Arbitration CAS 2019/A/6286 Guizhou Hengfeng FC v. Bubacarr Trawally, award of 11 December 2019

Panel: Mr Efraim Barak (Israel), President; Mr Michele Bernasconi (Switzerland); Mr Anthony Lo Surdo (Australia)

Football
Contractual dispute
Application of Swiss law for the interpretation of employment contracts signed between football clubs and football players
Interpretation of contracts based on the principle of confidence
Swiss law principles for the interpretation of contracts

1. **Considering that the relevant FIFA regulations do not contain any rule regarding the interpretation of the employment contracts signed between clubs and players, such contracts shall be interpreted according to Swiss law.**

2. **By seeking the ordinary sense given to the expressions used by parties to a contract, the real intention of the parties must be interpreted based on the principle of confidence. According to such principle, a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed.**

3. **It is of the responsibility of the author of a contract to choose its formulation with adequate precision. Unclear declarations or wording in a contract will be interpreted against the party that drafted it. Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law, under which the accrued protection of the weakest party.**

I. INTRODUCTION

1. Guizhou Hengfeng FC (the "Appellant" or the "Club") brings an appeal against the decision of the Dispute Resolution Chamber (the "FIFA DRC") of the Fédération Internationale de Football Association ("FIFA") rendered on 11 April 2019 (the "Appealed Decision") and notified to the Appellant on 25 April 2019.

2. In the Appealed Decision, the FIFA DRC decided, *inter alia*, that the Appellant was required to pay to Mr Bubacarr Trawally (the "Respondent" or the "Player") the amount of USD 1,500,000 plus interest in respect of a sign-on fee pursuant to a *"Professional Athlete Employment Contract"*

and a *"Supplementary Agreement on Salary and License Fee and Sign-on Fees"* each signed on and dated 24 February 2018.

II. THE PARTIES

3. The Appellant is a football club from China, currently playing in League One (the second division of the Chinese professional football). It is affiliated with the Chinese Football Association which in turn is a member of FIFA.

4. The Respondent is a professional football player from Republic of The Gambia, Africa.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the factual part of the Appealed Decision, the parties' written submissions and the exhibits filed. Additional facts and allegations found in the parties' written submissions, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Award only refers to the submissions and evidences the Panel considers necessary to explain its reasoning.

6. On 13 February 2018, the Appellant entered into an agreement with VB Alliancen A/S, a Danish football club (the "Lending Club") whereby the Player was loaned to the Appellant for the period from 13 February 2018 to 31 December 2018 (the "Loan Period") (the "Loan Agreement"). Pursuant to the Loan Agreement, *inter alia*:

   (a) the Player's registration was to be transferred from the Lending Club to the Appellant for the Loan Period for a net loan fee amount of EUR 300,000; and

   (b) the Appellant had priority to sign the Player at the end of the Loan Period.

7. On 24 February 2018, the parties entered into the following two written agreements:

   (a) *"Professional Athlete Employment Contract"* (the "Employment Contract"); and

   (b) *"Supplementary Agreement on Salary and License Fee and Sign-on Fees"* (the "Supplementary Agreement").

8. At the date of the execution of the Employment Contract and the Supplementary Agreement, the Player was in a contractual dispute with his previous Chinese football club, Yanbian Fude Football Club, arising from the termination of his employment contract with that club. That dispute was apparently resolved upon the terms appearing in a *"Settlement Agreement"* dated 27 February 2018 and a *"Supplemental Agreement of the Settlement Agreement"* also dated 27 February 2018 (collectively the "Settlement Agreement"), pursuant to which the Appellant, and the Chairman of its board of directors, agreed to pay Yanbian Fude Football Club amounts totalling

RMB 25,000,000 by way of settlement of the dispute between the Player and Yanbian Fude Football Club.

9. The Employment Contract, which is expressed as being intended to be legally binding (Article 1), was for a fixed term from 1 January 2018 to 31 December 2018 (Article 2). It provides in particular that if the Respondent *"successfully transfers to* [the Appellant] *in 2019, the contract will be renewed automatically until December 31, 2020"*. Article 15 contemplates that the parties may sign a *"Supplementary Agreement"*.

10. The Supplementary Agreement refers to the Employment Contract and is expressed as being intended to *"regulate some pending issues in the Employment Contract"* (Article 1). Relevantly, it provides that the Appellant has to pay the Respondent the net sum of USD 1,500,000 *"as the sign-on fees and it is after-tax for 2018 season"*. The payment was to be made in two instalments, the first of USD 1,000,000 *"[w]ithin 30 business days after the transfer"* and the second of USD 500,000 *"*[w]*ithin 10 business days after the 20th round of CSL"* (Article 2) (collectively the "Sign-on Fees").

11. On 31 December 2018, the Loan Agreement and the Employment Contract expired and the Club did not express its intention to sign the Player for the future or to renew his Employment Contract.

12. Consequently, on 17 January 2019, the Player's lawyer wrote to the Club and put it in default of its obligations to pay the Sign-on Fees plus interest of 5% per year within a 10-day limit.

13. As no response was received to that letter and the Sign-on Fees remained outstanding, on 7 February 2019, the Player's lawyer dispatched a written warning notice to the Club claiming the total amounts outstanding and setting another 10-day limit for the Club to remedy its default in relation to the outstanding payments.

14. No response having been received, on 22 February 2019, the Player lodged a claim before the FIFA DRC requesting that the Club be ordered to pay to the Player in respect of the Sign-on Fees overdue payables in the amount of USD 1,500,000, plus 5% interest *per annum* as of 8 April 2018 on the amount of USD 1,000,000 and plus 5% interest *per annum* as of 6 September 2018 on the amount of USD 500,000 and that the Club be sanctioned in accordance with the provisions of Article 12bis of the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

15. Before the FIFA DRC, the Club did not deny the undertaking to pay the Sign-On Fee, but rather argued that the delay in payment was due *"exclusively to a cash flow problem"* and explained the delay in payment saying that it had reached a verbal agreement with the Player on the postponement of the payment. It also contended that it had always acted in good faith and that because it is the first case involving overdue payables, it was not deserving of severe sanctions.

16. The FIFA DRC concluded that the arguments raised by the Club did not provide a valid reason for non-payment and that, in accordance with the general legal principle of *pacta sunt servanda,* the Club was obliged to pay to the Player the Sign-on Fees together with interest. It also

determined to impose a warning on the Club in accordance with Article 12bis par. 4 lit. a) of the RSTP.

17. Thus, on 11 April 2019, the FIFA DRC rendered the Appealed Decision as follows:

> *"1. The claim of the Claimant, Bubacarr Trawally, is accepted.*
>
> *2. The Respondent, Guizhou Hengfeng FC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of USD 1,500,000, plus interest at the rate of 5% p.a. until the date of effective payment as follows:*
>
> *a. 5% p.a. on the amount of USD 1,000,000 as from 8 April 2018;*
>
> *b. 5% p. a. on the amount of USD 500,000 as from 6 September 2018.*
>
> *3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *4. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received.*
>
> *5. A warning is imposed on the Respondent".*

18. On 25 April 2019, the grounds of Appealed Decision was communicated to the parties.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

19. On 16 May 2019, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 Edition) (the "Code") against the Appealed Decision rendered by the FIFA DRC on 11 April 2019, and received with grounds by the Appellant on 25 April 2019.

20. On 24 May 2019, the Appellant requested from the CAS an extension of the deadline to file its Appeal Brief until 17 June 2019, due to the difficulty of collecting evidence and witnesses and considering the time to translate from Chinese to English. On the same date the CAS Court Office invited the Respondent to comment on such request and suspended the time limit for the filing of the Appeal Brief. The Respondent opposed the Appellant's request for extension at issue.

21. On 3 June 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division of the CAS, granted the Appellant an extension until 6 June 2019 to file its Appeal Brief.

22. On 14 June 2019, due to the fact that all letters sent by the CAS Court Office until then were not sent to the correct Appellant's address, and because the Appellant had therefore not received those letters, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, granted to the Appellant an extension until 17 June 2019 to file its Appeal Brief.

23. On 17 June 2019, the Appellant filed its Appeal Brief in accordance with Articles R32 and R51 of the Code.

24. By letter of 12 July 2019, the parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel (President of the Panel), Mr Michele Bernasconi, attorney-at-law in Zurich, Switzerland (nominated by the Appellant) and Mr Anthony Lo Surdo, barrister in Sydney, Australia (nominated by the Respondent), arbitrators. Mr Pierre Turrettini, attorney-at-law in Geneva, Switzerland, was appointed as *Ad hoc* Clerk by the Panel.

25. On 26 July 2019, the Respondent filed his Answer with the CAS Court Office in accordance with Article R55 of the CAS Code.

26. On 30 July 2019, the CAS Court Office wrote to the parties acknowledging receipt of the Respondent's Answer, informing them of the provisions of Article R56 of the CAS Code and inviting them to advise whether they preferred a hearing to be held in the matter or for the Panel to issue an award based solely on the parties' written submissions, noting that Article R57 of the CAS Code provides that, after consulting the parties, the Panel shall decide whether or not to hold a hearing.

27. On 30 July and 6 August 2019, the parties informed the CAS Court Office that they preferred the Panel to issue an award based solely on the parties' written submissions.

28. On 24 and 25 September 2019 the parties signed the Order for Procedure by which, *inter alia*, they confirmed their agreement that the Panel decide this matter based upon their respective written submissions and that their right to be heard has been respected.

V. SUBMISSIONS OF THE PARTIES

29. What follows is a summary of the parties' written submissions and does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the Panel notes that it has carefully considered all of the evidence and arguments submitted by the parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant's submissions and request for relief

30. The Appellant claims that it was first approached by the Player's agent, Mr Lucas Jin Chang, who represented that the Player could be permanently transferred to the Appellant for free

upon the expiration of the Loan Agreement. Considering the existence of a dispute between the Player and his former club Yanbian Fude Football Club, the agent suggested that it was more appropriate to first transfer the Player to VB Alliancen A/S, as a bridge club, and then loan the Player to the Appellant.

31. The Appellant maintains that the dispute with Yanbian Fude Football Club ended with the Settlement Agreement, pursuant to which the Appellant, and the Chairman of its board of directors, agreed to pay Yanbian Fude Football Club amounts totalling RMB 25,000,000 which were to be considered as a *"transfer fee"* for the then permanent transfer of the Player at the expiration of the Loan Agreement.

32. The Appellant submits that the Employment Contract and the Supplementary Agreement were each signed hastily and in such circumstances where the parties were of the *"common understanding"* that the payment of the Sign-on Fees was to be conditional on the permanent transfer of the Respondent to the Appellant upon the expiration of the Loan Agreement.

33. The Appellant asserts that it negotiated with Mr Lucas Jin Chang with regard to the Sign-on Fees and that the latter orally promised to the Appellant that only if the Respondent successfully and permanently transferred to the Appellant at the end of the season would the Sign-on Fees be payable.

34. The Appellant asserts that this common understanding between the parties is consistent with the payment condition in Article 2 of the Supplementary Agreement which provides notably a first payment within *"30 business days after the transfer"* and with paragraph 3 of Article 2 of the Employment Contract, which provides that *"*[i]*f Party B successfully transfers to Party A in 2019, the contract will be renewed automatically until December 31, 2020"*.

35. Since the Employment Contract expired at the end of 2018 and the Respondent did not transfer to the Appellant, the Appellant submits that it has no obligation to pay the Sign-on Fees.

Relief Sought

36. In this context, the Appellant submitted the following requests for relief:

> *"(a) set aside the* [Appealed] *Decision;*
>
> *(b) dismiss the Respondent's claim;*
>
> *(c) order the Respondent to reimburse the Appellant's legal costs and other expenses pertaining to this appeal proceeding before CAS; and*
>
> *(d) order the Respondent to bear the costs of the arbitration".*

B. The Respondent's submissions and request for relief

37. The Respondent submits that, pursuant to the Supplementary Agreement, the Appellant was required to pay the Sign-on Fees of USD 1,500,000 in two instalments:

    (a) the first instalment of USD 1,000,000, within 30 days after the transfer of the Respondent, being 8 April 2018; and

    (b) the second instalment of USD 500,000, within 10 business days after the 20th round of the Chinese Super League, which was played on 24 August 2018, and thus payable on 6 September 2018.

38. The Respondent asserts that the Appellant did not express its intention to definitely transfer the Respondent or to renew his Employment Contract which resulted in the Loan Agreement and the Employment Contract having expired on 31 December 2018.

39. The Respondent claims that he has fulfilled his obligations under the Employment Contract, has received both the fixed and variable remunerations but has not received the Sign-on Fees without any legitimate reason.

40. The Respondent further invokes Article 12bis of the RSTP ("Overdue payables"), which provides that *"[c]lubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contract signed with their professional players, and in the transfer agreements"*, and the basic legal principle of *pacta sunt servanda* which, in essence, means that the agreements must be respected by the parties in good faith.

41. The Respondent submits that the circumstances pertaining to the termination of his employment contract with his previous Chinese Club, Yanbian Fude Football Club, and the execution of the Settlement Agreement bear no relevance to the question as to whether the Appellant is obliged to make the payments of the Sign-on Fees.

42. The Respondent maintains that as at the date of the execution of the Employment Contract and the Supplementary Agreement, he did not have an agent and is unaware of the alleged involvement of Mr Lucas Jin Chang. He stresses that the facts argued by the Appellant with regards to representations made by Mr Jin Chang have no relevance to the issues the subject of the appeal.

43. According to the Respondent, the Appellant's lack of *bona fides* is further demonstrated by the following facts:

    (a) the Appellant has never sent any written correspondence to the Respondent claiming the invalidity of the Supplementary Agreement;

    (b) the Appellant has never sent any written letter to the Respondent requesting and/or proposing to renew or extend the duration of the Employment Contract;

(c) the Appellant has never replied to the two warning letters sent on behalf of the Respondent requesting the payment of the amount of USD 1,500,000 plus interest pursuant to the Supplementary Agreement;

(d) on the contrary, the Appellant has always assured the Respondent that the payment would be completed at the end of season 2018; and

(e) In the proceedings before the FIFA DRC, the Appellant did not refer to the matters presently submitted but simply tried to justify its delay in payment by claiming that it had cash flow difficulties.

44. The Respondent finally claims that the Appellant is a well-established club which regularly and intentionally violates the principle of *"contractual stability"* in its relationships with its players, coaches, staff members and other creditors and provides references of recent cases apparently pending before FIFA judicial bodies and the CAS where it is in default of its financial and contractual obligations.

Relief Sought

45. In this context, the Respondent submitted the following requests for relief:

"1. Confirm the FIFA DRC decision appealed by the Club;

2. Order the Appellant to reimburse all the legal costs incurred by the Respondent in the present proceedings equals to 25,000 CHF;

3. Order the Appellant to bear the entire amount of the costs of the arbitration".

VI. JURISDICTION

46. The jurisdiction of the CAS in this procedure derives from Article R47 of the CAS Code, Article 58 of the FIFA Statutes (August 2018 Edition) ("FIFA Statutes") and Article 24 of the RSTP (promulgated pursuant to Article 5 of the FIFA Statutes).

47. According to Article R47 of the CAS Code, *"*[a]*n appeal against the decision of the Federation, Association or sports-related body may be filed with CAS if the statute 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 statute or regulations of that body".*

48. Article 58 of the FIFA Statutes, relevantly provides:

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted".

49. The FIFA DRC was established by FIFA pursuant to Article 23 of the RSTP to adjudicate on any of the cases described under Article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.

50. Article 24 of the RSTP provides that decisions reached by the FIFA DRC may be appealed before the CAS. There is no internal channel of appeal for such a decision.

51. In circumstances where there is no internal channel of appeal from a decision of the FIFA DRC and where the CAS is specified in Article 24 of the RSTP as the relevant appeal body, the Panel holds that it has jurisdiction to hear this appeal.

52. Further, neither party has contested the jurisdiction of the CAS. Indeed, by signing the Order of Procedure, each confirmed that the CAS has jurisdiction.

VII. ADMISSIBILITY

53. The Appealed Decision was passed on 11 April 2019 and notified with grounds to the parties on 25 April 2019. Accordingly, and having regard to Article 58 para. 1 of the FIFA Statutes, any appeal against the Appealed Decision was to be filed with CAS by 16 May 2019. The Statement of Appeal in this procedure was filed by the Appellant with the CAS Court Office on 16 May 2019.

54. Accordingly, the Appeal is admissible. The Respondent has not contended to the contrary.

VIII. APPLICABLE LAW

55. 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".*

56. Article 57 para. 2 of the FIFA Statutes provides:

> *"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

57. Article 15 para. 6 of the Employment Contract provides that *"matters not covered by this contract shall be governed by the relevant laws and regulations of China, rules and regulations and the relevant regulations of FIFA, and Chinese Football Association".*

58. The Supplementary Agreement does not provide any choice of law clause.

59. The Appellant submits that the FIFA regulations, Swiss law and additionally the *"so-called lex sportiva"* shall apply to the present matter.

60. The Respondent takes no particular position on this issue.

61. According to established CAS case law, an agreement conferring jurisdiction on CAS is an implicit choice of law by the parties within the meaning of the first alternative of Article 187 par. 1 of the Swiss Private International Law Act (notably CAS 2016/A/4704 para. 65 *et seq.* CAS 2014/A/3850 para. 45 *et seq.*) which in its English translation states as follows:

> *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected".*

62. The question remains as to what should apply when the parties have made an implicit (indirect) choice of law, but at the same time have also explicitly specified which law is to apply to the dispute in general or to a specific aspect of it, for example in an employment contract.

63. In the present case, the Panel observes that the Employment Contract provides that different sets of laws and regulations shall apply to the contract, in particular *"the relevant laws and regulations of China, rules and regulations and the relevant regulations of FIFA, and Chinese Football Association"*. There is, however, no order of priority between such sets of laws and regulations. Further, those laws only expressly apply to *"matters not covered by this contract"*. Whilst it is not immediately apparent to the Panel as to what circumstances are contemplated by such a provision, nevertheless the question raised by this appeal directly concerns a matter covered by the contract.

64. In these circumstances, it may be therefore questioned whether the laws and regulations of China and of the Chinese Football Association apply to the present case, instead of Swiss law, which is the implicit choice of law by the parties.

65. This said, the Panel notes that Appellant has in no way alleged that the laws and regulations of China and of the Chinese Football Association should be applied instead of Swiss law in relation to the Employment Contract. In this context, it did not provide the Panel with any information concerning any provision of the laws and regulations of China and of the Chinese Football Association that could be relevant for the present matter.

66. As a result, considering that the parties in the Employment Contract explicitly referred to the dispute-resolution system of FIFA (and of the CAS), that they explicitly also chose the application of FIFA rules and regulations and of Swiss law, that they both accepted the respective considerations and the reference to Article R29 of the Code in the Order of Procedure and that the Appellant did not invoke any laws or regulations of China or of the Chinese Football Association as applicable law, the Panel holds that the present dispute must be decided pursuant to the various FIFA rules and regulations and additionally pursuant to Swiss law.

IX. MERITS

A. Overview – issue for determination

67. Having regard to the *de novo* nature of the appeal, the arguments advanced by the Appellant, the submissions made by the Respondent and the evidence upon which each of the parties relies, these proceedings essentially give rise to the question as to whether or not the parties agreed in the Supplementary Agreement that the Sign-on Fees would only be paid if the Respondent will be permanently transferred to the Appellant at the expiration of the Loan Agreement.

68. Before embarking upon a consideration of the merits of the appeal, it is necessary to address, briefly, the burden of proof.

B. The burden of proof

69. The relevant FIFA regulations appear to be the RSTP and the FIFA Rules Governing the Procedures of the Players' Status Committee and Dispute Resolution Chamber (October 2017 edition) (the "FIFA Procedural Rules") pursuant to which the Appealed Decision was rendered.

70. Article 12 of the FIFA Procedural Rules provides the following:

> *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".*

71. In this context, the Panel finds that the Appellant bears the onus of establishing the facts pertinent to and which support its appeal, which is also in line with Article 8 of the Swiss Civil Code.

C. Consideration

72. Since the parties dispute the meaning of Article 2 of the Supplementary Agreement, the Panel finds that it is necessary to interpret the Supplementary Agreement in the light of all the circumstances of the present case in order to decide its real meaning. Such interpretation shall be made in accordance with Swiss law considering that the relevant FIFA regulations do not contain any rule regarding the interpretation of contracts.

73. In this context, the Panel observes that Article 18 par. 1 of the Swiss Code of Obligations provides as follows:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

74. The Panel further observes that CAS jurisprudence determines in particular the following in respect of this provision:

""By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND, op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wording in a contract will be interpreted against the party that drafted the contract (ATF 124 III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER, op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party" (CAS 2005/A/871, pg. 19, para. 4.30)" (CAS 2008/A/1518, paras. 143-144).

75. In view of the above guidelines, the Panel finds that the wording of Article 2 of the Supplementary Agreement leaves little room for an interpretation in favour of the Appellant's submissions, in particular considering the following circumstances of the present case.

76. It is firstly reminded that a Loan Agreement was entered into between the Appellant and the Lending Club to enable the Respondent to play on loan for the Appellant. That agreement is expressed as being for a loan period of 13 February 2018 to 31 December 2018. Article 5 of the Loan Agreement provided the Appellant with the option or priority to sign the Respondent (also) at the end of the Loan Period.

77. Consequent upon the execution of the Loan Agreement, the parties entered into the Employment Contract and the Supplementary Agreement. Consistent (though not co-extensive) with the Loan Agreement, both the Employment Contract and the Supplementary Agreement are expressed as being valid from 1 January 2018 to 31 December 2018.

78. Relevantly, Article 2 of the Supplementary Agreement is in the following terms:

"2. Party A shall pay Party B the net sum of 1.500.000 USD (SAY: One Million And Fifty Thousand) as the sign-on fees and it is after-tax for 2018 season. The payment shall be made in two instalments as follows:

1.000.000;

Within 30 business days after the transfer, Party A shall pay Party B 1.000.000 USD (SAY: One Million)

500.000;

Within 10 business days after the 20th round of CSL, Party A shall pay Party B 500.000 USD (SAY: Five Hundred Thousand)".

79. The Panel finds that the obligation imposed by Article 2 of the Supplementary Agreement upon the Appellant is clear and unequivocal. It requires the Appellant to pay to the Respondent, the amount of USD 1,500,000 as a sign-on fee in two instalments at the times specified. The Panel notes that agreeing on a sign-on fee as the parties did is a quite standard practice in the world of professional football.

80. The Appellant contends that it was the common intention of the parties that the Sign-on Fees would be paid conditionally upon the permanent transfer of the Respondent to the Appellant at or prior to the expiration of the term of the Employment Contract or the Supplementary Agreement.

81. To that argument, the Panel observes that that alleged common intention does not find expression in the terms of either the Employment Contract or the Supplementary Agreement. Indeed, it is inconsistent with the express terms of the Supplementary Agreement itself which imposes no such condition. Additionally, the Panel notes that both contracts were very likely drafted by the Appellant, since it contains a Chinese version as well, and shall therefore be interpreted against the Appellant who was the party responsible to draft clear and unequivocal clauses.

82. Furthermore, the Appellant is unable to identify any contemporaneous documentary record that supports its claim. The screen-shot of a *"WeChat"* discussion alleged to be between Web Xiaoting (Chair of the Appellant) and Mr Lucas Jin Chang, who the Appellant claims was agent for the Respondent (which is denied by the latter) does not address this issue.

83. The Panel affords no weight to the claim that Mr Lucas Jin Chang made an oral promise to the Appellant consistent with the alleged common intention because:

(a) there is no evidence that Mr Lucas Jin Chang was, in fact, appointed as the Respondent's agent (a matter which the Respondent denies). No agency or other agreement has been adduced;

(b) the assertion that Mr Lucas Jin Chang was the Respondent's agent is inconsistent with the words that appear below the Respondent's signature on the Employment Contract in which he states, *"I HAVE NO AGENT"*, a fact that must have been known to the Appellant by at least the date of the execution of that agreement;

(c) the alleged oral agreement, if it exists, was made at a time prior to the execution of the Employment Contract and the Supplementary Agreement. Neither of those agreements reflects the alleged oral agreement and, indeed, their terms are inconsistent with the existence of an alleged earlier oral agreement. The Employment Contract and the Supplementary Agreement are accordingly the best and most persuasive evidence of the common intention of the parties; and

(d) more importantly, the Appellant who bears the burden of proof asked and opted not to hold a hearing and did not submit any evidence nor did it make any other effort to further substantiate its allegations.

84. Indeed, a condition for which the Appellant contends would arguably be inimical to the object of a sign-on fee which is a payment that a player receives for signing with a club and which is usually paid in annual instalments over the period of the contract. The wording of the payment relates to the signing ("signing-on") of the agreement between the Player and the Appellant and

this may perfectly relate to the fact that the Player and the Appellant signed the Employment Agreement.

85. Further, the Employment Contract and the Supplementary Agreement were only ever for one year with an option exercisable by the Appellant to purchase the Respondent at the end of the Loan Period. Therefore, if the Sign-on Fees were to have any utility and be anything other than illusory, it had to be paid during that year. That this is what the parties contemplated is also apparent from the formulation of Article 2 of the Supplementary Agreement, which states that the Sign-on Fees is *"after-tax for 2018 season"*. That is, that the Sign-on Fees are for the 2018 season it being the only period for which the Respondent was contracted.

86. The Appellant asserts that the common understanding is consistent with the payment condition in Article 2 of the Supplementary Agreement and paragraph 3 of Article 2 of the Employment Contract, which provides that *"[i]f Party B successfully transfers to Party A in 2019, the contract will be renewed automatically until December 31, 2020"*.

87. In the Panel's view, this provision, properly understood, merely provides for the extension of the term of each of the Employment Contract and the Supplementary Agreement. The Supplementary Agreement, of course, contains provisions other than that concerning the Sign-on Fees. For example, Article 3 enables bonuses to be earned in the circumstances there specified. That provision would inure in the event that the Respondent transferred to the Appellant in 2019 (at the end of the 2018 season). Thus, in the view of the Panel, the provisions to which the Appellant refers are neutral at best.

88. In coming to the following conclusion the Panel also took due note of the fact that the allegations made by the Appellant at the CAS proceedings in support of the appeal contradict the arguments of the Appellant in front of the FIFA DRC, where the Appellant expressly admitted the duty to pay the sign-on fee and only explained the reasons for the non-payment, reasons that were justly denied by the FIFA DRC.

89. In these circumstances, the Panel is of the view that the Appellant has failed to establish that the payment of the Sign-on Fees was conditional as it contends and that the interpretation of the Employment Contract and the Supplementary Agreement does not allow it to conclude so, in particular, considering that the Appellant very likely drafted such contracts.

90. There does not appear to be any issue that:

(a) pursuant to Article 12bis of the RSTP ("Overdue payables"), *"Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players, and in the transfer agreements"* and, in doing so, are obliged to act in accordance with the basic legal principle of *pacta sunt servanda;*

(b) the Respondent has fulfilled his obligations under the Employment Contract and has not received the Sign-on Fees;

(c) interest is payable on the Sign-on Fees at the rate of 5% *per annum* on the amount of USD 1,000,000 from 8 April 2018 and at the same rate on the amount of USD 500,000 from 6 September 2018; and

(d) the Respondent complied with its obligations under Article 12bis para. 3 of the RSTP which is a pre-condition for sanctions to be imposed on a club in respect of Overdue payables;

D. Determination

91. The Appeal is accordingly dismissed and the decision of the FIFA DRC is confirmed. This conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Guizhou Hengfeng FC on 16 May 2019 against the decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association passed on 11 April 2019 is dismissed.

2. The decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association passed on 11 April 2019 is confirmed.

3. (…).

4. (…).

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