Arbitration CAS 2014/A/3735 Hapoel Tel Aviv v. Gabriel Dos Santos Nascimento, award of 26 August 2015

Panel: Mr Jacopo Tognon (Italy), President; Prof. Ulrich Haas (Germany); Mr José Juan Pinto (Spain)

Football
Termination of the employment contract without just cause
Principles governing compensation for breach of contract
Mitigation of the compensation

1. **Principles governing compensation for breach of contract have been recognised in the jurisprudence of CAS and of the DRC. If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 of the FIFA Regulations for the Status and Transfer of Players. The objective calculation shall be made by the adjudicating body based on the principle of the so called "positive interest", meaning that it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly. Other criteria may also be considered in order to arrive at a just and fair determination of the compensation due, such as the so called *"specificity of sport"*. In addition, an adjudicating body may consider to increase the amount of damages, if a party engaged in a conduct which is in blatant bad faith or if said party terminated the contract for selfish interests. However, it may also consider to decrease the amount of damages in case the party in breach of the contract – taken apart the breach – displayed exemplary behaviour throughout the duration of the contract and possibly even at the occasion of its termination.**

2. **According to Article 44 of the Swiss Code of Obligations, where the injured party consented to the action which caused the loss or damage or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, the adjudicating body may reduce the compensation due or even dispense with it entirely.**

I. THE PARTIES

1. Hapoel Tel Aviv Club (the "Club", "Hapoel" or the "Appellant") is a professional football club, based in Tel Aviv, Israel. It is one of the most important Israeli clubs and participates in the Premier League.

2. Mr. Gabriel Dos Santos Nascimento (the "Player" or the "Respondent") is a professional football player from Recife, Brazil. He played in various clubs during his career in Brazil and Israel.

II. THE FACTS

3. A summary of the facts and background giving rise to the present dispute will be developed below based on the parties' submissions and the evidence examined in the course of these proceedings. Additional background may be also mentioned in the legal considerations of the present award. In any case, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the Parties in the present proceedings, but it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 17 July 2007, the Parties entered into an employment contract for four seasons, namely until 30 June 2011 (the "Contract"). The Contract provided that the Club would pay for every season a signing fee of NIS (New Israel Shekel) 172,450 as well as a monthly salary of NIS 117,110 (see Art. 2 of the Contract).

5. In addition, the Club, according to Art.17 of the Contract, was under the obligation to provide twice in every season a return flight ticket to the Player and his family and to provide the latter with a furnished apartment and a car.

6. After staying only six (6) months in Israel, the Player was then loaned by the Club to the Brazilian club Sporting Club Recife ("Recife") from 26 February 2008 to 31 December 2008. In return of this loan, Recife paid to the Club the sum of USD 50,000. Unfortunately, towards the end of the loan period, the Player sustained a serious injury (rupture to the anterior cruciate ligament of the knee). Recife communicated the injury to the Appellant, which agreed that the required medical intervention be performed. Meanwhile, during the recovery of the Player, the loan was *de facto* renewed until 30 June 2009.

7. By letter dated 25 March 2009, the Player's agent, Mr. Aldo Giovani Kurle (the "Agent"), informed the Club that Recife had requested the extension of the loan period until 30 June 2009 (which is, in fact, not disputed by the parties) requesting the Club to send the corresponding loan contract to him on this purpose. In addition, the Agent informed the Club that Recife was also requesting the renewal of the loan agreement until 31 December 2009. In particular, in accordance with the letter of Recife dated 20 March 2009 which was enclosed to the Agent's correspondence, Recife was requesting the Club *"que ao final do empréstimo, e na hipótese do Sport Club do Recife ter interesse em continuar como o mesmo o Hapoel libere o atleta até 31.12.09 sem ônus para o Clube"* (which can be freely translated into English as follows *"that, at the end of the loan period, and under the assumption that Sport Club do Recife would be interested in continuing with it, Hapoel releases the athlete until the 31.12.09 without any cost to the Club"*).

8. In the absence of response from the Club, on 12 May 2009, the Agent of the Player renewed his inquiry and sent a further communication containing the previous offer to the Club.

9. In accordance with the Club's statements, apparently in view of the fact that the date of 31 December 2009 (the proposed termination date of the Agent's offer for an extension of the loan agreement) fell in the middle of the European season, the Club objected to the Agent's proposal. Instead, the Club made a counter-offer proposing a renewal of the loan agreement until 30 June 2010. Furthermore, the counter-offer provided that the loan was to be made against payment, *i.e.* for a sum of USD 70,000. The Agent of the Player started negotiations on that basis with Recife and obtained its agreement for a remuneration of USD 50,000. Hapoel gave its approval and considered herewith the matter closed.

10. By letter dated 10 July 2009, the Agent advised the Club that Recife was no longer interested in the loan of the Player and requested the Club to provide him and his family with the necessary flight tickets in order to return to Israel and to be reinstated in Hapoel's first squad.

11. By letter dated 14 July 2009, the Club replied to the Agent as follows: *"… Last week you gave us an offer according to it the player will be loaned for 50,000$ to the sport club recife. After the approval of our president, you were supposed to send me the loan agreement. On the basis of this agreement, our president stopped the negotiations with another club who expressed its will to buy Gabriel. The other club has already signed a contract with a defender so there is no longer place for Gabriel in this club. Moreover, our club signed a contract with a defender too, so we have no place for Gabriel in our team as well. This was done according to your statements that Gabriel wants to play in Brazil and not in Israel … Therefore, we kindly ask you and Gabriel to find a club in Brazil who wants Gabriel …".* Furthermore, as per the Club's statements, since the latter had reached the quota of foreign players permitted on a team, it was not able to include the Player in its roster.

12. In a letter to the Club dated 22 July 2009, the Agent rejected the Club's presentation of facts and responded – inter alia – as follows: *"… In fact, at the request of …* [Hapoel]*, certain attempts at extending the loan period of the athlete were made, however, they were unsuccessful, particularly due to the amounts claimed by Hapoel …The athlete has no obligation to find a new team since his agreement with Hapoel Tel Aviv is valid until up to 2011. … Now, in order to prevent unnecessary losses, we ask you to kindly send the air tickets so that Gabriel … and his family … may return to Israel, within forty-eight hours …".*

13. The Club did not react to the Agent's letter.

14. The Player then decided to purchase a flight ticket on his own and to travel to Israel in order to start the pre-season preparation with the Club. As it is evidenced by the stamps in the passport (annex 8 in the Respondent's answer), the Player arrived in Israel on 10 August 2009, and remained there until 9 September 2009. During this period, the Player was neither provided with accommodation or a car by the Club nor did he receive any salary.

15. In order to solve the situation the Club proposed to the Player, applying Art. 17, clause 5 of the Contract (which provided that *"In the event of the Club being relegated during the period of this contract from the premier league to the National league and in the event of the Club having foreign players in excess of amount permitted in the national league as shall be stipulated, the Club shall loan a foreign player in accordance with the regulations to another club in the premier league or the national league or shall release him. For the*

avoidance of doubt it is hereby clarified that the Club may, at its sole discretion, decide that the player should be loaned or released as specified above") by analogy, to either go on loan to another Premier League/National League club of Israel or, alternatively, to accept a substantial reduction in salary so as to permit the Club to remain within the allocated budget for the season.

16. Evidence of the above proposal by the Club can also be found in an audio file attached to the Player's claim presented before the FIFA bodies. The file contains the recording of various phone calls between – *inter alia* – the Agent, the Player and Mr. Nir (CEO of the Club) in English, Hebrew and Portuguese.

17. By letter dated 13 August 2009, the Agent made a last attempt to reach an amicable settlement of the dispute and requested the Club *"to comply with the following contractual obligations within forty-eight … hours: … immediate reimbursement of the … air ticket; supply of air tickets to his wife and son, so that they can return to Israel ..; provide a residence for the athlete and his family …; provide a vehicle to the athlete …; payment of the amounts due, i.e. signing fees relating to the 2007/2008 season, in the amount of NIS 172,450 … and the salary of July/2009, in the amount of NIS 117,110 …".*

18. By letter dated 2 September 2009, the Agent repeated the above requests and submitted that the Club was to be considered the only party responsible for the breach of contract.

19. On 23 September 2009, the Club sent a letter to the Agent rejecting all the demands contained in his last correspondence, and requesting that the Player pays USD 662,500 plus EUR 1,600,000 as a compensation for the damages that the Player would have caused the Club and informing him that should he fail to pay those amounts, the Club would bring a claim against him before FIFA.

20. In January 2010, the Player signed an employment agreement with the Brazilian club America Futebol Clube ("America") until November 2010.

21. On 1 January 2011, the Player signed another employment contract with America for the duration of one year (until 10 December 2012).

III. THE PROCEEDINGS BEFORE THE FIFA DRC

22. On 29 October 2009, the Player filed a claim with the FIFA Dispute Resolution Chamber (the "DRC") and requested (i) that the Club be ordered to comply with its contractual obligations, in which case the Club would have to pay the amounts due to him and fulfil with all its contractual duties or, alternatively, should Hapoel not be interested in complying with the Contract until its expiration date (ii) that the DRC condemn the Club to pay a compensation for breach of contract under Art. 17 of the FIFA Regulations on the Status and Transfer of Players ("RSTP") for a total sum of NIS 3,155,540.

23. On 8 August 2011, the Club filed a claim against the Player before FIFA and requested the DRC to condemn the Player to pay compensation for breach of contract under Art. 17 of the

RSTP in the total amount of NIS 11,095,344, as well as to impose on the Player and on the Agent sporting sanctions.

24. In its response to the Player's claim dated 24 August 2011, the Club rejected all of the Player's requests, claiming that they were without merit. Additional submissions concerning the audio CD were submitted by the Club on 8 May 2013.

25. On 23 July 2013, the DRC informed the Parties that both claims were going to be joined within a sole procedure.

26. On 14 September 2013, the Player responded to the Club's claim. In his answer to such claim, the Player rejected all of the legal arguments and requests for relief submitted by the Club.

27. During the proceedings before the DRC, the club America was invited to participate as an "interested party". In particular, it submitted that it acted in no unlawful way when signing the player.

28. The DRC issued its decision on 27 February 2014 (the "Appealed Decision"). The grounds were communicated to the Parties on 21 August 2014.

29. In summary, the DRC stated that:

- there is no proof of the fact that the loan had been renewed until 31 May 2010 (or rather, 30 June 2010). Indeed, the club has not provided any evidence that there existed a loan agreement;
- since the Player was no longer on loan after 30 June 2009, the Club breached the Contract by sending the letter dated 14 July 2009 in which the Club declined to accept the services of the player, who intended to return to Israel to resume to provide his services for the Club;
- clause 17, par. 5 of the Contract is not applicable to the present dispute. The provision is invalid because it only serves the purposes of the Club without taking due consideration of the interests of the Player. In any event, the clause is not applicable, since the prerequisites mentioned therein (namely, the relegation of the Club in the National League and, for that reason, the exceeding of the quota for foreign players) were not fulfilled;
- the expiration of the loan on 30 June 2009 and the absence of the Player for only ten (10) days did not legitimize the Club to terminate the Contract for just cause. Instead, it was the Club that breached the contractual obligations as of 14 July 2009 when it advised the Player in a letter that there was no place for him in the Club's team. This breach continued throughout the period the Player stayed in Israel trying in vain to fulfill the Contract.
- With regard to the economic consequences, the DRC noted that the Player had entered into two different contracts with America. In particular, in the first contract for the period from 6 January 2010 to 30 November 2010, the salary was NIS 21,609 per month and in

the second contract for the period from 1 January 2011 to 10 December 2012 the remuneration for the Player's services amounted to NIS 36,998 per month.

- In conclusion, by applying the criteria established in Art. 17 par. 1 RSTP and deducting from the total amount of NIS 3,155,540 the amount of NIS 462,000, a total of NIS 2,693,540 remains, which is the compensation due to the Player in this case.
- Furthermore, the DRC decided that the Club was also under the obligation to refund the ticket acquired by the Player (equal to 2,474 Brazilian real) together with a 5% interest due if at the expiration of 30 days from the communication, should this total amount have not been paid.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 11 September 2014, and in accordance with Articles R47 *et seq*. of the Code of Sports-related Arbitration (the "Code"), the Appellant filed its statement of appeal against the Respondent with respect to the Appealed Decision. Together with its statement of appeal, the Appellant nominated Prof. Ulrich Haas, professor in Zurich, as arbitrator, in case the present matter shall be referred to a three-member Panel.

31. In accordance with Article R51 of the Code, the Appellant filed his appeal brief on 21 September 2014.

32. In accordance with Article R55 para. 1 of the Code, the Respondent filed its answer on 18 November 2014. The Respondent appointed Mr. José Juan Pintó, attorney-at-law in Barcelona, Spain, as an arbitrator.

33. By letter of the same date, the CAS Court Office informed the parties that, pursuant to Article R54 of the Code, the Panel appointed to adjudicate the present matter was constituted as follows: Mr. Jacopo Tognon, professor and attorney-at-law in Padova, Italy, President; Prof. Ulrich Haas, professor in Zurich, Switzerland, and Mr. José Juan Pintó, attorney-at-law in Barcelona, Spain, as arbitrators.

34. On 2 December 2014, the CAS Court Office, on behalf of the Panel and in accordance with Article R57 para. 1 of the Code, requested FIFA to produce a copy of the file which the Appealed Decision was based on.

35. On 15 December 2014, the CAS Court Office, on behalf of the Panel, informed the parties that a hearing would be held, in accordance with Article R57 of the Code.

36. On 16 December 2014, FIFA provided the CAS Court Office with a clean copy of the Appealed Decision, including all relevant documents. Such documents were forwarded to the parties on the same day.

37. On 5 and, respectively, 9 February 2015, the parties signed and returned the Order of Procedure to the CAS Court Office.

38. On 12 February 2015, a hearing was held in Lausanne. The Panel was assisted by Mr. Fabien Cagneux, Counsel to the CAS. The hearing was attended by Mr Joseph Gayer, attorney-at-law in Tel Aviv Israel (Counsel for the Appellant) as well as by Mr. Lorenzo Guerrero, attorney-at law in Zurich and Mr. Aldo Giovani Kurle, attorney-at-law in Sao Paulo, Brazil (Counsel for the Respondent). At the conclusion of the hearing, both parties confirmed that they had no objection to the way the Panel had been constituted and conducted the hearing. Furthermore, both Parties confirmed that their right to be heard had been fully respected.

39. At the end of the hearing, the Panel ordered the production of some documents by the Respondent, namely all the contracts concluded between the latter and Recife.

40. In view of the above, and by letter of 16 February 2015, the CAS Court Office invited the Respondent, within fifteen (15) days upon receipt of that letter, to produce an English version of all contracts signed between him and Recife. Furthermore, in the same letter, the CAS Court Office informed the Appellant that – upon receipt of these documents – it will be granted a ten-day time limit to file its comments. In addition, the Respondent was advised that he will be granted a similar deadline to send his reply.

41. By letters of 3 and 4 March 2015, the Respondent sent the requested documents to the CAS court Office.

42. By letter of 11 March 2015, the Appellant filed its comments with respect to the documents provided by the Respondent.

43. Finally, by letter of 20 March 2015, the Respondent submitted his reply with respect to the Appellant's comments.

V. THE PARTIES' POSITIONS

44. This section of the award does not contain an exhaustive list of the parties' contentions, its aim being to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the parties, including allegations and arguments not mentioned in this section of the award nor in the discussion of the claims below

A. Appellant's submissions and requests for relief

45. In summary, the Appellant submits the following arguments in support of its appeal.

46. According to the Club, the Player always wanted to play and stay in Brazil. This – according to the Club – is evidenced by a number of facts, *inter alia*, (i) by the Player's request just after six (6) months of his arrival in Israel to return to Brazil on a loan agreement basis, (ii) his request to extend the first loan and (iii) his second request to extend the loan agreement. Indeed, out of two years provided for in the Contract, the Player had spent 18 months in Brazil. It is rather obvious that he hoped to remain in Brazil for another year, *i.e.* for the total term of the Contract.

47. According to the Club, the Panel should give particular importance to the Player's behavior following his second request for renewal of the loan agreement (12 May 2009). Before such request, until the letter of 10 July 2009, the Player and the Agent never *"reserved the approval given by the Appellant to the extension of the Player's loan for another season. For two months there was not a word on their behalf that could contradict their request from 12 May 2009, or to put the Club in alert that the Player may 'change his mind' (which he never did), about returning to Israel"*.

48. The Club acted and relied upon the presentation of the Player and his Agent that an agreement had been reached for the renewal of the loan in the first week of June. This all the more true, since it appeared that an agreement had been reached on the term of the loan (30 June 2010) and in particular the amount of the loan fee (USD 50,000).

49. Hapoel, relying on the presentations made by the Agent on behalf of the Player, permitted the Agent to finalize the operation with Recife and simply waited for the formal documents to be sent to for its signature. In the absence of any indication of the contrary, the Club relied on the Agent's presentation that the Player would not return to Israel before June 2010 or at least not before January 2010 and, thus, replaced the Player by another foreign player. In doing so, the Club was no longer able to include the Player in its team due to the existing quota for foreign players.

50. In view of the above, the Club submits that it did not breach the Contract when it rejected the Player's request to come back to Israel, but instead relied on the statements previously given by the Player and the Agent in writing, in words and behavior.

51. The lack of a formal loan document cannot overcome the fact that the agreement between Recife, the Player and the Agent had been reached to extend the loan agreement. According to Hapoel, it was the Player who, by filing his claim on 23 of October 2009 before FIFA against the Club, had breached the Contract.

52. Should CAS reject the Club's submission with respect to the breach of the Contract, the Club submits that the compensation due to the Player must be assessed differently from the calculation set out by the Appealed Decision. According thereto, the Player is not entitled to the salary under the Contract, but only to the damage *"suffered by the Player [in respect of] … what he could earn in Brazil and not what he would earn in Israel – where he did not want to play"*.

53. Furthermore, the Appellant submits that the Player, in January 2010, signed an agreement with America for two seasons. The term of this agreement exceeds the term of the Contract. The Appellant submits that, in doing so, the Player breached his duty to mitigate his damage, since

there is no justification for the Player to sign an agreement for relatively small money considering that he was not under a rush or pressure. All of the above proves – according to the Appellant – that the Player *"was happy with the salary he actually received at America"* and that, therefore, there is no reason *"why the Club shall compensate him while he suffered no damages"*.

54. The Player further violated his duty to mitigate the damage when he was offered by the Club to go on loan with another Israeli club. The amounts that the Player could have earned in such an instance is – according to the Appellant – *"similar or close to the amounts stated in the Contract between the Club and the Player and significantly higher than the amounts the Player earned at America"*.

55. Finally, the Appellant submits that the Player, on 28 February 2008, signed a waiver that stated – inter alia – as follows: *"The above-mentioned amount constitutes my full entitlement for working with you, salary, bonuses, sick pay, vacation payments, severance pay and any other right I am entitled to according to the contract and/or according to the law. Once this amount will be transferred to my account I do not have and will not have any allegations and/or claims and/or demands exceeding the above-mentioned and I hereby waive such allegations and/or claims and/or demands"*.

56. In conclusion, in his Appeal Brief, the Appellant submits the following prayers for relief:

"85.1. To annul the decision and to condemn the Respondent of breach of contract without just cause.

85.2. To declare that it was impossible to fulfil the contract due to the actions taken by the Respondent, and therefore, the Respondent terminated the contract prematurely.

Alternatively:

85.3. To determine that due to the Respondent' contributory fault – he is responsible for the termination of the contract prematurely and to the damages suffered.

85.4. To condemn the Respondent for not taking all the actions in order to mitigate his alleged damages.

85.5. To determine that the Respondent did not act reasonably after terminating the contract.

85.6. To declare that the compensation ruled to the Respondent was unjustified and higher that the compensation he is eligible to receive under these circumstances

85.7. To condemn the Respondent to pay the Appellants' legal fees in the amount it deems fit and to fix any additional costs of the arbitration on the Respondent".

B. Respondent's submissions and requests for relief

57. In summary, the Respondent submits the following arguments in support of his requests.

58. Up to March 2009, there was no loan extension signed between the Appellant and Recife. On 25 March 2009, the Agent sent a letter to the Club on behalf the Player (who was almost fully recovered from his injury) enclosing a letter from Recife in which it requested the extension of the loan agreement until 30 June 2009. In this same letter, the Agent requested the Club to *"send*

urgently the loan contract to my office […] or directly to the Sport Club do Recife". However, the Appellant neither answered this letter, nor sent the requested loan agreement. Such request was made again on 12 May 2009, neither being answered by the Appellant.

59. The Respondent submits that, due to the lack of response of the Appellant, the Agent had to contact the Club by phone during the last days of May 2009. From the Player's perspective, it was the Club's sole responsibility to manage the extension of the loan agreement with Recife.

60. The Respondent submits that Recife accepted Hapoel's conditions, so that the loan was concluded. The Player informed the Appellant of the situation during a phone call, which took place on the last days of May.

61. However, and for reasons not related to the Player, during the last days of May 2009, Recife changed its mind and decided not to enter into a new loan agreement for the Player. The Agent informed the Appellant thereof in early June 2009. Thereupon, the Agent attempted to reach an alternative solution for Gabriel Dos Santos Nascimento with another suitable club in Brazil. However, no such solution could be reached.

62. Therefore, the Agent sent the email of 10 July 2009 to the Appellant, in which he advised that the Player was willing to return to Israel to fulfil his contractual obligations towards the Club and thus requested the latter to provide the Player with the necessary flight tickets to return to Tel Aviv.

63. The Player submits that a loan has the same legal consequences as a definitive transfer. It is for this reason that the parties to the loan (*i.e.* the two clubs and the Player) must formalize their agreement in writing before it takes effect.

64. The Respondent submits that the Recife, for reasons not imputable to him, had changed its mind concerning the loan. For this reason, the agreement could not be formalized and, thus, was not definitely concluded. In light of this situation, the Player had no other choice but to return to Israel to play with Hapoel.

65. The Club breached the Contract by not accepting the Player's services and in light of the fact that the Contract was valid and binding at that time. Thus, the Club had to fulfil its duties under Articles 2 and 17 of the Contract.

66. The Club, however, refused the Player's request for flight tickets, stating that the Player should stay in Brazil, because Hapoel – having reached the quota for foreign players – had no use of the Player. When the Player came to Israel, the Club never attempted to comply with its obligations under the Contract. In particular, the Club did not pay the salary due nor did it provide the Player with a car or a furnished apartment.

67. With respect to Article 17.5 of the Contract, the Player concurs with the conclusions reached by the DRC in para. 24 of the Appealed Decision. Indeed, the two conditions provided for in said Article (namely the relegation of the Club and the excess of foreign players allowed in the

respective category) were not met. Indeed, the Club had not been relegated at the end of the season and, in addition, the Club has neither proven that any limitation with regard to foreigners to participate in the Premier competition exists, nor if the Club had exceeded the maximum number of foreign players.

68. The Player submits that *"[n]otwithstanding, it is clear that the Contract between the player and the Club was still valid and in force as well as that, after the end of the loan with SC Recife the effects were no longer suspended and both parties had to fulfil their contractual obligations. The player, for his part, contacted the Club asking for the flight tickets to go back to Israel and, in refusal of the Club, even bought himself the ticket, being available and ready to provide his services. The Club, on the other hand, did not provide the flight tickets as contractually agreed, did not accept the Player back, did not allow him to train, did not register him for the next season, tried to force him to accept a new loan agreement and even tried to force him to accept a very significant reduction of his salary".*

69. In addition, the Respondent underlines that when America requested the International Transfer Certificate ("ITC") to register him in January 2010, the Club did not object. This is – according to the Player – another proof that the Club was no longer interested in the Player's services.

70. As for the consequences of the breach of Contract, the Player submits that the calculation of damages performed by the DRC is correct. According to the Player, the DRC correctly subtracted from the Player's claim against Hapoel the salary received by the Player from America. This way of proceeding is – according to the Player – in line with the principles established by Article 17.1 RSTP.

71. In conclusion, the Respondent submits the following prayers for relief:

"1- To reject the appeal and entirely confirm the presently challenged decision passed by the Dispute Resolution Chamber on 27 February 2014.

2- To order the appellant, pursuant to Article 64.5 of the Code, first, to bear with all the costs incurred in this arbitration, and second, to contribute to the legal and other costs incurred by the Respondent in an amount of CHF 10.000,00 (ten thousand Swiss francs)".

VI. JURISDICTION

72. 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 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. […]".

73. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS. Furthermore, the Parties confirmed the jurisdiction of CAS by signing the Order of Procedure.

74. In light of the fact that jurisdiction of the CAS a) is not contested by either of the Parties, b) clearly confirmed by the above-mentioned provisions and that c) is further evidenced by the fact that both Parties signed the Order of Procedure, the Panel is satisfied that CAS has jurisdiction to resolve and decide the present case.

VII. ADMISSIBILITY

75. Article R49 of the 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against […]".

76. Based on the documents submitted, the grounds of the Appealed Decision were notified on 21 August 2014 to the Parties. The Appellant filed its Statement of Appeal on 11 September 2014, *i.e.* within the 21 day time limit provided by the applicable rules (Article 67 para. 1 of the FIFA Statutes).

77. The Panel is satisfied that the Appellant's Statement of Appeal was timely filed and is therefore admissible.

VIII. MANDATE OF THE PANEL

78. The mandate of this Panel follows from Article R57 of the Code and the requests filed by the Parties. According to Article R57 of the Code, the CAS has – in principle – unrestricted powers to look into the matter (fact and the law). Given that the Appellant limited its appeal against the Appealed Decision insofar as the latter deals with the claim filed by the Player, this Panel does not need to examine whether or not FIFA was right in "rejecting" Hapoel's counterclaim.

IX. APPLICABLE LAW

79. Article R58 of the Code provides as follows:

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

80. It follows from this provision that the rules and regulation of FIFA apply in the first place, in particular the RSTP. The Parties to these proceedings have not – explicitly –chosen any rules of law to be applicable to the dispute. In particular no such choice of law was made in the Contract. Also at a later stage no such agreement was entered into. The Panel notes that both

the Appellant and the Respondent made reference in their submissions to various provisions of the RSTP (in particular Article 17 RSTP).

81. Article 66 para. 2 of the FIFA Statutes provides that CAS shall apply the various regulations of FIFA and, additionally, Swiss law. The Panel thus holds that the rules of FIFA, in particular the RSTP, and additionally Swiss law, are applicable.

X. MERITS OF THE APPEAL

82. The present dispute, as said above, is primarily governed by the RSTP. The latter provides, in cases of breach of a contract, financial compensation as well as potential sporting sanctions. However, the matter in dispute here only deals with the financial consequences of an (alleged) breach of the Contract.

83. Article 17 of the RSTP provides that *"the following provisions apply if a contract is terminated without just cause: 1. In all cases, the party in breach shall pay compensation. Subject to the provisions of art. 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"*.

84. The purpose of Article 17 of the RSTP has been discussed and clarified in many CAS awards. For example, in CAS 2008/A/1519-1520, the Panel stated that: *"the purpose of art. 17 is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of pacta sunt servanda in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player…this deterrent effect shall be achieved through the impending risk… to have to pay compensation for damage caused by the breach or unjustified termination"*.

85. In other words, *"both players and clubs are warned: if one does breach or terminate a contract without just cause, a financial compensation is due, and such compensation is to be calculated in accordance with all those elements of art. 17 of the FIFA regulations that are applicable in the matter at stake, including all the non-exclusive criteria listed in par. 1 of said article"* (CAS 2009/A/1856-1857, para. 186 *et seq.*).

86. The Panel concurs with the above considerations. In fact, as described above, two basic principles have been recognised in the jurisprudence of CAS and of the DRC:

i. If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 RSTP.

ii. The objective calculation shall be made by the Tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the*

respective party in the position that same party would have been in if the contract had been performed properly" (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (editors), "Sport Governance, Football Disputes, Doping and CAS arbitration", Colloquium, 2009, p. 249).

87. Moreover, it is important to underline that other criteria could be considered in order to arrive at a just and fair determination of the compensation due, such as the so called *"specificity of sport"*.

88. Indeed, as stated by CAS, *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2009/A/1856-1857, para. 186).

89. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case"* (see ibid.; CAS 2009/A/1880-1881, para. 233-240).

90. To sum up, a panel may consider to increase the amount of damages, if a party engaged in a conduct which is in blatant bad faith or if said party terminated the contract for selfish interests. However, a panel may also consider to decrease the amount of damages in case the party in breach of the contract – taken apart the breach – displayed exemplary behaviour throughout the duration of the contract and possibly even at the occasion of its termination (see also the recent award in CAS 2014/A/3573).

91. In view of the above, the main issues to be resolved by the Panel in the present appeal procedure are:

    1) Who was in breach of the Contract?

    2) Is the injured party entitled to any compensation? and

    3) In case the aforementioned question is answered in the affirmative, in which amount?

1. Who was in breach of the contract?

92. The Panel is of the view that the Club did not have just cause to terminate the Contract. The Panel bases its findings first and foremost on the facts subsequent to the Agent's letter of 25 March 2009. It is true that the renewal of the loan until June 2009 had not been formalized by the Club, the Player and Recife. It is equally true that the RSTP require – for the purpose of

these regulations – that the loan agreement be in writing (Article 10 of the RSTP). However, it is also true that – apparently – the Club, the Player and Recife orally agreed on the terms of the extension of the Contract. This is also what the Agent communicated to the Club. This follows from the Appellant's email dated 14 July 2009 addressed to the Agent and from the statements made by the Parties during the hearing. Furthermore, this follows from the Respondent's "Statement of Defence" dated 18 December 2018 in which it is stated at marg. no. 21 *"During the last days of May, the Player discusses with … [Recife] the extension of the loan. At first, the Brazilian club accepted the conditions demanded by the Club and so informed the Player to the Club in a phone call. Nevertheless, all of a sudden, and for the reasons not relate to the Player, [Recife] changed its opinion and was not interested in the Player's loan anymore"*.

93. The Respondent, during the hearing, contested his (own) submissions made in para. 21 of the "Statement of Defence" and submitted that it was a clerical mistake. What he wanted to say is that at first an agreement seemed possible (instead of an agreement having been reached). However, in any event, it appears that the Agent communicated to the Appellant that an oral agreement had been reached.

94. As a consequence, the Panel is of the opinion that, pursuant to Article 10 of the RSTP, in the absence of any written documentation, the new loan agreement with Recife never came into force. In this regard, the Panel has noted that at that time the Agent sent two letters on behalf of the Player (*i.e.* 25 March 2009 and 12 May 2009) informing the Appellant that Recife was willing to extend the loan period until 30 June 2009 but without cost, and requesting the Club to *"send urgently the loan contract",* so the agreement (in case the latter agreed on the terms proposed by Recife) could have been formalized. In spite of the Agent's requests, the Club neither answered any of these letters, nor sent any draft of the new loan agreement. The Panel finds that, in view of the above and irrespective of the fact whether (or not) the Agent and Recife came to terms in relation to the extension of the loan agreement at the end of May 2009, there is a certain lack of diligence on the part of the Appellant in dealing with the matter.

95. In any case, concerning who was responsible for the non-formalization of the extension of the loan agreement, although Hapoel, *de iure condendo*, could have blamed Recife for the breach of negotiations or the annulment of a contract practically ready to be formalized; however, the Club can only partly blame the Player for these facts, since the Player – just like the Club – would be also "a victim" of Recife's behavior.

96. In light of the above, the Panel finds that the Club did not behave correctly. In line with the approach taken by the DRC, the Panel finds that, in the absence of any formalization of the new loan agreement, the Club, in principle, had the obligation to take the Player back and to allow him to return to Israel to make himself available, the Contract being valid and in force for a further two seasons.

97. In this regard, the Panel notes that, on 10 July 2009, the Agent formally informed the Appellant that Recife was not interested in renewing the loan agreement of the Player, and thus requested the Club to "urgently" send the necessary flight tickets to the Player and his family *"in order to fulfill his responsibilities at Hapoel team as agreed in contract"*. Nonetheless, in spite of the fact that at

that moment the Contract was already back in force (as the loan agreement had expired), on 14 July 2009 the Appellant answered the Agent informing him that *"we have no place for Gabriel in our team as well"* and requesting them *"to find a club in Brazil who wants Gabriel",* clearly showing a serious disrespect and indifference for its contractual obligations towards the Player.

98. In this context, and regardless what had happened before in connection with the negotiations for the renewal of the loan agreement, to determine which of the Parties breached the Contract, the Panel deems it necessary to analyze the conduct performed by the Parties once both knew that the loan agreement had not been renewed. In this regard, although the Agent sent several letters to the Club (*i.e.* 22 July 2009, 13 August 2009) warning the latter that the Player had a valid Contract with Hapoel and asking it to reinstate him in the team and let him render his professional services, and although the Player even travelled to Hapoel by his own means on 10 August 2009 and remained there until 9 September 2009, the Club not only prevented the Player to join its team and did not fulfil with its contractual obligations towards the Player (*i.e.* provide him with the necessary air tickets to return to Hapoel, provide him with a residence, a vehicle, etc.) but also did not actively seek a realistic alternative for the Player nor really tried to look for a solution. In this regard, the Panel notes that although the Appellant maintains that it offered the Player to go on loan with another Israeli club, it has not provided any evidence in this regard, trying to justify such lack of evidence under the pretext that the Player refused to even consider the alleged offer, and thus allegedly not having any original documentation in connection with this potential loan to an Israeli club.

99. In particular, the Panel finds it inadmissible the thesis of the Appellant, according to which the Player would have breached the Contract by filing a claim against it in October 2009 and by signing an agreement with America without the consent of the Club and *"for a period exceeding June 2010"*. Pretending that the *"Player should have waited until it was possible to rejoin the Appellant"* (and apparently without being paid by the Club) is not only abusive but also a circumstance that would have allowed the Player to terminate the Contract with just cause and, in particular, for sporting reasons as it would imply that the Club was neglecting the Player from a sporting point of view because it was indeed not interested in his services.

100. In this regard the Panel finds significant that, even though on 23 September 2009 the Appellant sent a letter to the Agent requesting the payment by the Player of USD 662,500 plus EUR 1,600,000 as a compensation for the alleged damages that the latter would have caused the Club for his alleged breach of the Contract, and informed him that it would bring a claim before FIFA in case he would not pay the requested amounts within fourteen days, it was not until 8 August 2011 (close to the potential prescription of its claim) when the Appellant finally brought a claim against the Player before FIFA. In the Panel's view, this fact demonstrates that the alleged claim of the Appellant was groundless.

101. As a result of the foregoing the Panel concludes that the Appellant breached the Contract and that, as declared by the Appealed Decision, it *"terminated the Contract without just cause on 14 July 2009, date on which the Respondent/Counter-Claimant [the Appellant] notified the Claimant/Counter-Respondent [the Player] that it was no longer counting on his services"*.

2. Is the injured party entitled to any compensation?

102. After having concluded that the Appellant breached the Contract, the Panel shall determine the consequences of such breach. In accordance with the FIFA Regulations, when a party terminates a contract with just cause, the party responsible for the termination of the contract shall be liable to pay a compensation for the damages caused as a consequence of the early termination of the contract. Therefore, the Panel finds that the Appellant, who is the party in breach, shall pay a compensation to the Respondent for the damages caused.

103. To this purpose, the Panel shall take into consideration Article 17 para. 1 of the RSTP, according to which *"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".*

104. In particular, with regard to the remuneration and other benefits due to the Player under the Contract and his new contract with America, the Panel is comfortable with the calculation made in the Appealed Decision in accordance with Article 17 of the RSTP, which is additionally in line with the Jurisprudence of the CAS in this matter. In particular, taking into account (i) the remuneration and other benefits due to the Player under the existing Contract, (ii) that the Player signed a new contract with America that partially mitigated the loss he suffered due to the Appellant's behaviour, (iii) the Contract's remaining period, and (iv) the rest of the factors established by Article 17 of the FIFA Regulations, the Panel agrees with the calculation made by the DRC in the Appealed Decision (NIS 2,693,540 plus BRL 2,474 corresponding to the cost of the Player's flight ticket to Hapoel), which shall be the basis of the amount of the compensation, without prejudice to its potential mitigation if the circumstances of the present case warrant so.

3. In case the aforementioned question is answered in the affirmative, in which amount?

105. Notwithstanding the foregoing, the Panel notes that, on a subsidiary basis, the Appellant requests to reduce the amount of the compensation granted by the Appealed Decision on the basis of several circumstances alleged in its Appeal Brief. On the other hand, the Respondent agrees with the compensation granted by the DRC as it is the one resulting from the application of Article 17 of the RSTP, and rejects all the reasons given by the Appellant to base its request for reduction of the compensation.

106. In this regard, the Appellant firstly argues that, ultimately, the damages that the Player would have suffered should be calculated on the basis of the salary that the Player was supposed to earn at Recife, and not on the salary that he would have earned in Israel. The Appellant

maintains that at the time of the breach of the Contract the Player was willing to keep playing for Recife for a salary agreed with the latter, which seemed acceptable to him. In the Panel's view, the arguments of the Appellant in this regard shall not be accepted, because within the criteria established by Article 10 of the RSTP to quantify the amount of the compensation, this provision compels the Panel to take into account *"the remuneration and other benefits due to the player under the existing contract"*, and not the remuneration of a previous or a potential subsequent contract. Therefore, taking into account that at the moment of the breach the "existing contract" was the Contract which is the object of this procedure, the Panel shall reject the Appellant's submission.

107. On the other hand, the Appellant sustains that, taking into account that *"part of being a sports player is the obligation to try and be always a part of a team while earning accordingly, and even when things are not as expected – a player must always try to find his place in a team's squad"*, by rejecting the Club's offer to go on loan with another Israeli club, the Player breached his obligation to mitigate his damages. However, although this could have been the case if the Appellant had proved that he made a specific offer to the Player in order to loan him to another Israeli club, under the Panel's view the Appellant has not proved that such an offer existed, nor that the Player rejected it, and thus has not met its burden of proof in this regard. Therefore, due to this lack of evidence, the Panel shall also reject this submission.

108. The Appellant also considers that, regardless the salary that the Player could have earned in another Israeli club, he decided to sign a contract with America for a substantial lower amount compared to the amounts he could have earned in Israel. In addition, this fact also prevented the Club to have received at least USD 50,000 per year for the loan of the Player to a third Club. Therefore, in the Appellant's view, the Player did not act reasonably after terminating the Contract and, on the contrary, he acted in bad faith. The Appellant considers that this should entail either to declare that the Player is not entitled to any compensation or, in any case, should lead to the reduction of the compensation awarded in at least USD 100,000, which is the amount that the Player's prevented the Club to earn for his loan to a third club.

109. The Panel cannot agree with the Appellant's statements in this respect. First of all, the Panel finds this statement contradictory with the Club's position that *"part of being a sports player is the obligation to try and be always a part of a team while earning accordingly, and even when things are not as expected – a player must always try to find his place in a team's squad"*. Therefore, the Club cannot blame the Player for entering into an agreement with America for a substantial lower amount than those agreed in the Contract because, as the Appellant's says, *"a player must always try to find his place in a team's squad"*, *"even when things are not as expected"*. When the Player signed the contract with America, he came from the recovery from an injury and had been unemployed for several months, without being able to play for any team. For this reason, it was important for him to resume his professional career and sign with a new team, even if the economic conditions of the contract were worse than those he had with the Appellant. And, in addition, this would help the Player to mitigate the damages suffered due to the Appellant's breach of the Contract. Therefore, the Panel finds that there was nothing reprehensible in signing this new contract with America. In addition, and for the sake of completeness, the Panel shall highlight that when the Player entered into an agreement with America, the Contract had been terminated already,

and thus it was not possible for the Appellant to enter into a loan agreement for the Player with a third club, nor to earn any amount for such agreement. Therefore, due to this lack of evidence, the Panel shall also reject this submission.

110. The Appellant also claims that, by signing the document of 28 February 2008, the Player waived all the Club's financial and/or contractual obligations towards him, and thus he would not be entitled to receive any compensation from the club. In this regard, the Panel has noted that such document of waiver cannot be interpreted with the extension pretended by the Appellant. The Panel considers that the wording of this document clearly states that such waiver was limited and only referred to the amounts due for the season 2007/2008 and until January 2009, and thus cannot affect to or limit his right to compensation for the Appellant's breach of the Contract. Therefore, this submission is also dismissed.

111. Notwithstanding the previous, with regard to the alleged Player's contributory fault and responsibility for the damages he suffered, the Panel partially agrees with the Appellant and considers that, due to the specific circumstances of the present case that will be explained below, the compensation granted by the DRC warrants a correction. While it seems correct to deduct from the amount of NIS 3,155,540 (24 monthly salaries of the contract with Hapoel) the sum of 462,000 (11 months of the first contract plus six months of the second contract with America), it is also true that, in the case at stake, it seems necessary to take also in account the behaviour of the Player.

112. Indeed, from this perspective, the Panel does not adhere fully to the conclusions of the DRC, because it deems, in effect, that also the behavior of the Player is indeed questionable. In the Panel's view, the behavior of the Player warrants a deduction of 20% from the total compensation granted by the DRC.

113. The Panel comes to this conclusion by first taking into account that the Player throughout the term of the Contract had manifested the intention not to play in Israel. In effect, on verification of the Player's professional one notices that out of 24 months only 6 months were played in Israel. It is true that, in October 2008, he suffered a serious injury, but it is also true that he stayed in the country where he sought medical care and tried, by all means, to stay there.

114. Only when he realized, perhaps because Recife abandoned the negotiation or withdrew the agreement, that he had no possibility to remain in Brazil, he tried to enforce the Contract and, as a consequence, putting Hapoel in difficulty. This is even true considering that, even taking into account that the Appellant demonstrated a lack of due diligence, all negotiations between Hapoel and Recife went through the Agent of the Player. At no time there was any direct contact between the clubs. Even considering that the extension of the loan agreement was never formalized, it must be kept in mind that it was the Agent that communicated to the Appellant that an agreement had been reached. Even though the Club was at fault when relying on an alleged agreement that was not formalized, it is equally true that it is the Player's (or his Agent's) behavior (orally and in writing) that gave rise to the misunderstanding and the consequences following thereof.

115. In Panel's opinion, it may not be justified in light of these circumstances, but explainable that the Club – relying on the statements made by the Agent started from the assumption that (in reality) the Player had no intention to come back to Israel.

116. Furthermore, the Panel takes into account that the Player or his Agent left the Club in such belief for a considerable period of time, *i.e.* from 12 May 2009 until 10 July 2009 when he informed the Club that the agreement with Recife had failed. For nearly two months there was no communication from the Agent to the Club.

117. In that time span of a month the Parties (and in particular the Player) tried insistently for a solution that involved the Player staying in Brazil, because this was his will, as accepted by the parties. The objective having been missed, it is clear that the Club would have to take him back, but it is also clear that the Player did not express any desire to play with Hapoel before.

118. Finally, there is another element that leads to the mitigation of the compensation. Article 44 of the Swiss Code of Obligations, that is applicable on a subsidiary basis, states as follows: *"Where the injured party consented to the action which caused the loss or damage or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely"*.

119. In this regard, the Player did not, in fact, accept (and was correct not to) the proposal of the loan in Israel nor the contractual reduction proposed in the period in which he was in Israel. It is clear that, however, nobody obliged him to sign for a period of two years. He could have signed for one year/season and then – not being under time pressure – look for a better offer for the second year.

120. If the Player had actually wanted to play in Israel, he would also have been able to take advantage of the fourth year of the Contract, given that in the third year it was impossible for the Club to sign him, apparently having exceeded the quota for foreign players.

121. Conversely, the Player, as soon as he had the opportunity to sign for another Club, concluded the contract, closing every relationship with Hapoel, save to ask for the difference between what he would have earned in Israel and what he had earned in Brazil. Where the signing was annual, the player could, for the 2010/2011 season, have returned to Israel and provided his services to the Appellant.

122. In conclusion, for all the reasons provided and due to the specificity and uniqueness of the case, it appears to the Panel that the Player basically "took advantage" of the situation created and that, in any case, even after returning to Brazil, he did not have any intention or desire to continue the relationship, even for the last year of Contract.

123. It follows from all of the above that it is appropriate to reduce the compensation due to the Player. Taking all these circumstances into account it appears to the Panel that a decrease of 20% of what has been attributed by the Appealed Decision is warranted.

124. In conclusion, the appropriate amount due to the Player according to Article 17 of the RSTP is – according to the Panel – **NIS 2,154,832** (emphasis added by the Panel).

125. In view of the Panel, this conclusion is just, consistent and appropriate upon a due analysis of all the evidence and all the arguments put forward by the parties.

126. In conclusion, on the basis of the rules applicable to the merits and for all the reasons set out above, the Panel holds that the Appeal lodged by the Club shall be partially upheld in the *quantum debeatur*, and thus the Appealed Decision shall be partially set aside and any other prayers or requests shall be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Hapoel Tel Aviv Club on 11 September 2014 against the Decision rendered by the FIFA Dispute Resolution Chamber on 27 February 2014 is partially upheld.

2. The Decision issued by the FIFA Dispute Resolution Chamber on 27 February 2014 is partially set aside.

3. The Appellant shall pay to the Respondent an amount of NIS 2,154,832, and the amount of Brazilian Real (BRL) 2,474, plus interest of 5% as of the date of notification of the present decision.

(…)

6. All other prayers for relief are dismissed.