**Arbitration CAS 2016/A/4741 Club de Regatas Vasco da Gama v. Pedro Cabral Silva Junior, award of 18 April 2017**

Panel: Mr João Nogueira da Rocha (Portugal), Sole Arbitrator

*Football*
*Players' agent involved in a settlement agreement*
*Scope of application of the FIFA PAR*
*Outstanding importance of the personal element in the relationship between an agent and his/her client*
*Duty to avoid conflict of interests*

1. **The FIFA Players' Agents Regulations (PAR) are only applicable where players' agents intervene (i) in the negotiation or renegotiation of employment contracts between players and clubs; or (ii) in the negotiations aiming at the conclusion of transfer agreements between clubs. If the activities of an agent consist in providing services with a view to favour the amicable settlement of a pending dispute between two clubs, they do not fall within the scope of application of the PAR.**

2. **According to the PAR, only the players' agent him/herself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs. It is one of the crucial principles of the PAR that the personal element is of outstanding importance in the relationship between an agent and his/her client.**

3. **An agent has to avoid all conflicts of interests in the course of his/her activity. An agent may only represent the interests of one party in each "transaction". In particular, an agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' agents involved in the player's transfer or in the completion of the employment contract or transfer agreement.**

## I. PARTIES

1. Club de Regatas Vasco da Gama (hereinafter the "Appellant" or the "Club") is a professional football club affiliated to Confederação Brasileira de Futebol (hereinafter "CBF"), which in turn is a member of the Fédération Internationale de Football Association (hereinafter "FIFA").

2. Pedro Cabral Silva Junior (hereinafter the "Respondent" or the "Agent") used to be a licensed players' agent formerly registered with CBF, pursuant to the FIFA Players' Agents Regulations (hereinafter the "FIFA PAR"), edition 2008.

## II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in its Award only to the submissions and evidence it considers necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings. The Sole Arbitrator also considered facts that emerged from the examination carried out by the *Comitê de Resolução de Litígios* (hereinafter "CRL") of CBF.

4. On 23 July 2012, the Appellant entered into a transfer agreement with Al-Ittihad for the definitive transfer of D. (hereinafter the "Player"), a football player of Brazilian nationality. The total compensation agreed for the transfer amounted to EUR 5,000,000 net and payable as follows: (i) EUR 1,000,000 on or before 25 July 2012; (ii) EUR 1,500,000 on or before 10 August 2012; and (iii) EUR 2,500,000 on or before 15 January 2013.

5. On 25 July 2012, upon receipt of payment evidence, the Appellant released the Player's international transfer certificate. For undetermined reasons, though, such document proved to be incorrect.

6. On 28 August 2012, the Appellant served a formal notice of default on Al-Ittihad.

7. On 4 October 2012, the Appellant lodged a claim before the FIFA Players' Status Committee (hereinafter the "FIFA PSC").

8. On 15 January 2014, the Single Judge of the FIFA PSC rendered a decision ordering Al-Ittihad to pay the Appellant the original amount of EUR 5,000,000, plus 10% interest per annum as of 11 August 2012 until the date of effective payment, added to a penalty fee of EUR 1,000,000.

9. On 22 July 2014, Al-Ittihad filed an appeal with the Court of Arbitration for Sport (hereinafter the "CAS") requesting it to partially overturn the decision of FIFA (CAS 2014/A/3664 Al Ittihad Club v. Club de Regatas Vasco da Gama).

10. On 25 August 2014, the Appellant's then President, Mr Carlos Roberto Dinamite de Oliveira, signed an "Authorization" in the following terms: *"We authorize Mr. Pedro Cabral, Players agent n.º 074/CBF and Mr. Khaleefa T.Sh.H. Almutairi, passport number 003684808, State of Kuwait, to start negotiations with All Itthad FC regarding the transfer compensation related to the Player D. Any agreement will be considered null and void if not concluded directly by Vasco da Gama. This authorization is valid for the next 15 days"* (hereinafter the "Letter of Authorisation").

11. On 28 August 2014, the Appellant informed the Agent, through its President, that it was *"opened to discuss a proposal of EUR 4,000,000 (four million euros), and payment terms for the negotiation about the soccer player D."*.

12. Until 9 September 2014, no proposals were brought or actions were taken by the Respondent.

13. On 9 January 2015, the CAS rendered an award in case CAS 2014/A/3664, confirming in full the decision of the FIFA PSC.

14. On 9 February 2015, Al-Ittihad filed an action for the annulment of such CAS award before the Swiss Federal Tribunal (hereinafter the "SFT"), which eventually happened to be rejected.

15. On 23 February 2015, upon failure by Al-Ittihad to spontaneously comply with the CAS award, the Appellant requested the intervention of the FIFA Disciplinary Committee to enforce the ruling on the basis of article 64 of the FIFA Disciplinary Code.

16. On 21 May 2015, Al-Ittihad issued an authorization in the following terms: *"Ittihad Club represented by president Mr. Ibrahim H. Al-Balawi informs that giving permission to Mr. Rodrigo Nunes de Oliveira, passport FB383340 and FIFA players Agent Mr. Sultan Al-Balawi licence no (222) to negotiate with the Sport Club Desportivo Brasil (Trafic) and Vasco da Gama regarding the transfer compensation due related to the Player/D., any agreement will be considered null and void if not concluded directly be Ittihad Club"*.

17. On 25 May 2015, Al-Ittihad's president wrote to Mr Eurico Miranda, President of the Club, acknowledging the existing debt towards the Appellant and conveying the Saudi club's willingness to settle the case for the amount of EUR 5,000,000.

18. On 10 June 2015, Mr Rafael Queiroz Botelho, counsel for the Appellant in the dispute against Al-Ittihad before FIFA, CAS and STF, replied to such correspondence, opening negotiations directly with Al-Ittihad.

19. On 26 June 2015, the parties agreed on the terms of a settlement agreement, the signed copies of which were ultimately exchanged between Mr Rafael Queiroz Botelho and Al-Ittihad officials on 30 June 2015.

## III. PROCEEDINGS BEFORE THE CRL OF CBF

20. On 25 November 2015, the Agent lodged a claim before the CRL, requesting the payment of a 10% commission for services rendered in connection with the conclusion of the settlement agreement between the Appellant and Al-Ittihad.

21. In general terms, the Respondent sustained that the Letter of Authorisation, granted to him on 25 August 2014 and valid for a term of 15 days had been automatically and tacitly extended until 10 August 2015, because the negotiations between the parties would have *"lasted uninterruptedly for about a year, with the consent of both parties and no other agent involved, unequivocally demonstrating an automatic extension of the document"*.

22. On 28 June 2016, the CRL rendered a decision ordering the Appellant *"to pay Pedro Cabral Silva Junior the amount equivalent to EUR 500,000 (five hundred thousand) as commission, to be converted in national currency, which represent 10% (ten percent) of transaction mentioned in the file (page 07), plus interest counted from the summoning of the respondent as well as monetary restatement. The costs shall be borne by the respondent. No attorney legal fees due to the absence of specific provision"* (hereinafter the "First Decision").

23. In such decision, the CRL held that the Letter of Authorisation was tacitly extended as *"either the commercial partner of the agent, Mr. Rodrigo, or the claimant himself, maintained their agency services for almost 1 (one) year, aiming the international transfer of the player D., specifically for the club he was authorised so"* and the Appellant has not notified the Respondent, as well as his commercial partners, not to continue with the negotiations.

24. On 1 July 2016, the grounds of the First Decision were communicated to the Appellant via e-mail.

25. On 8 July 2016, the Appellant filed a motion for clarification (*"embargos de declaração"*) against the First Decision, a type of measure aimed at correcting possible contradictions, omissions or unclear parts of a judgment.

26. On 12 July 2016, the CRL rendered a decision on the Appellant's *"embargos de declaração"* modifying its First Decision recognizing the Respondent claim right *"to receive 3% (three percent) as remuneration, amending, thus, the previous decision, and maintaining the other reasons and orders"* (hereinafter "Second Decision"). As a result the amount to be paid by the Appellant is the equivalent in Brazilian Reais to EUR 150.000.

27. The CRL held that:

- *"as there is no written contract between the parties, thus there is no reason in the file to apply the percentage of 10% (ten percent) that is usually fixed by agents and their clients (Clubs and Players)"*;
- *"article 20, paragraph 4, of the Players' Agents Regulations-FIFA shall apply. Important to mention that, when the parties do not agree on the amount of remuneration or in the absence of a provision in the service contract, the compensation shall be equivalent to 3% (three percent)"*.

28. On 15 July 2016, the grounds of the Second Decision were communicated to the Appellant via e-mail.

29. The First Decision and the Second Decision form together the decision against which the Appellant hereby appeals (hereinafter the "Appealed Decision").

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

30. On 3 August 2016, the Appellant filed a statement of appeal before the CAS, against the Respondent, with respect to the Appealed Decision rendered by the CRL and with the following requests for relief:

*"a) That the present appeal be upheld in totum;*

*b) That the Appealed Decision be set aside in totum, being the initial claim of Mr Pedro Cabral Silva Junior fully rejected;*

*c) That Mr Pedro Cabral Silva Junior be ordered to bear the entire costs and fees of the present arbitration;*

*d) That Mr Pedro Cabral Silva Junior be ordered to pay Club de Regatas Vasco da Gama a contribution towards legal fees and other expenses incurred in connection with the proceedings".*

31. On 11 August 2016, the CAS Court Office invited CBF to confirm whether it intended to participate as a party in the present arbitration procedure or not.

32. On 24 August 2016, CBF informed the CAS Court Office that it renounced to intervene in the present arbitration procedure.

33. On 31 August 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division has decided to submit the present case to a sole arbitrator.

34. On 1 September 2016, the Appellant filed its Appeal Brief, which contains a statement of the facts and legal arguments accompanied by supporting documents. The Appeal Brief was duly notified by the CAS Court Office to the Respondent, with the express indication that *"if the Respondent fail[ed] to submit his answer by the indicated time limit, the Sole Arbitrator, may nevertheless proceed with the arbitration and deliver an award".*

35. On 27 September 2016, the CAS Court Office informed the parties that, in accordance with article R54 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"), the Sole Arbitrator appointed to settle the present dispute was Mr João Nogueira da Rocha, attorney-at-law in Lisbon, Portugal.

36. On 5 October 2016, the CAS Court Office informed the parties that it had not received the Respondent's answer, or any communication from the Respondent in this regard within the time limit granted pursuant to article R55 of the CAS Code. It also brought out again that, pursuant to article R55 of the CAS Code, if the Respondent fails to submit his answer by the indicated time limit, the Panel, may nevertheless proceed with the arbitration and deliver an award. Additionally, the CAS Court Office informed the parties that they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely. Furthermore, the CAS Court Office also invited the parties to inform whether they prefer a hearing to be held in this matter.

37. On 11 October 2016, the Appellant informed the CAS Court Office that, taking into account *"the Respondent's apparent failure not only to present an answer but to appear in the procedure"*, it preferred to leave for the Sole Arbitrator to decide whether he deemed to be sufficiently well informed at this stage of proceedings or if a hearing should be conveyed in this matter.

38. On 2 November 2016, the CAS Court Office informed the parties that the Sole Arbitrator decided to hold a hearing in the present case.

39. On 11 January 2017, the CAS Court Office sent the parties the order of procedure.

40. On 13 January 2017, the CAS Court Office received the Order of Procedure countersigned by the Respondent.

41. On 24 January 2017, the CAS Court Office received the Order of Procedure countersigned by the Appellant.

42. The hearing of the present procedure took place in Lausanne, Switzerland, on 27 January 2017. At the hearing the Appellant was represented by its lawyers, Mr Bichara Abidão Neto and Mr Victor Eleuterio. The Respondent was represented by its lawyer Mr Wallace Joacir Alves de Oliveira who was assisted by Mr Thiago Batista Corrêa. In addition, Mr José Luís Andrade, counsel to the CAS, assisted the Sole Arbitrator at the hearing.

43. At the outset of the hearing, both parties confirmed that they had no objections to the appointment of the Sole Arbitrator and did not object to the jurisdiction of the CAS. At the hearing, the parties had the opportunity to present their case, to submit their arguments and answer the questions posed by the Sole Arbitrator. The parties agreed that the hearing could be held in Portuguese as it was their and the Sole Arbitrator mother tongue.

44. Mr Rafael Queiroz Botelho, counsel for the Appellant in the dispute against Al-Ittihad before FIFA, CAS and SFT, and Mr Eurico Angelo Brandão de Oliveira Miranda (Euriquinho), Vice-President of the Appellant, were heard as witnesses via videoconference. Both witnesses gave their testimony after being duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. The parties and the Sole Arbitrator had the opportunity to examine and cross-examine Mr Rafael Queiroz Botelho and Mr Eurico Angelo Brandão de Oliveira Miranda.

45. At the end of the hearing, the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.

## V. SUMMARY OF THE PARTIES' POSITIONS

46. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

### A. The Appellant

47. The Appellant's submissions, in essence, may be summarized as follows.

#### *1. As to the burden of proof*

48. Article 21.3 of the CRL Internal Regulations establishes that *"the burden of proof is incumbent on the party alleging the fact"*.

49. This general principle, derived from the article 373 of the Brazilian Civil Code and also contained in Swiss Law, has already been examined by the CAS as follows:

- *"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based"* and *"It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based"* (CAS 2007/A/1380).

50. So a party shall *"provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (CAS 2007/A/1380).

51. The Appellant is of the opinion that the Respondent failed to discharge his burden of proof *inter alia* that:

- The Letter of Authorization was extended beyond the original 15 days agreed;
- The Respondent was actively involved in the negotiations leading to the conclusion of the settlement agreement between the Appellant and Al-Ittihad on 26 June 2015 (hereinafter the "Settlement Agreement");
- The Respondent effectively rendered services by representing the Appellant in the relevant negotiations; and
- Those services were personally rendered by the Respondent, in his capacity of licensed players' agent.

### *2. As to the jurisdiction of the CRL and the scope of the FIFA PAR*

52. According to Article 1 of the CRL Internal Regulations, the CRL is competent *inter alia "to handle disputes (…) between licensed agents and clubs"*.

53. The dispute at stake does not fall within the scope of FIFA PAR.

54. Pursuant to Article 1, par. 1 and 2 of the FIFA PAR:

- Par.1: *"These regulations govern the occupation of players' agents who introduce players to clubs with a view to negotiating or renegotiating an employment contract or introduce two clubs to one another*

*with a view to concluding a transfer agreement within one association or from one association to another;"*

- Par. 2: *"The application of these regulations is strictly limited to the players' agents' activities described in the paragraph above".*

55. The FIFA PAR apply only where players' agents intervene (i) in the negotiations or renegotiation of employment contracts between players and clubs; or (ii) in the negotiations aiming the conclusion of transfer agreements between two clubs.

56. The Respondent acted in his regular civil capacities.

57. The present case pertains an alleged render of services targeting the amicable settlement of a pending dispute between two clubs which had entered into a transfer agreement without the intervention of the relevant players' agent.

58. If any services at all were rendered, that would be outside the Respondent's capacity of players' agent and thus he may not take advantage of the CRL's jurisdiction.

59. The FIFA PSC has already established the inadmissibility of claims filed by players' agents for services rendered outside the scope of the FIFA PAR (ref. 2141260, decision of 25 February 2016) as follows:

*"6. En este contexto, el Juez Único consideró apropiado referirse al contenido del art. 1 par. 1 y 2 del Reglamento los cuales establecen que el ámbito de aplicación de este cuerpo normativo se circunscribe a la actividad de agentes de jugadores que presentan un jugador a un club a fin de negociar o renegociar un contrato de trabajo o que presentan dos clubes entre sí con el objeto de suscribir un contrato de transferencia de un jugador;*

*7. En este estado, el Juez Único reiteró que el documento no brindaba ninguna especificación sobre las actividades prestadas por el demandante en favor del demandado.*

*8. A continuación, el Juez Único puso de resalto que si bien durante la investigación del presente el demandante había tenido la oportunidad de brindar información o presentar evidencias que demostraran que las actividades de intermediación y asesoramiento deportivo que había prestado al demandado estaban incluidas dentro de las descriptas en el art. 1 par. 1 del Reglamento, el demandante no lo había hecho.*

*10. En este sentido, el Juez Único clarificó que si bien surgía evidente que el demandado se había obligado al pago de una suma de dinero a favor del demandante y que incluso el demandado había efectuado pagos parciales, quedaba por determinar si dicha obligación legal estaba o no incluida dentro del ámbito de aplicación del Reglamento.*

*11. En virtud de todo lo antes expuesto, el Juez Único manifestó que ante el cuestionamiento del demandado de la naturaleza de prestación que le había supuestamente brindado el demandante y la ausencia de pruebas por parte de éste último no tenía otra alternativa más que concluir que no existía sustento legal suficiente como para considerar que las actividades supuestamente brindadas por el demandante al demandado quedaban comprendidas dentro de la esfera de aplicación del Reglamento.*

*12. En conclusión, el Juez Único decidió que la demanda del demandante debía ser rechazada en su totalidad teniendo en cuenta que debe ser considerada inadmisible".*

60. The Appellant is of the opinion that the Appealed Decision shall be set aside and the Respondent claim before the CRL rejected on the grounds of inadmissibility, pursuant to article 1, par. 1 and 2 of the FIFA PAR.

### *3. As to the alleged participation of Mr Rodrigo Nunes de Oliveira in the conclusion of the Settlement Agreement and the prohibition to hire non-licensed agents*

61. The Club denies the participation of Mr Rodrigo Nunes de Oliveira in the negotiations leading to the conclusion of the Settlement Agreement.

62. The Settlement Agreement was negotiated and drafted by Mr Rafael Queiroz Botelho.

63. The Agent failed to produce evidence to prove that the Appellant would have hired Mr Rodrigo Nunes de Oliveira for such purposes.

64. Al-Ittihad mandated Mr Rodrigo Nunes de Oliveira to represent this club.

65. The unproven participation of Mr Rodrigo Nunes de Oliveira in the negotiations as an alleged commercial partner of the Respondent and in representation of the Club shall be deemed nothing more than clear piece of fiction aimed at distorting the truth of the facts pertaining the present dispute.

### *4. As to the admissibility of licensed players' agents and their duty to render services in person*

66. In accordance with the article 3, par. 1 of the FIFA PAR: *"Players' agents' activity may only be carried out by natural persons who are licensed by the relevant association to carry out such activity".*

67. The typical work of a player's agent must only be formed by him/her, in line with par. 2 of article 3 of the FIFA PAR, i.e., *"only the players' agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs".*

68. The argument of the Respondent according to which his personal services materialized through the conduct of another person, *in casu* Mr Rodrigo Nunes de Oliveira, a non-licensed agent representing the Appellant's counterpart, is incompatible with the FIFA PAR and thus cannot succeed.

### *5. As to the letter of authorization and article 19 of the FIFA PAR*

69. According to the article 19, par. 1 of the FIFA PAR: *"A players' agent shall be permitted to represent a player or a club only by concluding the relevant written representation contract with that player or club".*

70. Pursuant to par. 5 of the same article of the FIFA PAR: *"Such a representation contract must contain the following minimum details: the names of the parties; the duration and the remuneration due to the players' agent; the general terms of payment; the date of completion and the signature of the parties".*

71. The Letter of Authorization issued by the Appellant does not meet these basic requirements (*essentialia negotii* of a representation contract).

72. Where a representation contract does not exist, the CAS jurisprudence determines that a players' agent has no possibility to substantiate a claim for commission (CAS 2007/A/1274).

73. The Respondent was authorised to carry out negotiations aiming a possible settlement of the dispute between the Appellant and Al-Ittihad clearly and explicitly for the period of fifteen days, from 25 August to 9 September 2014, without prejudice to the right of the Club to conclude a settlement agreement without the assistance of a players' agent as determined by the article 19 par. 17 of the FIFA PAR.

74. The Club at no time has extended the term of the authorization, carried out any actions suggesting that or anyhow authorizing the Agent or any external person other than its lawyer Mr Rafael Queiroz Botelho to represent the Appellant in the negotiations at stake.

75. According to the article 19 par. 3 of the FIFA PAR: *"The representation contract shall be valid for a maximum period of two years. It may be extended for another maximum period of two years by a new written agreement and may not be tacitly prolonged".*

76. In previous occasions, when faced with the question as to whether the representation contract may be automatically or tacitly extended, CAS ruled as follows: *"(…) It has not been proved, on the basis of the evidence adduced and established, that there was any confirmation, renewal or extension of the engagement commitment. As such, the argument that the rights to represent* [the Club] *in a future* [transaction] *were still in force at the time of the (transaction), fails for lack of legal and contractual grounds, respectively"* (CAS 2008/A/1665).

77. The findings of the Appealed Decision according to which the Letter of Authorization was automatically and tacitly extended is absolutely *contra legem* and must not be upheld by the CAS.

### *6. As to the commercial partnership between Pedro Cabral Silva Junior and Mr. Rodrigo Nunes de Oliveira – dual representation and conflict of interests*

78. Pursuant to the article 19, par. 8 of the FIFA PAR: *"Players' agents shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interests of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' players' agents involved in the player's transfer or in the completion of the employment contract".*

79. Such provision may broken-down in three clear, very specific and mandatory commands:

(i) to avoid conflicts of interests;

(ii) to avoid dual representation; and

(iii) to abstain from having a commercial relationship with any counterpart or its representatives. The Respondent violated all three interdictions.

80. A contract concluded by a players' agent in dual representation is null and void (TAS 2007/O/1310).

81. In accordance with the article 119 of the Brazilian Civil Code: *"it is annullable the transaction concluded by the representative in conflict of interest with the represented party, if such fact was or should have been known by the one with whom it was dealt".*

82. The Appellant only took note of the unlawful commercial partnership between the Respondent and Mr Rodrigo Nunes de Oliveira in the moment the former lodged his claim before the CRL.

83. Therefore, even assuming that the Agent and Mr Rodrigo Nunes de Oliveira would have represented the Appellant in the conclusion of the Settlement Agreement, the fact that they did so in dual representation and, thus, in conflict of interest would render their entitlement to remuneration null and void.

### *7. As to the whatsapp messages Mr. Rodrigo Nunes de Oliveira and Euriquinho*

84. In evaluating the evidence produced by the parties in the context of the present arbitration, it would be advisable to assess such Whatsapp conversations with the utmost caution.

85. Such messages are not material in support of the Respondent's position.

They show that:

(i) Mr Eurico Angelo Brandão de Oliveira Miranda had no authority or powers to negotiate on behalf of or to bind the Appellant;

(ii) Mr Rodrigo Nunes de Oliveira was not a representative of the Appellant, but rather of Al-Ittihad; and especially

(iii) No agreement was reached as result such conversation (no causal link).

86. In order to be valid, both the offer and the acceptance must be conveyed by legally authorized representatives of the concerned parties or, if not, ratified by the latter. In the relevant messages, none of these elements can be verified.

87. Any service, if indeed rendered by Mr Rodrigo Nunes de Oliveira, were in the only interest of Al-Ittihad. The Respondent and Mr Rodrigo Nunes de Oliveira have therefore no right to claim remuneration from the Appellant.

88. […][1].

**B. The Respondent**

89. The Respondent did not file an answer, or any communication in this regard (see par. 36 above).

90. Pursuant to article R55 of the CAS Code, if the Respondent fails to submit his answer by the indicated time limit, the Panel, may nevertheless proceed with the arbitration and deliver an award.

91. Nevertheless, at the hearing the Respondent made the following submissions.

92. The Letter of Authorisation, granted to the Respondent on 25 August 2014 and valid for a term of 15 days had been automatically and tacitly extended until 10 August 2015, because the negotiations between the parties would have *"lasted uninterruptedly for about a year, with the consent of both parties and no other agent involved, unequivocally demonstrating an automatic extension of the document"*.

93. The Appellant has not notified the Respondent, as well as his commercial partners, not to continue with the negotiations.

94. The Letter of Authorisation authorised the Respondent to act on behalf of the Appellant regarding the transfer compensation related to the Player. The Respondent could negotiate on behalf of the Appellant until the amount of EUR 4.000.000.

95. The Appellant has never formally terminated the Letter of Authorisation and for that reason the Respondent and his commercial partner Mr. Rodrigo Nunes de Oliveira continued with the negotiations with Al-Ittihad on behalf of the Appellant.

96. Mr. Rodrigo Nunes de Oliveira was acting in representation of the Respondent and he managed to settle an agreement with the Appellant and Al-Ittihad and for that reason the Respondent is entitled to a commission.

97. Mr. Rodrigo Nunes de Oliveira only acted on behalf of the Respondent and not Al-Ittihad and, therefore, there is no conflict of interest as referred by the Appellant.

98. Article 20, paragraph 4, of FIFA PAR shall apply. When the parties do not agree on the amount of remuneration or in the absence of a provision in the service contract, the compensation shall be equivalent of 3%.

99. For that reason, the Respondent is entitled to such commission and, thus, the Appealed Decision shall be confirmed.

[1] [Para. 88 is missing in original award and is only inserted here to match original numbering].

## VI. JURISDICTION

100. Article R47 of the CAS Code 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 it prior to the appeal, in accordance with the statutes or regulations of that body".*

101. The jurisdiction of the CAS, which has not been disputed by the parties, arises out of the article 34 of the CRL Internal Regulations, *"the decisions of the CRL may be appealed, in last instance, to an arbitration court recognized by the Confederação Brasileira de Futebol-CBF. The time limit for appeal will be of twenty days, counted as of the publication of the decision, by electronic means".*

102. Pursuant to article 68 of the 2015 edition of FIFA Statutes, CBF is obliged to recognize and to ensure that its members recognize the CAS. The CAS is the only arbitration court recognized by CBF, in accordance with article 75 of CBF Statutes. The possibility to file an appeal with the CAS was also expressly indicated in the Appealed Decision. The jurisdiction of the CAS is also expressly confirmed by the parties' signature of the Order of Procedure.

103. Therefore, the Sole Arbitrator considers that the CAS has jurisdiction to rule on this case.

## VII. ADMISSIBILITY

104. Pursuant to article 34 of the CRL Internal Regulations, in connection with article R49 of the CAS Code, the Appellant had 20 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

105. There exists a contradiction between article 34 of the CRL Internal Regulations and the guidelines attached to the Appealed Decision, whilst the first mentions a deadline of 20 days for appeal, the second ones fixes the time limit in 21 days.

106. The grounds of the Appealed Decision were communicated to the Appellant via email on 15 July 2016, and the Statement of Appeal was filed on 3 August 2016 i.e. within the time limit required by the CRL Internal Regulations or the guidelines attached to the Appealed Decision and article R49 of the CAS Code.

107. Consequently, the Appeal filed by the Appellant is admissible.

## VIII. APPLICABLE LAW

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

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the*

*federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

109. Pursuant to article 2 of the CRL Internal Regulations:

*"In the exercise of its jurisdiction, the CRL shall apply the Statutes and regulations of the Confederação Brasileira de Futebol, in particular those based on the FIFA Statutes and regulations. The CRL shall also take into account the national law, as well as the specificity of sport".*

110. The CAS has applied FIFA Statutes and various regulations, and in particular the FIFA PAR, when dealing with appeals arising out of decisions of the CRL (CAS 2012/A/2889 and CAS 2012/A/2969). The CRL itself applied the FIFA PAR as stated in the Appealed Decision.

111. Taking the aforementioned provisions into account, the Sole Arbitrator concludes that the FIFA Regulations (in particular the FIFA PAR) and, additionally, Swiss Law are applicable to this case.

## IX. MERITS

112. Taking into account the facts of the case, the parties' submissions and the further grounds and statements raised at the hearing of the present proceedings, the Sole Arbitrator shall address the following issues to settle the dispute:

- Was the CRL competent to handle this dispute?
- Did Mr Rodrigo Nunes Oliveira participate in the conclusion of the Settlement Agreement? If so, is admissible under the FIFA PAR that the Agent acts through another person?
- Did the Respondent violate article 19 of the FIFA PAR by having a commercial partnership with Mr Rodrigo Nunes Oliveira?
- Was the Letter of Authorisation extended for more than 15 days?
- Is the Agent entitled to a 3% commission for services rendered in connection with the conclusion of the Settlement Agreement between the Appellant and Al-Ittihad?

113. The Sole Arbitrator notes that the CAS Court Office has not received the Respondent's answer, or any communication from the Agent addressing these issues. Pursuant to article R55 of the CAS Code, if the Respondent fails to submit his answer by the stipulated time limit, the Panel, may nevertheless proceed with the arbitration and deliver an award.

114. The Sole Arbitrator refers in this connection to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must discharge the burden of proof, proving that the alleged fact is as claimed.

115. The Sole Arbitrator further notes that this is in line with article 8 of the Swiss Civil Code ("Swiss CC"), which stipulates as follows: *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

116. As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e., it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71 ff.). The Sole Arbitrator also brings out that, pursuant to article R57 of the CAS Code, *"the Panel has full power to review the facts and the law"*.

117. As a preliminary point, the Sole Arbitrator states that the Respondent failed to discharge his burden of proof.

118. In addition, the Sole Arbitrator states that the first question to be answered is to rule on the jurisdiction of the CRL that can lead as unnecessary for the Sole Arbitrator to consider the other submissions presented by the Appellant. Notwithstanding this fact, the Sole Arbitrator finds relevant to address all the arguments and submissions presented by the Appellant in order to understand the overall context of this dispute.

## A. Was the CRL competent to handle this dispute?

119. In accordance with article 1 of the CRL Internal Regulations, the CRL *"(…) is competent to handle disputes between licensed agents and players and between licensed agents and clubs (…)"*.

120. The Sole Arbitrator notes that this dispute is between the Club and the Agent, in which the latter requested the payment of a 10% commission for services allegedly rendered in connection with the conclusion of the Settlement Agreement between the Appellant and Al-Ittihad. But what services did the Respondent allegedly render to the Appellant?

121. The Appellant sustains that the Agent was allegedly rendering services in his "regular civil capacities", and thus not in his capacity as a players' agent, and as a result the dispute at stake does not fall within the scope of the FIFA PAR.

122. The Sole Arbitrator analysed the facts and noted that the services the Respondent allegedly rendered were, as mentioned in the Letter of Authorisation, *"(…) to start negotiations with Al-Ittihad regarding the transfer compensation due related to the Player D. (…)"*.

123. In fact, based on the evidence provided, the Club was open to discuss a proposal and payment terms for the negotiation about the Player as to the amount already due by Al-Ittihad as a result of a transfer occurred in the past. At the time the Letter of Authorisation was granted to the Agent, the Player was already transferred to Al-Ittihad and both the Appellant and the referred club had a pending dispute before the CAS (CAS 2014/A/3664).

124. Furthermore, the Sole Arbitrator observes that, in accordance with article 1, par. 1 and 2, of the FIFA PAR, these regulations are only applicable where players' agents intervene (i) in the negotiation or renegotiation of employment contracts between players and clubs; or (ii) in the negotiations aiming the conclusion of transfer agreements between clubs.

125. The Sole Arbitrator observes that none of the activities described in article 1, par. 1 of the FIFA PAR, were described in the Letter of Authorisation granted to the Respondent by the Appellant.

126. Thus, the Sole Arbitrator shares the Appellant's view that the present case pertains an alleged render of services targeting the amicable settlement of a pending dispute between two clubs, which had entered into a transfer agreement.

127. In addition, the Sole Arbitrator considers that the Respondent also failed to prove that he was effectively involved in the negotiations leading to the conclusion of the Settlement Agreement by not providing any evidence whatsoever.

128. Although this dispute is between a club and an agent, the Sole Arbitrator states there is no legal basis to consider that the services or activities allegedly provided by the Respondent to the Appellant were included within the scope of the FIFA PAR or that the same were in fact provided by the Respondent.

129. The Sole Arbitrator notes that article 1 of the CRL Internal Regulations shall be interpreted taking into account the FIFA PAR, and its scope in particular. The scope of the FIFA PAR is clear: *"These regulations govern the occupation of players' agents who introduce players to clubs with a view to negotiating or renegotiating an employment contract or introduce two clubs to one another with a view to concluding a transfer agreement within one association or from one association to another. The application of these regulations is strictly limited to the players' agents' activities described in the paragraph above"*. The Sole Arbitrator considers that, even assuming that the Agent had provided the services as described in the Letter Authorisation, such services were not included in the object of the FIFA PAR.

130. Taking into account the factual background and article 1, paras. 1 and 2 of the FIFA PAR, the Sole Arbitrator concludes that the Appealed Decision shall be set aside and the Respondent's claim before the CRL shall be rejected, as the CRL had no jurisdiction to handle this dispute.

**B. Did Mr Rodrigo Nunes Oliveira participate in the conclusion of the Settlement Agreement? If so, is admissible under the FIFA PAR that the Agent acts through another person?**

131. The Respondent, in the claim lodged before the CRL, sustained that Mr Rodrigo Nunes Oliveira was his business commercial partner and that he participated in the negotiations leading to the conclusion of the Settlement Agreement. For that reason, the Respondent claims a commission.

132. The Sole Arbitrator has already found that the present dispute does not fall within the scope of the FIFA PAR, but will examine this issue nonetheless *"de arguendo"*. However, the Sole Arbitrator notes that during the CAS proceedings the Respondent provided no evidence in order to prove that Mr Rodrigo Nunes Oliveira was his partner or that he had provided services on behalf of the Appellant during the period granted by the Appellant as stated in the Letter of Authorisation. The Sole Arbitrator observes that the only evidence regarding this matter was the Whataspp conversations between Mr Rodrigo Nunes Oliveira Mr Eurico Angelo Brandão de Oliveira provided by the Appellant.

133. On the other hand, the Appellant denies the participation of Mr Rodrigo Nunes de Oliveira in the negotiations leading to the conclusion of the Settlement Agreement. In fact, the Settlement Agreement was negotiated and drafted by Mr Rafael Queiroz Botelho, who in his testimony confirmed the version of the facts made by the Appellant. Conversely, the Appellant has proven through a mandate signed by Al-Ittihad that the latter club in those negotiations mandated Mr Rodrigo Nunes de Oliveira. This fact is confirmed by the above-mentioned Whataspp conversations as they reflect that Mr Rodrigo Nunes de Oliveira was representing Al-Ittihad.

134. For that reason and in view of the fact that the Respondent did not provide any evidence regarding this matter, the Sole Arbitrator concludes that Mr Rodrigo Nunes de Oliveira did not participate in the conclusion of the Settlement Agreement on behalf of the Respondent and, consequently, on behalf of the Appellant.

135. Furthermore, the Sole Arbitrator notes the wording of article 3, par. 1 of the FIFA PAR, which reads: *"Players' agents' activity may only be carried out by natural persons who are licensed by the relevant association to carry out such activity"*. This means, that only the players' agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs.

136. The Sole Arbitrator considers that if the Respondent had used Mr Rodrigo Nunes de Oliveira in order to render the services for which the Appellant through the Letter of Authorisation hired the Agent, that would be incompatible with the FIFA PAR. This fact constitutes one of the crucial principles of the FIFA PAR and is based on the general approach that, in the relationship between an agent and his client, the personal element is of outstanding importance.

137. For that reason, the Sole Arbitrator considers that also the argument that the services could be provided by someone hired by the Respondent must fail.

**C. Did the Respondent violate article 19 of the FIFA PAR by entering into a commercial partnership with Mr Rodrigo Nunes Oliveira?**

138. Article 19, par. 8 of the FIFA PAR states the following: *"Players' agents shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interests of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' players' agents involved in the player's transfer or in the completion of the employment contract".*

139. This means that an agent has to avoid all conflicts of interests in the course of its activity. An agent may only represent the interests of one party in each "transaction". In particular, an agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' agents involved in the player's transfer or in the completion of the employment contract or transfer agreement.

140. As mentioned above, the Respondent, in the claim lodged before the CRL, sustained that Mr Rodrigo Nunes Oliveira was his business commercial partner and that he participated in the negotiations leading to the conclusion of the Settlement Agreement.

141. However, it was also proven that Al-Ittihad issued an authorization to Mr Rodrigo Nunes de Oliveira to negotiate with the Sport Club Desportivo Brasil (Trafic) and Vasco da Gama regarding the transfer compensation due related to the Player.

142. Therefore, even if the alleged services provided by the Respondent would have fallen under the scope of the FIFA PAR, the Sole Arbitrator can only conclude that the Respondent would also be violating article 19, par. 8 of the FIFA PAR, since the Respondent and Mr Rodrigo Nunes de Oliveira were allegedly representing the Appellant and Al-Ittihad in the conclusion of the Settlement Agreement.

**D. Was the Letter of Authorisation letter extended for more than 15 days?**

143. The Sole Arbitrator analyses now if the Letter of Authorisation was extended for more than 15 days. The Sole Arbitrator considers that it was proven that that the Respondent was authorised to carry out negotiations aiming a possible settlement of the dispute between the Appellant and Al-Ittihad clear and explicitly for the period of fifteen days, from 25 August to 9 September 2014.

144. The CRL, in the Appealed Decision considered that the Respondent and his business partner, Mr Rodrigo Nunes de Oliveira, *"maintained their agency services for almost 1 (one) year, aiming the international transfer of the player D., specifically for the club he was authorized to"*. In the same decision, the CRL continues by stating that *"the respondent [the Club] has not notified the agent, as well as his commercial partners, so that they did no continue with the negotiations, there is no other interpretation but the tacit extension of the authorisation of page 14"*.

145. On the other hand, the Club arguments that at no time it has extended the term of the Letter of Authorization or carried out any actions that would suggest that such authorization was extended for the Agent or any external person. The Sole Arbitrator notes that this fact was corroborated by the testimony of Mr Rafael Queiroz Botelho.

146. The Sole Arbitrator notes that the Respondent failed to provide any evidence that the Letter of Authorisation was in fact extended or renewed.

147. It has not been proved, on the basis of the evidence adduced and established, that there was any confirmation, renewal or extension of the engagement between the parties. As such, the argument that there was a tacit extension of the Letter of Authorisation, fails for lack of legal and contractual grounds.

148. The Sole Arbitrator also concludes that the findings of the Appealed Decision according to which the Letter of Authorization was automatically and tacitly extended is dismissed.

**E. Is the Agent entitled to a 3% commission for services rendered in connection with the conclusion of the Settlement Agreement between the Appellant and Al-Ittihad?**

149. Based on the above conclusions that:

- the CRL had no jurisdiction to handle this dispute;
- the Respondent was not actively involved in the negotiations leading to the conclusion of the Settlement Agreement;
- the Respondent did not render services by representing the Appellant in the relevant negotiations;
- Mr Rodrigo Nunes de Oliveira, business partner of the Respondent, did not participate in the conclusion of the Settlement Agreement on behalf of the Respondent and consequently on behalf of the Appellant;
- Even if the alleged services provided by the Respondent would have fallen under the scope of the FIFA PAR, the Respondent would have violated article 19, par. 8 of the FIFA PAR;
- the Letter of Authorisation was not extended beyond the original 15 days agreed;

the Sole Arbitrator's considers that the Agent is not entitled to any commission for services rendered in connection with the conclusion of the Settlement Agreement between the Appellant and Al-Ittihad and, consequently, the appeal is upheld.

## ON THESE GROUNDS

**The Court of Arbitration for Sport hereby rules:**

1. The appeal filed by Club de Regatas Vasco da Gama on 3 August 2016 against the decision rendered on 28 June 2016 and on 12 July 2016 by the *Comitê de Resolução de Litígios* of the *Confederação Brasileira de Futebol* is upheld.

2. The decision rendered on 28 June 2016 and on 12 July 2016 by the *Comitê de Resolução de Litígios* of the *Confederação Brasileira de Futebol* is set aside.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.