over the present appeal arbitration.
65. Moreover, the jurisdiction of CAS, which is not disputed, is confirmed by a footnote in the Appealed Decision of the Single Judge of the FIFA PSC referring to the provisions of FIFA Statutes.
66. The Parties also confirmed the CAS jurisdiction by signing the Order of Procedure sent by the CAS Court Office. The Parties have further confirmed at the hearing that they accept the CAS jurisdiction. Accordingly, the Panel is satisfied that it has jurisdiction to hear this case.
67. Under Article R57 of the CAS Code, the Panel has the full power to review the facts and the law and may issue a new decision which replaces the Appealed Decision or annuls it and refers the case back to the previous instance.

IX. APPLICABLE LAW

68. Article R58 of the CAS Code provides the following: *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has*

issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

69. According to Clause VII of the Loan Agreement, the Parties have agreed that the Regulations of FIFA shall govern any dispute arising between them under the Loan Agreement.
70. Therefore, the FIFA Regulations on the Status and Transfer of Players are primarily applicable to the present case, with Swiss Law applying subsidiarily.

X. ADMISSIBILITY OF THE APPEAL

71. Article R49 of the CAS Code provides as follows: *“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*
72. The same time limit is confirmed by Article 67, par. 1 of FIFA Statutes quoted in the footnote of the Appealed Decision.
73. The Panel notes that the Single Judge of the FIFA PSC rendered the Appealed Decision on 21 January 2013, and that the PSC notified it to the Appellant on July, 8, 2013 and to the Respondent, through the Brazilian Football Confederation, on 9 July 2013.
74. Considering that the Appellant filed its Statement of Appeal on 29 July 2013, and also that the admissibility of the present appeal is not contested by the Respondent, the Panel is satisfied that the Appellant’s appeal was timely filed and is, therefore, admissible.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

75. The Panel considers that, since the Respondent denied having signed the Loan Agreement, a preliminary issue to decide is whether the Loan Agreement was valid and binding between the Parties.
76. In this respect, considering the documents in the file, the Panel notes that, consistent with the grounds of the Appealed Decision, the copy of the relevant Loan Agreement actually bears the signatures of all the Parties to that agreement. Moreover, the Respondent did not at any time object to the authenticity of the signature of the legal representative of Clube the Regatas contained in the Loan Agreement. In addition, the witness called by the Appellant, Mrs. Margarida Camacho, also confirmed that the Loan Agreement was forwarded by facsimile to the Respondent which returned it by facsimile to the Appellant with the signature of the Brazilian Club, which fact is also confirmed by the facsimile track on the upper edge of the copy submitted by the Appellant.
77. Consequently, with respect to the above, the Panel believes that the Loan Agreement was indeed concluded and signed and is valid and binding between the Parties.

78. With regard to the Appellant's request that the Respondent be considered responsible for breach of the Loan Agreement, the Panel notes that the documents submitted by the Appellant prove that the Brazilian Club failed to pay the Player's remuneration during the loan period, as well as other relevant costs as set forth under Clause IV of the Loan Agreement. Moreover, these facts were never disputed by the Respondent.
79. Therefore, the Panel concludes that the Respondent actually breached the relevant obligations under the Loan Agreement.
80. Subsequently, having established the foregoing, the Panel examined the request for compensation claimed by the Appellant based on the penalty clause set forth in the Loan Agreement.
81. In this regard, the Panel shares the view of the Single Judge of the FIFA PSC that Clause VI of the Loan Agreement could only be applicable had the Appellant lost the (economic and/or federative) rights of the Player due to a transfer to another club without the consent of the Appellant or in the event that a breach committed by the Respondent would have affected the Appellant's rights over the Player.
82. In the Panel's view, the wording of Clause VI, point 3, contrary to the Appellants' argument, should be interpreted in the sense that, in case of breach by the Respondent of the obligations under the Loan Agreement, the relevant compensation shall apply based on the following alternative conditions: a) when the breach of the Respondent entails the transfer of the Player without the consent of the Appellant; or, conversely, b) when the transfer of the Player, prospected by the Appellant, is precluded by the breach of the Loan Agreement by the Respondent.
83. Therefore, the Panel rejects the Appellant's suggestion that the wording under Clause VI, point 3 of the Loan Agreement: "*which enables, or does not enable the release of the consenting player to another sports association*" should be interpreted as if it relates to any breach of the contractual conditions, irrespective of the transfer of the Player to another sports associations.
84. In addition, the Panel rejects the Appellant's argument that Clause VI of the Loan Agreement would be applicable even in the absence of an effective damage, but also as a consequence of the mere risk incurred by the Appellant to lose its rights over the Player. In the Panel's view, in fact, such an interpretation is inconsistent with the wording of the relevant Clause.
85. Accordingly, since it was not demonstrated that the Appellant suffered any loss or prejudice relating to the Player's rights due to the violations committed by the Respondent, the Panel concludes that the Appellant is not entitled to receive any compensation under Clause VI of the Loan Agreement.
86. With regard to the request for reimbursement made by the Appellant as a consequence of the Respondent's violations, the Appellant also requests to be reimbursed for the amounts paid in substitution of the Respondent, namely, the Player's salaries and other expenses, allegedly amounting to EUR 43.266,18. In this regard, the Appealed Decision concluded that the

payment obligations emerging from the employment contract concluded between the Player and the Respondent only concerned these two parties and, therefore, the Appellant was not entitled to lodge any claim in relation to the non-fulfilment of the terms of that employment contract.

87. Conversely, it is the opinion of the Panel that the bilateral nature of the relationship between the Player and the Respondent, based on their employment contract, is not a sufficient element to reject the Appellant's claim for reimbursement. As a matter of fact, Clause IV, par. 2 and 3 of the Loan Agreement, can be construed as meaning that the Respondent undertook the payment obligations of the Player's salary and expenses during the loan period not only towards the Player but also towards the Appellant. In fact, the payment of the Player's salaries during the loan period was set forth as a condition of the temporary transfer of the Player from the Appellant to the Respondent (the heading of Clause IV of the Loan Agreement also reads as follows: "*The general conditions governing the transfer of the consenting player*"). Under Clause IV of the trilateral Loan Agreement, the Respondent was obliged to pay the Player's salary in full and to bear the insurance costs, accommodation and travel expenses of the Player. Therefore, by failing to pay the Player's salaries and other expenses, the Respondent also breached the Loan Agreement towards the Appellant and is therefore liable to compensate the Appellant for damages, in an amount corresponding to the sums paid by the Appellant to or for the Player in substitution of the Respondent.
88. Even if the Respondent's failure to pay the Player's salaries and expenses was not to be construed as a breach of the Loan Agreement towards the Appellant, the Panel believes that by failing to comply with its payment obligations under Clause IV of the Loan Agreement, the Respondent benefited without just cause from the payment made by the Appellant on its behalf and is therefore liable to compensate the Appellant for the relevant amounts.

In this regard, the Panel reflects on Article 62 of the Swiss Code of Obligations wherein it is stated that "*[a] person who has enriched himself without just cause at the expense of another is obligated to make restitution. In particular, restitution is owed for money benefits obtained for no valid reason whatsoever, for a reason that did not transpire or for a reason that subsequently ceased to exist*".

89. The Panel notes that the Appellant submitted documentary evidence which shows that, as a consequence of the Respondent's breach of its payment obligations under the Loan Agreement, the Appellant incurred the following costs and expenses *in lieu* of the Respondent, in relation to the Player: EUR 1.477,29 for air tickets, BRL 8.025,62 (corresponding to EUR 2.502,00) for accommodation in Brazil, EUR 8.000,00 for compensation for "revocation" and EUR 25.194,21 for the Player's outstanding salaries (EUR 8.398,07 x 3). Such expenses were directly related to the Respondent's payment obligations, which the Appellant undisputedly paid, due to the Respondent's failure. Therefore the Panel decides that the Appellant shall be awarded compensation for the Respondent's breach of contract in the total amount of EUR 37.173,50.
90. By facsimile letter dated 27 February 2014, the Respondent contested the documents submitted by the Appellant on 10 February 2014 arguing that they could not support the Appellant's claims and asking the Panel to reject them. Nevertheless, the Panel is of the opinion that the payment by the Appellant of the Player's salaries and other relevant costs of the Player, in substitution

of the Respondent, was confirmed by Mrs Camacho at the hearing and was further supported by the documentary evidence submitted by the Appellant during the present proceedings, both before and after the hearing.

XII. CONCLUSION

91. In view of all the above, the Panel deems that the Loan Agreement was in fact concluded on 25 August 2008 between the Appellant, the Respondent and the Player which was valid and binding between them. The facts and documents of the case prove that the Respondent failed to fulfil its obligations under Clause IV of the Loan Agreement. However, the Panel considers that the Appellant is not entitled to receive any compensation under Clause VI of the Loan Agreement, since the relevant Clause is not applicable in the present case. The Panel also considers that the Respondent has breached its payment obligations under Clause IV of the Loan Agreement requiring the Appellant to make these payments *in lieu* of the Respondent in order to mitigate any future damages. Therefore, the Panel concludes that the Appellant shall be reimbursed by the Respondent for the amounts paid by the Appellant to the Player *in lieu* of the Respondent, due to the Respondent's breach of contract, as compensation for damages or, subsidiarily, as restitution for enrichment without just cause. As a conclusion, the Appellant's claim to set aside the decision of the Single Judge of the FIFA PSC is partially upheld and the Respondent shall pay the Appellant compensation in the total amount of EUR 37.173,50.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Clube Desportivo Nacional against the decision issued by the FIFA Single Judge of the Players' Status Committee on 21 January 2013 is partially upheld;
2. The decision issued by the FIFA Single Judge of the Players' Status Committee on 21 January 2013 is partially set aside;
3. Clube de Regatas Brasil shall pay to Clube Desportivo Nacional the amount of EUR 37.173,50, as reimbursement plus 5% interest p.a. as of the date of the Appealed Decision until the effective payment;
- (...)
6. All other motions or prayers for relief are dismissed.