Arbitrations CAS 2019/A/6463 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & Fédération Internationale de Football Association (FIFA) & CAS 2019/A/6464 Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club, award of 10 November 2020

Panel: Prof. Massimo Coccia (Italy), President; Mr Mark Hovell (United Kingdom); Prof. Ulrich Haas (Germany)

Football
Termination of the employment contract without just cause by the player during the protected period
Video-conference hearing and right to be heard
Failure to request an extension of a deadline and equality of the parties
Inadmissibility of a party's late answer and status of the party as a respondent
Consequences of the inadmissibility of a late answer
Status of FIFA as a party in contractual disputes
Failure to submit an answer and position of the appellant(s)
Validity of the employment contract
Principles of compensation for the unilateral, unjustified termination according to Art. 17 para. 1 RSTP
Club found to be in breach of contract or found to be inducing a breach of contract according to Art. 17 para. 4 RSTP

1. **Deciding to hold a video-conference hearing does not violate any right of the parties, including the right to be heard. The CAS Code does not grant the parties a right to a hearing. In fact, pursuant to Article R57 of the CAS Code, a CAS panel has the discretion, after consulting with the parties and if it considers to be sufficiently well informed, not to hold a hearing at all. Therefore, *a fortiori*, the parties have no right to an in-person hearing over one by video-conference. In addition, Article R.44.2 of the CAS Code – applicable to appeals proceedings through Article R57 – expressly provides that the *"President of the Panel may decide to conduct a hearing by video-conference"*.**

2. **Requests for extensions may not be made, and therefore not granted, after the expiration of a deadline. According to Article R32 of the CAS Code, an extension may only be granted *"if the circumstances so warrant and provided that the initial time limit has not already expired"*. It is irrelevant that the other parties to the proceeding requested and obtained extensions. The CAS Code does not stipulate that an automatic extension must be provided to one party where another party properly requested and obtained an extension of its own. Moreover, the equality of the parties and a fair proceeding is not guaranteed by bending the CAS Code in favour of the needs of one party. Instead, it is guaranteed by (i) requiring all of the parties to respect the CAS procedural rules, and (ii) having the CAS generally and evenly apply said rules to all parties.**

3. **There is no rule of the CAS Code providing that a respondent loses its right to be a party**

altogether and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a belated answer. Article R55 of the CAS Code, which deals with a belated answer, only indicates that *"[i]f the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award"*. In addition, Article R56 of the CAS Code does not preclude the respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings, or from submitting post-hearing briefs strictly limited to commenting on the evidence presented at the hearing. To hold otherwise would mean that, under Article R56 of the CAS Code, all parties to CAS appeals proceedings would always be restricted in their oral statements to repeating exactly what they have already written in their briefs prior to the hearing; this would essentially make all oral pleadings at hearings meaningless and unnecessary.

4. **Late filing of an answer does not come "without a price". The party is sanctioned by not being allowed to: (i) have its answer on file and, in turn, not being able to further elaborate on the arguments it presented in the first instance proceedings; (ii) raise those objections that are only permitted to be made within the first written defence (such as, for example, a jurisdictional objection); (iii) submit any evidence or ask for evidentiary measures. This includes not being allowed to submit fact or expert witness statements, to call witnesses to testify at the hearing, or to requests for the production of documents, etc.; and (iv) put forward any motions for relief, given that it is constant CAS practice that motions for relief may not be amended at the hearing. Besides, the party cannot cure the inadmissibility of its answer by submitting, in post-hearing briefs, the arguments and evidence that were disregarded as a consequence of the answer's inadmissibility.**

5. **In a contractual dispute that led to disciplinary sanctions being challenged before the CAS, FIFA is not merely a "nominal" party, or one of "second class" or "inferior status". FIFA has standing to be sued and is a full respondent, given that it is the association that issued the appealed decision and imposed sanctions on the appellant(s); as such, its submissions must be taken into account to the same extent as those of the appellant(s) and it is not limited to pleading only on the disciplinary sanctions imposed, but may also plead with respect to the facts which led to said sanctions even if based on a contractual dispute that, in itself, did not involve FIFA.**

6. **A respondent's failure to submit an answer does not mean that the CAS panel must blindly accept the position of the appellant(s). The panel is tasked with assessing whether the appealed decision should be confirmed or overturned, in part or in full, and it may make such assessment and reach a conclusion thereon even in the absence of one of the parties' answers in accordance with Article R55 of the CAS Code.**

7. **There is no rule in the FIFA Regulations on the Status and Transfer of Players (RSTP)**

setting out the specific order of steps that must be taken to sign a player. While the ideal or *"ordinary course"* of a transfer might be the signature of a transfer agreement followed by the signature of the employment contract, this is not the only and mandatory way. In practice, transfers occur in a variety of different manners. As there is no mandatory sequence of events for the transfer of a player, the validity of an employment contract cannot be preconditioned on the clubs entering into a written transfer agreement or on the termination of an existing employment contract.

8. Compensation for the unilateral, unjustified termination of an employment contract is calculated pursuant to Article 17.1 RSTP. The list of criteria set out in Article 17.1 RSTP is illustrative and not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, provided that there exists a logical nexus between the breach and loss claimed. In the analysis of the relevant criteria, the order by which those criteria are set forth by Article 17.1 RSTP is irrelevant and need not be exactly followed by the judging body. It is for the latter to carefully assess, on a case by case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation. While each of the factors set out in Article 17.1 or in CAS jurisprudence may be relevant, any of them may be decisive on the facts of a particular case. While the judging authority has a *"wide margin of appreciation"* or a *"considerable scope of discretion"*, it must not set the amount of compensation in a fully arbitrary way, but rather in a fair and comprehensible manner. At the same time, as the CAS Code sets forth an adversarial rather than inquisitorial system of arbitral justice, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17.1 RSTP or set out in the CAS jurisprudence, if the parties do not actively substantiate their allegations with evidence and arguments based on such factor. In calculating compensation, the panel will be guided by the principle of the so-called "positive interest" or "expectation interest" and accordingly determine an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred.

9. FIFA rules must be interpreted in a way that reflects their true meaning. The clear purpose of Article 17.4 RSTP is to ensure contractual stability and ensure that the club behind or abetting a player's breach of contract within the protected period is punished. With this in mind, the notion of "signing club" under Article 17.4 RSTP cannot be interpreted restrictively to mean only the club with which the player first formally signs and registers after his unjustified termination of an employment contract; it must be interpreted more generally as the club which benefits from said termination by having the player at its disposal after the breach. In any case, Article 17.4 RSTP punishes not only the "new club" or "signing club" but *"any club"* found to be inducing a breach of contract during the protected period.

I. INTRODUCTION

1. Mr. Saman Ghoddos and Östersunds FK Elitfotboll AB bring appeals, docketed respectively as CAS 2019/A/6463 and CAS 2019/A/6464, against a decision of the FIFA Dispute Resolution Chamber issued on 28 August 2019 – the operative part was previously issued on 14 June 2019 – which (i) held that the Player terminated his employment contract with SD Huesca without just cause, (ii) ordered the Player to pay to SD Huesca the amount of EUR 4 million, plus five percent interest *p.a.* from the issuance of the FIFA decision until the date of effective payment, (iii) held Östersunds FC as jointly liable for said payment, and (iv) imposed a four-month ban on the Player from playing official matches (which he has since fully served) and a ban on Östersunds FC from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

II. PARTIES

2. Mr. Saman Ghoddos (the "Player") – the Appellant in CAS 2019/A/6463 and Third Respondent in CAS 2019/A/6464 – is a professional football player of Iranian nationality born on September 6, 1993. He currently plays for the Amiens Sporting Club.

3. Östersunds FK Elitfotboll AB ("Östersunds FC") – the Second Respondent in CAS 2019/A/6463 and Appellant in CAS 2019/A/6464 – is a professional football club seated in Östersunds (Sweden) and currently competing in the top Swedish championship *Allsvenskan*. Östersunds FC is affiliated to the Swedish Football Association (*Svenska Fotbollförbundet* or "SFA"), itself affiliated to FIFA since 1904.

4. Sociedad Deportiva Huesca SAD ("SD Huesca") – the First Respondent in both CAS 2019/A/6463 and CAS 2019/A/6464 – is a professional football club seated in Huesca (Spain) which was promoted to the Spanish top championship *La Liga* at the end of the 2017-2018 season, was relegated to *Segunda División* at the end of the 2018-2019 season and, after winning that championship, was promoted again to *La Liga* for the upcoming 2020-2021 season. SD Huesca is affiliated to the Royal Spanish Football Federation (*Real Federación Española de Fútbol* or "RFEF"), itself affiliated to FIFA since 1904.

5. Amiens Sporting Club ("Amiens SC") – the Third Respondent in CAS 2019/A/6463 and the Fourth Respondent in CAS 2019/A/6464 – is a professional football club seated in Amiens (France) and currently competing in the French *Ligue 2* after being relegated from *Ligue 1* following the 2019-2020 season. Amiens SC is affiliated to the French Football Federation (*Fédération Française de Football* or "FFF"), itself affiliated to FIFA since 1919.

6. FIFA – the Fourth Respondent in CAS 2019/A/6463 and the Second Respondent in CAS 2019/A/6464 – is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland

III. BACKGROUND

7. Below is a summary of the Panel's understanding of the relevant facts and allegations based on the written submissions, oral pleadings and evidence adduced by the Parties. Additional facts and allegations found in the Parties' written submissions, pleadings 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, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Factual Background

i. The Employment Contract between Östersunds FC and the Player

8. On 13 February 2018, the Player signed a contract with Östersunds FC effective from that date until 31 December 2020 (hereinafter the "Östersunds Employment Contract"), which extended his employment relationship with the Swedish club that had started back in 2016.

ii. Negotiations between Östersunds FC and SD Huesca

9. On 31 July 2018, SD Huesca, which had just been promoted to the top Spanish division, contacted an intermediary, Mr. Enrique Pina, to forward to Östersunds FC an offer of EUR 2 million for the transfer of the Player plus a sell-on fee of 40 percent.

10. Following an exchange of negotiation proposals, on 7 August 2018, SD Huesca – through its General Manager – made a formal proposal to Östersunds FC, valid until 9 August 2018, to purchase the federative rights of the player for EUR 3 million plus a 20 percent sell-on fee. The offer read as follows:

> *"On behalf of our Club I would like to transmit and offer for your contracted professional football player Saman Ghoddos.*
>
> – *THREE MILLION EUROS for the 100% of the federative rights (TWO MILLION within seven days the signatur[e] and ONE MILLION ON 1st July 2019).*
>
> – *20% of the proc[eeds] of a future sale.*
>
> *The offer is valid until 9th August 2018".*

11. The very same day, Östersunds FC accepted the offer by email:

> *"The offer is ok. Can you Please draft an agreement contract".*

12. As requested by Östersunds FC, later on 7 August 2018, SD Huesca sent the draft transfer agreement to the Swedish club. According to said draft, the transfer agreement's validity would be subject to the following conditions: (i) *"Huesca reaches an agreement with the [P]layer and becomes ready to sign the employment contract"*; (ii) *"Ostersunds sends the ITC and prepares and submits the necessary documents to the relevant federation"* and (iii) *"Huesca pays the first instalment to Ostersunds"*.

13. The next day, on 8 August 2018, Östersunds FC emailed SD Huesca regarding the draft transfer agreement and pointed out that it contained some mistakes: *"There were some wrongs – for example if the fee where it said 2,3 million euro"*. Östersunds FC asked whether it or SD Huesca should fix the mistakes, to which SD Huesca replied: *"Please, change the mistakes and sen[d] us the contract signed ok? The player has just signed too"*.

iii. The Player's travel to Huesca and the signing of the Huesca Employment Contract

14. Late on 7 August 2018, the Player travelled with his brother to Huesca with the full awareness and permission of Mr. Daniel Kinberg, President of Östersunds FC.

15. At 8:00 am on 8 August 2018, the Player and his brother met in the lobby of their hotel with SD Huesca representatives, including Mr. José Luis Ortas (the club's managing director) and Mr. Emilio Vega (the club's sports director). Also present at the meeting was the intermediary Mr. Enrique Pina, Mr. Pina's lawyer, and Mr. Dalil Behyahia (a Swedish agent who had put the Player in contact with Mr. Pina to find transfer opportunities).

16. At this meeting the Player signed an employment contract with SD Huesca (hereinafter the "Huesca Employment Contract"), as well as a registration request form for his registration at the RFEF for the 2018-2019 season. He later underwent and passed a medical examination.

17. At the time the Player signed the Huesca Employment Contract, his brother had received and shown to him the email in which Östersunds FC declared that the *"offer is ok"*.

18. The same morning Mr. Kindberg texted the Player. The conversation between the two went as follows:

> Mr. Kindberg at 9:01AM: *"Very strange headlines here at home, the nutsos in Huesca seem to believe that they are smart leaking inaccurate things, dummies!"*.
>
> Mr. Kindberg at 9:14AM: *"Has Nenad or Ferat gotten ahold of you? I have not answered them yet!"*.
>
> The Player at 9:38AM: *"They were not the ones who leaked it! No have not answered them"*.

Mr. Kindberg at 9:43AM: *"Yeah, it is not me and not you, so they are the ones left! Ok, how far away are you from an international airport? When do you think you will be there, is it Barcelona? What is your ordinary travel schedule? D".*

Mr. Kindberg at 10:03AM: *"Planning to take you to Birmingham, do not say anything to anyone, only your brother! Can be a mega deal, Rodrigues is leaving! Exciting hours ahead of us! The doors will be kept open! D".*

The Player at 10:22AM: *"I'm 2-3 hours from Barcelona airport! Was going to watch a match when Huesca play a practice match at 7 p.m".*

Mr. Kindberg at 10:25AM: *"Be constantly prepared to go to the airport! Keep your phone close, I may need to get ahold of you!".*

Player at 10:26AM: *"No problem boss. They seem to be very good here".*

Mr. Kindberg at 10:37AM: *"Yes, one should hope so, they are going to play in la liga! Be alert!".*

Mr. Kindberg at 10:43 AM: *"Huesca is saying and writing that you have signed with them, tell them not to throw around statements like that, it only makes me angry!".*

The Player at 10:49 AM: *"I signed so that I could do the medical exam [K]indberg? I thought that you have the final say anyway".*

Mr. Kindberg at 10:51 AM: *"That was wrong, totally wrong! They deceived you, you don't do that! You should not have signed anything! Yup, you're right, you can tell them that I will not sign! D".*

The Player at 10:52 AM: *"Why have they deceived me?".*

The Player at 10:56 AM: *"They are really good why have I been deceived".*

Mr. Kindberg at 10:57 AM: *"In the agreement between the clubs the clause would be inserted, you are not required under any circumstances to sign to do a medical exam, why do you need to do that? There is no reason whatsoever, the[ir] window closes on 31/8! It is only a sham, to get you to sign! Is it conditioned on that the agreement between the clubs is entered into?".*

The Player at 10:58 AM: *"Ha ha ha [K]indberg] I don't even know what that means".*

Mr. Kindberg at 11:06 AM: *"Did a lawyer look at the agreement you signed? Keep in mind that all clubs are nice when they want a player and some cheat the pants off players! Is the contract in English? If you want, our lawyer can review the contract so that you don't end up in trouble! You don't need to sign a single letter to do a medical exam!!! We have not approved that you should do a medical exam! Who is actually there helping you? Watch out!".*

Mr. Kindberg at 11:19 AM: *"Just spoke to the lawyer and she was worried! If you signed a player contract then you have committed a breach of contract, have you signed an agreement regarding Gdpr and access to medical journals then it is something else! Huesca knows this!!!! They have cheated you. The clubs first sign conditional upon players and with examinations! Every single error in the book has been made! Please come home!"*.

19. Later that same day Mr. Kindberg and the Player continued their conversation:

Mr. Kindberg at 15:10PM: *"What the hell is this, never got so ****** up, I do not sign any agreement and I have notified Huesca!"*.

The Player: *"Sorry boss I did the medical exam that's why I couldn't answer. Why what's happening?"*.

Mr. Kindberg: *"Just read and look at the pictures that someone named Pina published! We agreed that you should go there and look at the city and talk to them, I have not approved either a medical examination or that you may sign an agreement. I never agree with this!"*.

The Player at 15:22PM: *"But everything is great [K]indberg I am happy with everything! A lawyer was there and helped me too"*.

Mr. Kindberg: *"[…] I will not accept this, under any circumstances! We had an agreement, it does not apply to anything else!"*.

The Player: *"I'm going home now, don't know when I'm home exactly. But he did a really good deal for me"*.

Mr. Kindberg: *"Come home and we'll check it out, obviously a good deal, because we get a lot less! Bring the contract so you don't get ****** too, and answer immediately when I text or call! A lot happens on the scenes! Text your itinerary so I know when you're up in the air!"*.

The Player: *"Yes boss"*.

20. The next day on 9 August 2018, Mr. Kindberg and the Player exchanged more texts:

Mr. Kindberg at 11:30: *"The Huesca deal is off, I have notified Huesca of this!"*.

The Player: *"Why[?]"*.

Mr. Kindberg: *"Because you made all the mistakes that exist and broke my trust! And Huesca's bid is 1 million euros lower than the other bids I now have! Your actions have also ruined the opportunities for others to make bids! Of course, Huesca can raise its bid by EUR 1 million and take it from Pinas and your brother's commission and agreement! Your actions are under all criticism and totally wrong!"*.

The Player: *"So you mean the English clubs don't make a bid because of this happen?"*.

Mr. Kindberg: *"Not only they, everyone else in Europe is stuffed! […]"*.

The Player on 9 August at 11:56AM: *"But you accepted the offer and got what you wanted! Why did you let me go, and it was wrong of me to sign without you knowing, but I was so happy with my contract and that I finally can play in La Liga […] Then it doesn't matter what others think because I play in a team I want. I got as I wanted and you also otherwise you would never have accepted that I travel there"*.

Kindberg: *"No, I did not accept the agreement, only the structure, there are several things that were wrong in the agreement! Then we have higher bids and better conditions from others! Your agreement with Huesca is not valid and they know that! The fact that your personal contract and Pina's payments are high is because our agreement is bad because I was open with the information! But Huesca pays €1 million more, then we may discuss with them!"*.

The Player: *"So my personal contract should be worse so you can get a higher bid?"*.

iv. The Huesca Employment Contract

21. Pursuant to the Huesca Employment Contract, the Player would provide his services to SD Huesca as a professional football player from 8 August 2018 until 30 June 2022 in exchange for a net salary of EUR 600,000 per year. The Player's salary would be automatically reduced by 50 percent to EUR 300,000 per year in the event that SD Huesca was relegated to the Spanish *Segunda División* following the 2018-2019 season unless the Player accepted a transfer or temporary loan to a team that agreed to assume the Player's full salary. The contracting Parties also agreed under Article 1.3 of the Huesca Employment Contract that if the Player unilaterally terminated the contract early he would be liable to pay SD Huesca EUR 40 million as indemnification.

v. The Player's return to Östersunds and the termination of the Huesca Employment Contract

22. Following his return to Östersunds, the Player trained with the Swedish club for two weeks and on 12 August 2018 participated in an official match against Kalmar FF before being transferred to Amiens SC on 24 August 2018 (see *infra* at para. 26-34).

23. On 14 August 2018, SD Huesca sent a letter to Östersunds FC in which it requested that it proceed within 24 hours to *"formalize in writing the transfer agreement and introduce in the TMS [FIFA Transfer Matching System] both the transfer order of the player and the information and documents required by the system"*. However, Östersunds FC did not comply with the request; the draft transfer agreement was never signed, and the Player was never registered with the RFEF.

24. Instead, on 18 August 2018, the Player, pressured by Mr. Kindberg, terminated the Huesca Employment Contract by letter (hereinafter the "Termination Letter"). In the Termination Letter, the Player declared the following:

> *"I write you regarding the recent events occurred between us, which led me to appear in the news and social media with the wrong perception that I voluntarily and freely signed an alleged labour contract with your Club which I would be now registered.*
>
> *As you were and are aware of, during last week my current club Östersunds FK authorized me to travel to Huesca only to visit the city and the facilities of your Club as one of my possible destinations during the current registration period.*
>
> *The intermediary working on your side, Mr Quique Pina, that only now I discovered not being registered with the RFEF to perform intermediary activities, pushed me not to travel with my appointed agents (CLS Mundial AB of Solna, Sweden).*
>
> *Once arriving at your club, with my brother as only support and without speaking Spanish, Mr Pina and your representatives handed me a document suggesting me that it was a standard template necessary to be signed with the sole scope to possibly undergo medical visits at a later stage and for your Club to officially starting negotiations with Östersunds FK for my transfer.*
>
> *I trusted you in good faith, but I realized that this was a big mistake as I was frauded.*
>
> *Only upon my return to Sweden, after having let translate the document, I realized that it was a draft of a labour contract. In its wording, it even appears (premises, point II) my declaration that I should not be contractually bond with any other club and therefore free to sign it ("(…) no tener vinculación contractual con ningún otro club, y por tanto tener la capacidad suficiente para contratarse").*
>
> *You obviously knew that this was not the truth, as you separately entered into negotiations with Östersunds FK to agree to possible terms of my transfer. This is a further clear sign of your will to deceive me.*
>
> *It is therefore evident that I was induced by you in error to sign such document, in a language I do not master at all and against my conscious will. The alleged contract is thus null and void.*
>
> *At any rate, I note that eventually your Club and Östersunds FK have not found any agreement on the terms and conditions of my possible transfer.*
>
> *Therefore, even if the alleged labour contract is valid – which is obviously not – I can never be registered with your Club, start any employment relationship or validly performing any service according to such alleged labour contract.*

You are also fully aware of that, as you have not requested me to stay in Huesca nor to come back after I flew back to Sweden and kept playing with Östersunds FK in the Swedish championship, according to my only valid and binding contract with my current club.

In view of all the above, for the sake of clarity only and without this would imply any recognition of its validity or entering into force, I hereby formally terminate the alleged labour contract I was mistakenly induced to sign with your club.

I also take the opportunity to request that your representatives refrain to make any public comment in the press about this matter and, in particular, to contact other clubs which are currently negotiating with Östersunds FK my eventual transfer, passing wrong and destabilizing information about purported possible problems in my registration. These conducts are ungrounded and illegitimate and are causing me and my current club serious problems.

Should these abusive conducts not be stopped immediately, I will be obliged to protect my rights before the competent authorities, informing FIFA, the RFEF and La Liga about your several violations. So far, I hereby reserve all my rights accordingly".

25. On 20 August 2018, the General Manager of SD Huesca, Mr. Josete Ortas, replied to the Player's letter by WhatsApp: *"I received your letter two days ago and I understand someone forced you to sign it. [T]oday we won our first match in the first division, we hope you are here very soon, as you told our president. Tomorrow, we will translate your case to FIFA".*

vi. Negotiations between Östersunds FC and Amiens SC

26. On 20 July 2018, Amiens SC offered Östersunds FC EUR 3.5 million to definitively acquire the Player, in addition to some "contingent" transfer fees (depending on some Player's and team's achievements) and a "sell-on" fee (linked, as customary in the football industry, to the possible future transfer of the Player to a third club for a higher price).

27. Amiens SC then sent two more offers – one on 31 July 2018 for a EUR 500,000 loan with an option to definitively acquire the Player for EUR 3.5 million, and another on 1 August 2018 for a EUR 2 million loan with an option to definitively acquire the Player for EUR 2 million, in addition to contingent and sell-on fees.

28. On 2 August 2018, Amiens SC, per Östersunds FC request, made certain modifications to its proposal of 1 August 2018. Amiens SC sent the new proposal to Östersunds FC but did not hear back until 8 August, at which point Östersunds FC informed Amiens SC that it had been in advanced negotiations with SD Huesca which ultimately did not materialize into the Player's transfer.

29. On 9 August 2018, Amiens SC sent a new formal offer to definitively acquire the Player for EUR 4 million, in addition to contingent and sell-on fees.

30. According to Amiens SC, the next day it temporarily suspended the offer in order to determine whether there was truth to the rumours that SD Huesca held the federative rights of the Player.

31. On 21 August 2018, Amiens SC renewed its offer to definitively acquire the Player for EUR 4 million, along with contingent and sell-on fees.

32. On 22 August 2018, Östersunds FC and Amiens SC signed an agreement for the definite transfer of the Player in exchange for a transfer fee of EUR 4 million (hereinafter the "Amiens Transfer Contract"). Östersunds FC and Amiens SC also agreed on (i) "additional transfer fees" of EUR 250,000 *"each time the player has played in 75% of the official matches during a season"*, EUR 500,000 each time Amiens SC qualified for the UEFA Europa League group stage provided the Player was still with Amiens SC, and EUR 1 million each time Amiens SC qualified for the UEFA Champions League group stage provided the Player was still with Amiens SC, and (ii) a sell-on fee of 10% on the difference between the transfer fee paid by Amiens to Östersunds (including any additional transfer fees) and EUR 10 million received by Amiens from the third club, 12.5% on any amount received from the third club between EUR 10,000,001 and EUR 15,000,000, 15% on any amount received from the third club between EUR 15,000,001 and EUR 20,000,000, and 17.5% on any amount received from the third club above EUR 20,000,001.

33. On 23 August 2018, the Player and Östersunds FC terminated the Östersunds Employment Contract and the Player signed an employment contract with Amiens SC.

34. On 24 August 2018, the SFA issued the related ITC and the Player was registered with the FFF by Amiens SC.

B. Proceedings before the FIFA Dispute Resolution Chamber

35. On 31 August 2018, SD Huesca filed a complaint against the Player, Östersunds FC and Amiens SC before the FIFA Dispute Resolution Chamber (hereinafter the "DRC").

36. On 28 August 2019, the DRC issued the grounds of its decision passed on 14 June 2019. The DRC ordered the Player to pay SD Huesca the amount of EUR 4 million, plus five percent interest *p.a.* until the date of effective payment, for the early termination without just cause of the Huesca Employment Contract and held that Östersunds FC was jointly liable for that amount. It also placed a four-month restriction on the Player's eligibility to play in official matches (which he has since served) and a ban on Östersunds FC from registering any new players, either nationally or internationally, for two entire and consecutive registration periods (the "Appealed Decision").

37. In summary, the DRC ruled that:

– the Player and SD Huesca entered into a valid and binding employment contract (i.e. the Huesca Employment Contract). The fact that Östersunds FC and SD Huesca had not formalized a transfer agreement did not affect the validity and binding nature of the Huesca Employment Contract because (i) transfer contracts and employment contracts are separate agreements with different objects and parties, (ii) in principle, the validity of an employment contract cannot be made conditional upon the formalization of a transfer agreement (which, in any case, it was not made in the Huesca Employment Contract), (iii) Articles 18.3 and 18.5 of the Regulations on the Status and Transfer of Player (the "RSTP") do not concern the validity of an employment contract, and (iv) the Player demonstrated a strong will to join SD Huesca under the terms of Huesca Employment Contract as demonstrated by the fact that he signed the contract, signed a registration request with the RFEF, and underwent a medical examination.

– The Player unilaterally terminated the Huesca Employment Contract without just cause on 18 August 2018 and, consequently, is liable under Article 17 RSTP.

– In application of Article 17.1 RSTP, the Player owes SD Huesca EUR 4 million for his breach of the Huesca Employment Contract. This is a reasonable and justified compensation for the Player's breach of contract given that it was the Player's market value at the time of the termination, as evident from the fact that only 4 days after the termination, the Player was transferred to Amiens SC for EUR 4 million. Article 1.3 of the Huesca Employment Contract – under which the Player agreed to pay SD Huesca EUR 40 million for the early termination of the contract – must be disregarded as it is grossly disproportionate.

– Östersunds FC is liable jointly and severally under Article 17.2 RSTP as the *"new club"*, which should be understood as the club *"benefitting directly from the breach of the contract by the player"*.

– The Player is also subject to the minimum four-month ban from participating in official matches and Östersunds FC is subject to a ban from registering any new players for two entire consecutive registration periods, because the Swedish club as the "new club" failed to reverse the presumption under Article 17.4 RSTP that it induced the Player into committing the breach of the Huesca Employment Contract.

38. The DRC so ordered in the operative part of the Appealed Decision:

"1. The claim of the Claimant, SD Huesca, is partially accepted.

2. The Respondent 1, Saman Ghoddos, is ordered to pay to the Claimant within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 4,000,000.

3. The Respondent 2, Ostersunds FC, is jointly and severally liable for the payment of the aforementioned compensation.

4. In the event that the amount due to the Claimant in accordance with above-mentioned point 2 is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. The Claimant is directed to inform the Respondent 1, and the Respondent 2, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

6. A restriction of four months on his eligibility to play in official matches is imposed on the Respondent 1. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

7. The Respondent 2 shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 18 September 2019, the Player filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against SD Huesca, Östersunds FC, Amiens SC and FIFA with respect to the Appealed Decision rendered by the DRC on 14 June 2019.

40. On the same day, Östersunds FC filed a Statement of Appeal against SD Huesca, FIFA, the Player, and Amiens SC with respect to the Appealed Decision. Östersunds FC also requested to stay the transfer ban the Appealed Decision imposed against it.

41. On 4 October 2019, in accordance with the agreement of the Parties, the CAS consolidated the proceedings.

42. On 18 October 2019, the CAS President of the Appeals Division issued an Order granting Östersunds FC's request to stay the sanction imposed against it in the Appealed Decision.

43. On 21 October 2019, in accordance with Article R51 of the Code of Sports-related Arbitration (the "CAS Code"), the Player and Östersunds FC filed their respective Appeal Briefs.

44. On 18 November 2019, SD Huesca filed its Answer. The deadline to submit the Answer was 12 November 2019 and SD Huesca did not request an extension of that time limit.

45. On 22 November 2019, in accordance with R55 of the CAS Code and an extension requested and granted, Amiens SC filed its Answer.

46. On 25 November 2019, in accordance with R55 of the CAS Code and an extension requested and granted, the Player and Östersunds FC filed their respective Answers.

47. On 4 December 2019, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Professor Massimo Coccia as president, Mr. Mark Hovell, jointly designated by the Player and Östersunds FC, and Professor Ulrich Haas, jointly designated by SD Huesca, Amiens SC and FIFA.

48. On 3 January 2020, FIFA acknowledged that the Player fully served his suspension and was eligible to play in official matches.

49. On 6 January 2020, in accordance with Article R55 of the CAS Code and an extension requested and granted, FIFA filed its Answer.

50. On 16 January 2020, pursuant to Article R55 of the CAS Code, the Player challenged the admissibility of SD Huesca's Answer dated 18 November 2019 on the grounds that the Answer was not filed within the deadline.

51. On 7 February 2020, pursuant to Article R55 of the CAS Code, the Panel, for reasons that were to be provided in this Award (i) decided to not admit the Answer filed by SD Huesca on 18 November 2019, and (ii) advised the Parties that in accordance with Articles R44.2 and R56 of the CAS Code, SD Huesca would have the right to attend the hearing and present oral pleadings, but would not be allowed to present any witnesses or new evidence at the hearing.

52. The same day the CAS Court Office notified the Parties that Mr. Francisco A. Larios had been appointed as *ad hoc* clerk.

53. On 1 April 2020, the Parties were advised that pursuant to Article R57 of the CAS Code, the Panel decided to hold a hearing and invited the Parties to inform it whether they preferred to hold the hearing in person or by video conference.

54. On 15 April 2020, after careful review of the Parties' positions (i.e. that the Appellants preferred an in-person hearing, that SD Huesca and FIFA preferred a hearing by video conference, and that Amiens SC remained silent on the matter), the Panel decided not to procrastinate the case and to hold the hearing by video conference in light of the CAS Emergency Guidelines of 16 March 2020 related to the ongoing Covid-19 pandemic, which encouraged that hearings be conducted by video conference due to the circumstances. The Panel also informed the Parties that there would be no closing oral pleadings at the hearing and instead the Parties would be granted the opportunity to file written post-hearing briefs.

55. On 22 April 2020, the Player and Östersunds FC (i) requested the Panel to reconsider hosting the hearing over video conference for a number of reasons that they considered to put them at a disadvantage, and (ii) objected to SD Huesca's participation in the hearing and filing of a post-hearing brief.

56. On 28 April 2020, the Panel rejected the requests by the Player and Östersunds FC to reconsider the decision not to hold an in-person hearing, for reasons that would be given in this final Award. As for the objection to SD Huesca filing post-hearing briefs, the Panel referred to its letter of 7 February 2020 and indicated that the objection would be fully dealt with in the final Award.

57. On 25 May 2020, the hearing took place entirely by video conference.

58. The following persons attended the hearing:

- The Panel assisted by Mr. Francisco A. Larios (*ad hoc* clerk) and Ms. Andrea Sherpa-Zimmermann (CAS Counsel).
- For the Player: Mr. Fabrice Robert-Tissot (counsel) and the Player himself, in addition to his brother Mr. Sasan Ghoddos called as a witness.
- For Östersunds FC: Mr. Marc Cavaliero, Ms. Marie-Anne Lindhardt, and Mr. Daniel Wesslund (all as counsel).
- For SD Huesca: Messrs. Manual Miguel Torres Guillaumet and Pedro Camarero Rodríguez (both as counsel), Mr. José Louis Pérez (General Director of SD Huesca), and Mr. Cris J. Mathers (interpreter).
- For Amiens SC: Mr. Jérémie Delattre (counsel).
- For FIFA: Mr. Miguel Lietard Fernandez-Palacios (Director of Litigation), Mr. Jaime Cambreleng Contreras (Head of Litigation), Ms. Imen Larabi (counsel), and Ms. Melanie Leskow.

59. At the outset of the hearing, (i) the Panel reminded SD Huesca that it could only plead within the scope of its submissions before FIFA and reserved its right to disregard any arguments that fell outside that scope, (ii) the Parties confirmed that they had no objections to the constitution and composition of the Panel, and (iii) the Appellants maintained their procedural objections related to SD Huesca.

60. The Player and his brother, Mr. Sasan Ghoddos, testified at the hearing.

61. At the end of the hearing, the Panel granted the Parties leave to submit post-hearing briefs strictly limited to commenting on the evidence presented during the hearing. Apart from the

mentioned Appellants' objection related to SD Huesca's procedural position (see *supra* at paras. 55 and 59 and *infra* at para. 103 *et seq.*), no procedural objection was raised by any Party at the end of the hearing.

62. On 26 May 2020, the Panel granted (i) the Parties until 16 June 2020 to submit their respective post-hearing briefs within the aforementioned limitations, and (ii) Amiens and Östersunds FC until 3 June 2020 to confirm when Amiens made its offer for the Player's transfer and to file the relevant supporting documentation.

63. On 28 May 2020, in response to some Spanish media publications containing details of the hearing, the CAS Court Office, on behalf of the Panel, reminded SD Huesca of the Parties' obligation to respect confidentiality under Article R59, para. 7 of the CAS Code and that under Article R64.5 of the CAS Code, the Panel shall take into account *"the conduct of the parties"* when assessing the legal costs of the case.

64. On 3 June 2020, SD Huesca, in accordance with Article 59 of the CAS Code, denied having disclosed any confidential information to the media and pointed out that the Spanish media made reference to news previously appearing in the Swedish media. On the same day, Amiens and Östersunds reported that the offer leading to the Player's transfer was made on 21 August 2018 and enclosed said offer.

65. After having been granted an extension of the time limit, on 25 June 2020, the Parties submitted their respective post-hearing briefs.

V. SUBMISSIONS OF THE PARTIES

A. The Player

66. In its Appeal Brief in CAS 2019/A/6463, the Player set forth the following motions for relief:

> *"1. The appeal before the Court of Arbitration for Sport is admissible.*
>
> *2. The decision of the FIFA Dispute Resolution Chamber dated 28 August 2019 (operative part dated 14 June 2019) is set aside.*
>
> *3. Mr Saman Ghoddos is granted an award for his legal costs and other expenses pertaining to these appeal proceedings before the Court of Arbitration for Sport to be paid to Mr Saman Ghoddos, individually or jointly, by Sociedad Deportiva Huesca, Amiens Sporting Club, FIFA and/or Östersunds Fotbollsklubb.*
>
> 4. *Sociedad Deportiva Huesca, Amiens Sporting Club, FIFA and/or Östersunds Fotbollsklubb shall bear the costs of these appeal proceedings before the Court of Arbitration for Sport and reimburse the CAS court office fee of CHF 1,000 paid by Mr Saman Ghoddos in the arbitration CAS 2019/A/6463".*

67. In his answer in CAS 2019/A/6464, the Player set forth the following motions for relief:

> *"7. First:*
>
> – *The decision rendered by the FIFA Dispute Resolution Chamber ("the DRC") dated 14 June 2019 ("the Appealed Decision") shall be set aside;*
>
> – *SD Huesca's claim for financial compensation shall be rejected; and*
>
> – *The sporting sanction imposed on Östersunds FC shall be cancelled.*
>
> *8. Secondly, in the alternative:*
>
> – *The compensation for breach of contract set for in the Appealed Decision shall be reduced to an amount of zero (0) EUR or be mitigated to another reasonable amount; and*
>
> – *The sporting sanction imposed on Östersunds FC shall be set aside.*
>
> *9. Mr Ghoddos rejects Östersunds FC's requests for relief to the extent that the Player shall bear the costs of the arbitration.*
>
> *10. Mr Ghoddos rejects Östersunds FC's requests for relief to the extent that the Player shall, individually or jointly with the other respondents in the case CAS 2019/A/6464, pay a contribution towards Östersunds FC's legal fees and other costs incurred in connection with the proceeding CAS 2019/A/6464".*

68. The Player's submissions, in essence, may be summarized as follows:

– SD Huesca's Answer is inadmissible as it was filed late. As a result, the Answer must be disregarded and SD Huesca is not entitled to plead (either in writing or orally) before CAS. Moreover, SD Huesca's failure to submit an Answer on time means that it has not rebutted the Player's position on the facts or the law and, as a consequence, the Panel must deem his case proven and set aside the Appealed Decision.

– FIFA is only a nominal respondent in this contractual dispute. It cannot testify about the facts related to the signing or termination of the employment contract, as it was not a witness thereto. FIFA contradicts its own regulations and jurisprudence and *"bullies"* the Player by trying to portray him as a liar and ignoring the clear misbehaviour of SD Huesca.

– The Player went to SD Huesca simply to visit the facilities and the club. SD Huesca then presented the Player with the Huesca Employment Contract without any advance notice and led the Player to believe that a transfer agreement had been entered into with Östersunds FC in order to push him into signing the employment contract. There was

an "asymmetry of information", as the Player was not aware of the status of the transfer agreement between the clubs.

– The Player and SD Huesca never entered into a valid employment contract. The validity of the Huesca Employment Contract was subject to the implied conditions precedent that SD Huesca and Östersunds FC enter into a transfer agreement and that the Player terminate the Östersunds Employment Contract, neither of which occurred (Article 151 of the Swiss Code of Obligations or "SCO"). Even if the Huesca Employment Contract was valid (*quod non*), it was impossible to perform it *ab initio* (Article 20 SCO) and/or subsequently (*"impossibilité subséquente"* – Article 119 SCO) because Östersunds FC and SD Huesca never signed a transfer agreement, no ITC was ever issued, no corresponding entry into TMS was made, and the player cannot play for two teams at once. Even if the Huesca Employment Contract was valid and not impossible to perform, the contract was validly terminated/invalidated by the Player on 18 August 2018 for (i) deceit under Article 28 SCO based on SD Huesca's false misrepresentations, or (ii) for fundamental error under Article 24(1) SCO based on SD Huesca's mistaken misrepresentations. Accordingly, the Huesca Employment Contract became null and void under Article 31 SCO. In any event, SD Huesca's behaviour breached the principle of good faith and, as a result, does not deserve any legal protection (Article 2(2) of the Swiss Civil Code or "SCC").

– The Player is not liable to pay compensation or subject to a sporting sanction under Article 17 RSTP because no valid employment agreement existed that could be breached and, in any case, even if the Huesca Employment Contract was valid (*quod non*), the Player had a justified reason to terminate/invalidate it.

– SD Huesca has not proven that it incurred any damages. SD Huesca never paid a transfer fee for the Player and saved itself the financial burden of having to pay a salary to the Player. Moreover, the EUR 4 million awarded by the Appealed Decision is grossly disproportionate and violates personality rights (Article 28 SCC). Therefore, the Appealed Decision is not enforceable (Articles 19 and 20 SCO).

B. Östersunds FC

69. In its Statement of Appeal and Appeal Brief in CAS 2019/A/6464, Östersunds FC set forth the following motions for relief:

"Firstly

1.3 The Appellant requests the Court of Arbitration for Sport (the "CAS") to set aside the Appealed Decision and thereby reject SD Huesca's (the "First Respondent") claim for financial compensation from the Appellant and cancel the sporting sanction imposed on the Appellant.

Secondly, and in alternative, the Appellant requests the following relief:

1.4 The Appellant requests the CAS to alter the Appealed Decision and

(i) decide that the compensation from breach of contract set forth in the Appealed Decision shall be reduced to an amount of zero (0) EUR or be mitigated to another reasonable amount; and

(ii) set aside FIFA Dispute Resolution Chamber's (the "DRC") decision to impose sporting sanctions on the Appellant.

In any event

1.5 The Appellant requests that any potential order against the Appellant shall be directed against Östersunds FK Elitfotboll AB.

1.6 The Appellant also requests the CAS to order one or more of the First Respondent, the FIFA (the "Second Respondent") or Amiens SC (the "Fourth Respondent") (hereinafter jointly referred to as the "Respondents") to bear the costs of the arbitration.

1.7 The Appellant finally requests the CAS to grant the Appellant a contribution towards its legal fees and other costs incurred in connection with this arbitration, from the Respondents, individually or jointly, in an amount to be determined at the discretion of the Panel".

70. In its Answer (case CAS 2019/A/6463), Östersunds FC set forth the following motions for relief:

"1.1. ÖFK accedes to the following Player's requests for relief

(i) The appeal before the CAS is admissible; and

(ii) The Appealed Decision is to be set aside.

1.2 ÖFK rejects the Player's request for relief that the Player shall be granted an award for his legal costs and other expenses pertaining to the appeal proceedings before the CAS to be paid to the Player to the extent ÖFK shall be ordered to do so individually or jointly.

1.3 ÖFK rejects the Player's request for relief to the extent that ÖFK shall, individually or jointly, bear the costs of the appeal proceedings before the CAS and reimburse the CAS court office fee of CHF 1,000 paid by the Player.

1.4 ÖFK requests the CAS to order one or more of the Player, SD Huesca ("Huesca"), FIFA and Amiens SC (jointly referred to as the "Other Parties") to bear the costs of this proceeding.

1.5 ÖFK also requests the CAS to grant ÖFK a contribution to its legal fees and other costs incurred in connection with this arbitration, from the Other Parties, individually or jointly, in an amount to be determined at the discretion of the Panel.

1.6 In addition to the above stated requests for relief, and with reference to the consolidation of the appeal proceedings CAS 2019/A/6463 CAS 2019/A/6464, ÖFK also refers and adheres to its requests for relief set forth in paragraph 1.3-1.7 in ÖFK's statement of appeal dated 18 September 2019 and submitted in the appeal proceeding CAS 2019/A/6464 ('ÖFK's Statement of Appeal')".

71. The submissions of Östersunds FC, in essence, may be summarized as follows:

- SD Huesca should not have been allowed to plead at all before the CAS because it filed its Answer late.

- The Player went to SD Huesca only to get acquainted with the city and club, not to sign an employment contract and/or undergo a medical examination. SD Huesca had the Player sign an employment contract in order to *"shortcut"* the transfer process and prevent him from signing with another club.

- Östersunds FC and SD Huesca did not satisfy the necessary conditions and elements to validly and conclusively perform an international transfer. In particular, they did not enter into a valid and binding transfer agreement because they did not agree on all essential points (*essentialia negotii*), and (ii) Östersunds FC and SD Huesca intended – in accordance with the FIFA regulations and industry practice and FIFA and CAS jurisprudence – to be contractually bound only if and when they agreed to all essential points *in writing*, i.e. in a signed transfer agreement.

- Even if Östersunds FC and SD Huesca entered into a valid transfer agreement (*quod non*), it *"never deployed any effect"* because the conditions precedent inserted into the draft agreement by SD Huesca were never satisfied (i.e. SD Huesca never took any steps as required by the RSTP to request the ITC via TMS and it never paid the first instalment to Östersunds FC).

- The alleged Huesca Employment Contract should not be considered valid or binding because (i) SD Huesca acted in bad faith by inducing the Player to sign an employment contract before signing a transfer agreement with Östersunds FC, and (ii) it was signed under false pretences (Article 23 SCO). In any case, under Swiss law, by not responding to the Player termination of the Huesca Employment Contract, SD Huesca must be assumed to have agreed with the termination.

- Assuming that the Player breached the Huesca Employment Contract (*quod non*), Östersunds FC is not liable under Article 17.2 RSTP because it is not the *"new club"*. In

any case, based on the principle of *nemo auditor propriam turpitudinem allegans* SD Huesca lost its right to any compensation under Article 17 RSTP by acting in violation of Article 18.3 RSTP when it signed the Huesca Employment Contract without the prior definitive consent of Östersunds FC.

– Even if the Östersunds FC is liable towards SD Huesca under Article 17 RSTP (*quod non*), no financial compensation should be awarded because SD Huesca failed to prove it suffered any damages. The Appealed Decision, without proper analysis, used the criterion of the Player's market value in coming up with the compensation due to SD Huesca under Article 17 RSTP. This calculation is incorrect, simplistic and unreasonable.

– No sporting sanction can be imposed under Article 17.4 RSTP against Östersunds FC because (i) it is not the *"new club"* and, thus, cannot be presumed to have induced the player into allegedly breaching the Huesca Employment Contract, and (ii) there is no proof that Östersunds FC actually induced the Player into the alleged breach. In any case, it would be unreasonable to impose an automatic sanction considering that Östersunds FC acted in good faith and in line with its rights and obligations.

C. FIFA

72. In its Answer to both appeals, FIFA requests the Panel to issue an award:

"(a) rejecting the reliefs sought by the Appellants;

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings".

73. FIFA's submissions, in essence, may be summarized as follows:

– It is clear from the Player's declarations before the FIFA DRC that (i) he wanted to transfer to SD Huesca, but Östersunds FC and his agent manipulated him into terminating the Huesca Employment Contract, and (ii) the Player knowingly, voluntarily and purposely negotiated and signed the Huesca Employment Contract, understood the nature of the agreement, and was "very happy" about it. The Player cannot change his account now in an attempt to fit a new line of defence and avoid liability under Article 17 RSTP.

– A transfer agreement and an employment contract are independent of each other. While it may be ideal and the *"ordinary course of events"* to have all the conditions of a transfer agreement agreed upon before a player signs his employment contract with his new club, there is no provision in the RSTP preventing a player from signing an employment contract without a transfer agreement being signed or negotiated at all.

– The Commentary to the RSTP provides a remedy for the situation where a player signs more than one employment contract, specifying that with the execution of the second contract, the first contract is effectively terminated.

– As the FIFA DRC has consistently held, an employment contract cannot be made conditional upon the execution of any formality that exclusively belongs to *"the sole responsibility of a club and on which a player has no influence"*. Even if the Panel were to depart from the DRC's jurisprudence, the Player has failed to prove that the execution of a transfer agreement and/or the termination of the Östersunds Employment Contract were condition precedents (either express or implied) to the entry into force and validity of the Huesca Employment Contract.

– In the absence of any condition precedent, let alone one that is valid, the debate about whether Östersunds FC and SD Huesca entered into a transfer agreement is moot. For this reason and given that the DRC and the Panel do not have the competence to assess whether a transfer agreement existed and was valid and binding – only the Players' Status Committee ("PSC") had such competence –, there is no need to enter into that debate.

– The Huesca Employment Contract was not *"impossible"* to perform. Neither entering into a transfer agreement, terminating the previous employment contract, obtaining an ITC, nor using TMS are essential or necessary features that may affect the validity of the Huesca Employment Contract or the possibility to perform the obligations contained therein. Moreover, the Huesca Employment Contract is not invalid for an alleged fraud under Article 28 SCO or fundamental error under Articles 24(1) SCO.

– Due to his breach of the Huesca Employment Contract, the Player is liable to compensate SD Huesca under Article 17 RSTP. The FIFA DRC correctly calculated the quantum of compensation to be EUR 4 million or the market value of the Player as evidenced by the transfer fee payment made to Amiens SC.

– Östersunds FC is jointly and severally liable for the amount awarded because it is the new club for the purposes of Article 17.2 RSTP. In line with SFT jurisprudence (SFT 4A_32/2016) the *"new club"* must be interpreted broadly to mean the club which has *"profited"* from the early termination of the employment contract. In this case, the profiting club is Östersunds FC who received an additional EUR 1 million from Amiens SC. It is irrelevant in determining the *"new club"* that the Player was not technically deregistered and then reregistered with Östersunds FC.

– Östersunds FC must receive a sporting sanction under Articles 17.4 RSTP because the Swedish club's inducement of the Player to breach the Huesca Employment Contract is presumed. In any event, there is sufficient proof to establish that Östersunds FC actually induced the Player to breach the employment contract.

– FIFA has entered into the substance of the case because it is necessary to explain the reasoning behind the Appealed Decision. However, it is by no means *"bullying"* the Player as he claims.

D. Amiens SC

74. In its Answer to both appeals, Amiens SC requests the following motions for relief:

> *"- Principally, declare that no claims are raised against it and exonerate Amiens SC for that reason alone;*
>
> *- In the alternative, if the Arbitration Panel were to consider that a lawful contract was concluded by SD Huesca and the Player and that the Player terminated it without just cause, declare that (i) Amiens SC is not the Player's "new club" within the meaning of Article 17.2 of the RSTP and that it (ii) did not in any way induce the Player to terminate the said alleged contract and that no liability can therefore be attributed to it on the basis of Article 17.4 RSTP;*
>
> *- In any event, dismiss all claims against Amiens SC, whether contractual, financial or disciplinary, and uphold the Decision on this issue;*
>
> *- Order SD Huesca, Östersunds FK, the Player and/or FIFA to pay all of the costs of the arbitration and order that Amiens SC be reimbursed for any costs that have been advanced;*
>
> *- Order SD Huesca, Östersunds FK, the Player and/or FIFA, individually or jointly and severally, to pay Amiens SC a contribution corresponding to all legal and other costs incurred by Amiens SC for the purposes of the proceedings (in particular translation costs)".*

75. Amiens SC' submissions, in essence, may be summarized as follows:

– Given that the CAS' power of review is limited to the requests of the parties, Amiens SC must be "exonerated" because none of the Parties have claimed anything against it: SD Huesca has abandoned its claim against Amiens SC by not challenging the Appealed Decision, while Östersunds FC and SD Huesca have not raised any claims against Amiens SC in either the first instance or in the present CAS appeal.

E. SD Huesca

76. As previously mentioned *supra* at para. 51, Huesca's Answer was held inadmissible. Therefore, the Panel has disregarded the arguments and evidence presented therein.

77. At the hearing, SD Huesca argued the following :

– The Player changed his version of the events after he was condemned to pay compensation under the Appealed Decision in order to avoid liability

– Östersunds FC and SD Huesca entered into a valid transfer agreement under Swiss law the moment that the Swedish club accepted SD Huesca's offer by email of 7 August 2018. The Player then travelled to Huesca, with the permission of Östersunds FC, signed an employment contract, a federative contract, and a RFEF registration form. He also underwent and passed a medical examination. Östersunds FC then attempted to back out of the deal by referring to the non-essential elements of the transfer agreement (which could be agreed upon later or established by a judge in the absence of the Parties' agreement under Article 2 SCO) and the mere formality of signing a transfer agreement, which under Articles 10 and 16 SCO was not required in the present case.

– The validity of a contract cannot be conditioned on administrative points falling outside the Player's control (Article 151 SCO). In any case, the non-compliance of Östersunds FC in fulfilling those conditions cannot affect the validity of the Huesca Employment Contract.

– The Player terminated the Huesca Employment Contract without just cause and is therefore liable under Article 17 RSTP. Östersunds FC is jointly liable and sanctionable as the *"new club"* and for its role in that breach of contract.

78. In the post-hearing brief, SD Huesca set forth the following motions for relief, which for the reasons explained *infra* at para. 99 *et seq.*, are stricken and shall be disregarded:

> *"1. The resources of Mr. Saman Ghoddos and the OSTERSUNDS FK ELITFOTBOLL; OSTERSUNDS FK against the decision of the FIFA Dispute Resolution Chamber of 28 August 2019 before the Court of Arbitration for Sport are not admissible and must be rejected.*
>
> *2. The decision of the FIFA Dispute Resolution Chamber dated 28 August 2019 (operative part dated 14 June 2019) must be confirmed in all its pronouncements and decisions.*
>
> *3. Order the appellants to bear all the costs of these proceedings".*

79. Whether and the extent to which the Panel may consider SD Huesca's arguments made during the hearing and in the post-hearing brief will be discussed *infra* at para. 99 *et seq.*

VI. JURISDICTION

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

81. Pursuant to Articles 57. 1 and 58.1 of the FIFA Statues (2018 edition), respectively:

- *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents"*;
- *"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".*

82. The Appealed Decision included a paragraph immediately below its operative part stating that *"[a]ccording to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS)"* and providing as an attachment a document entitled *"Directions with respect to the appeals procedure before CAS".*

83. None of the Parties raised any jurisdictional objection; it follows that the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

84. Article R49 of the CAS Code states the following:

> *"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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

85. According to Article 58.1 of the FIFA Statutes (2018 edition), *"[a]ppeals … shall be lodged with CAS within 21 days of receipt of the decision in question".*

86. FIFA notified the grounds of the Appealed Decision on 28 August 2019. Both the Player and Östersunds FC lodged their respective appeals with the CAS within the 21 days allotted under Article 58.1 of the FIFA Statutes. The Player and Östersunds FC lodged their respective appeals on 18 September 2019. It follows that the appeals are admissible.

VIII. APPLICABLE LAW

87. Article R58 of the CAS 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

88. According to Article 57.2 of the FIFA Statutes (2018 edition), *"[t]he 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".*

89. In accordance with the above provisions, as is undisputed by the Parties, the Panel must decide the present dispute in accordance with the various FIFA regulations, in particular the 2018 edition of the RSTP and, additionally, Swiss law.

IX. PROCEDURAL MATTERS

A. Holding a hearing by video conference did not violate the Appellants' rights

90. On 15 and 22 April 2020, despite the Appellants' request to hold an in-person hearing claiming that their right to be heard would otherwise have been violated, the Panel decided to hold the hearing by video-conference in light of the Covid-19 pandemic and the related CAS Emergency Guidelines of 16 March 2020, as opposed to waiting an indefinite period of time to hold an in-person hearing (see *supra* at para. 54-56). As indicated in those letters, the Panel was to give its reasoning for its decision in this final Award.

91. The Panel first notes that the Appellants' request for an in-person hearing was based on the following rationale (as explained in their respective letters of 8 and 22 April 2020):

(i) it would allow the witnesses to testify *"in the best conditions"* and the Parties' cases to be *"presented in a proper and suitable manner to the Panel"*;

(ii) it would ensure that the Player could properly exercise his right to be heard under Article 182.3 LDIP, since testifying by video conference could have an *"adverse effect"* on the conditions in which the witnesses would testify;

(iii) it would allow the Player's counsel to accompany him during the hearing, and Östersunds FC's counsels, who were based in different countries, to participate in the hearing from the same location, which was, according to them, important given that the Swedish lawyer knew the facts while the Swiss lawyer knew the law; and

(iv) it would allow for oral closing statements, avoiding the need for post-hearing briefs and, in turn, additional legal fees for the Player.

92. The Panel has rejected this Appellants' request for the following considerations.

93. First of all, deciding to hold a video-conference hearing would not violate any right of the Appellants, including the right to be heard. The CAS Code does not grant the parties a right to a hearing. In fact, pursuant to Article R57 of the CAS Code, the Panel has the discretion, after consulting with the parties and if it considers to be sufficiently well informed, not to hold a hearing at all. Therefore, *a fortiori*, the Parties have no right to an in-person hearing over one by video-conference.

94. Second, Article R.44.2 of the CAS Code – applicable to appeals proceedings through Article R57 – expressly provides that the *"President of the Panel may decide to conduct a hearing by video-conference"*.

95. Third, the CAS Code provides for the *"efficient conduct"* and *"efficient running"* of the proceedings (Articles S12 and S20) and, pursuant to Article R59, the Panel has a duty to pursue a speedy resolution of the dispute (in principle, the award should be issued *"within three months after the transfer of the file to the Panel"*). At the moment the Panel had to decide whether or not to hold an in-person hearing, it was unclear due to Covid-19 and the related travel restrictions – particularly with Parties, counsel and arbitrators located in no less than seven countries (France, Germany, Italy, Spain, Sweden, Switzerland and the UK) – when it would become possible for all Parties to safely travel to and convene in Lausanne to hold such a hearing if it were postponed. In all likelihood, at the time of issuing this Award, an in-person hearing would have not yet been held. Therefore, in order to fulfil its duty under Article R59 of the CAS Code, the Panel considered it appropriate to hold a hearing by video conference (and, with the benefit of hindsight, it still considers it was the appropriate decision).

96. Fourth, the Appellants failed to explain how a video conference would impair the witnesses' ability to testify properly or the counsel's ability to present their clients' cases to the Panel. The results of the hearing by video conference actually prove that no such impairment was caused; the hearing went smoothly, with the witnesses and counsel perfectly able to participate therein.

97. Fifth, the Panel considered it was unnecessary for counsel to accompany the Player and his brother to the hearing or for Östersunds FC's counsel to participate in the hearing from the same location. Counsel and their clients had ample time to adequately prepare for the hearing and, moreover, could request the Panel for short breaks to confer privately by phone amongst themselves.

98. Sixth, considering all of the above, the Panel found that the Player incurring additional legal fees for post-hearing briefs could not be a reason to require an in-person hearing. The increase of costs is a natural result of an arbitral tribunal ordering an additional procedural activity (such as, e.g. the production of documents). In any case, the Panel considered that with a

video hearing the Player would be significantly saving on costs for travel and accommodation for himself, his brother and his legal team.

B. Inadmissibility of SD Huesca's Answer and the consequences thereof

99. SD Huesca acknowledges that it filed its Answer late; nevertheless, SD Huesca contests that its Answer is inadmissible as a result thereof. SD Huesca argued in a letter to the CAS of 5 February 2020 that the late filing was simply a result of a *"material error in the calculation of the deadline"* and that such an error cannot lead to its Answer's inadmissibility because it would be excessively formalistic and violate the principle of equal treatment, considering that all of the other Parties to the proceeding received extensions to file their respective Answers.

100. In the Panel's view, the CAS Code is clear that requests for extensions may not be made, and therefore not granted, after the expiration of a deadline. Indeed, according to Article R32 of the CAS Code, an extension may only be granted *"if the circumstances so warrant and provided that the initial time limit has not already expired"* (emphasis added). The Panel observes that in the present case SD Huesca failed to request an extension before it expired; therefore, SD Huesca cannot be entitled to one. In this respect, it is irrelevant to the Panel that the other Parties to the proceeding requested and obtained extensions to file their respective Answers. The CAS Code does not stipulate that an automatic extension must be provided to one respondent where another party properly requested and obtained an extension of its own. Moreover, the Panel finds that the equality of the parties and a fair proceeding is not guaranteed by bending the CAS Code in favour of the needs of one party, as SD Huesca requests the CAS to do. Instead, it is guaranteed by (i) requiring all of the parties to respect the CAS procedural rules, and (ii) having the CAS generally and evenly apply said rules to all parties.

101. In light of the above, the Panel confirms its decision of 7 February 2020 that SD Huesca's Answer is inadmissible pursuant to Article R55 of the CAS Code (see *supra* at para. 52).

102. Having confirmed that decision, the Panel must determine, aside from the inadmissibility of the Answer, what are the other consequences stemming from SD Huesca's belated filing of that submission.

103. In this regard, the Appellants submit that SD Huesca should not be allowed to plead orally or in writing. In particular, the Appellants argue that SD Huesca should *"not be allowed to cure the inadmissibility"* of the Answer by filing post-hearing briefs. In essence, the Appellants argue that SD Huesca must lose its status as a respondent.

104. First of all, the Panel observes that there is no rule of the CAS Code providing that a respondent loses its right to be a party altogether and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a belated answer. Article R55 of the CAS Code, which deals with a belated answer, only indicates that *"[i]f the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award"*. This

is particularly telling when compared to other provisions of the CAS Code that do require the withdrawal or termination of a case for a belated filing. In particular, the Panel refers to:

– Article R49 of the CAS Code, which states that the *"Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late"*; and

– Article R51 of the CAS Code, which provides that if the appellant fails to submit its appeal brief within the set time limit, *"the appeal shall be deemed to have been withdrawn"*.

105. Second, in the Panel's view, Article R56 of the CAS Code does not preclude the Respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings before the DRC (and which were reported in the Appealed Decision), or from submitting post-hearing briefs strictly limited to commenting on the evidence presented at the hearing (as was ordered by the Panel). In the Panel's view, Article R56 of the CAS Code cannot be interpreted in such a restrictive manner as the Appellants propose; the clear rationale behind this provision is to prevent a party from ambushing the other party at the hearing. Therefore, it is not contravened by referencing the FIFA case file and, in particular, SD Huesca's position before the FIFA DRC as evidenced in that file and in the Appealed Decision. Article R56 of the CAS Code is also not violated by SD Huesca pleading orally and challenging the evidence put forward at the hearing. To hold otherwise would mean that, under Article R56 of the CAS Code, all parties to CAS appeals proceedings would always be restricted in their oral statements to repeating exactly what they have already written in their briefs prior to the hearing; this would essentially make all oral pleadings at hearings meaningless and unnecessary. In principle and in practice, parties are permitted to expand on their written submissions at a hearing provided that they remain within the scope of their case, as established in prior submissions (including those presented during the first instance proceedings). Indeed, it is not unusual in CAS hearings that, before the parties' oral pleadings, the panel expressly advises the parties' attorneys not to merely repeat orally what they have already stated in their written briefs.

106. Based on the above, the Panel holds that SD Huesca's failure to submit its Answer on time did not require, as the Appellants imply, to essentially exclude it as a party in the present arbitration. SD Huesca still had the right to plead orally at the hearing and to submit a post-hearing brief, both within the aforementioned scope limitations.

107. This does not mean, nevertheless, that SD Huesca's late filing did not come "without a price". SD Huesca was sanctioned – and to a substantial degree – for the belated filing of its Answer by not being allowed to:

(i) have its Answer on file and, in turn, not being able to further elaborate on the arguments it presented before the DRC;

(ii) raise those objections that are only permitted to be made within the first written defence (such as, for example, a jurisdictional objection);

(iii) submit any evidence or ask for evidentiary measures. This includes not being allowed to submit fact or expert witness statements, to call witnesses to testify at the hearing, or to requests for the production of documents, etc.; and

(iv) put forward any motions for relief, given that it is constant CAS practice that motions for relief may not be amended at the hearing.

108. The Panel agrees that SD Huesca cannot cure the inadmissibility of its Answer by submitting, in its post-hearing brief, the arguments and evidence that were disregarded as a consequence of the Answer's inadmissibility. For this very reason, at the end of the hearing and by letter of 7 February 2020, the Panel ruled that the Parties would be strictly limited in their post-hearing briefs to commenting on the evidence presented during the hearing.

109. The Panel notes that SD Huesca did not fully comply with the instructions of the Panel made on 7 February 2020 and at the outset of the hearing(see *supra* at paras. 61, 62 and 59). Instead, to a certain extent, SD Huesca attempted to submit its Answer *"through the back door"*. For one, SD Huesca submitted motions for relief in both its post-hearing brief and orally at the hearing. In accordance with its holding at para. 107 above, the Panel strikes those motions for relief and shall accordingly disregard them in their entirety. Secondly, SD Huesca did not fully stay within the scope of the arguments it made before the FIFA DRC (in particular, in relation to damages), and made comments in its post-hearing brief on matters that went beyond the evidence presented at the hearing. The Panel thus strikes and disregard those off-limit arguments and comments.

110. The Appellants further submit that SD Huesca's late filing of the Answer means that the Appellants' position has gone unchallenged and that, therefore, considering the *de novo* nature of a CAS appeals under Article R57 of the CAS Code and FIFA's alleged status as a nominal party only, the Appellants' case must be deemed proven on the facts and the law and their appeal accepted in full. On this point, the Panel first finds that FIFA is not merely a "nominal" party, or one of "second class" or "inferior status". FIFA has standing to be sued and is a full respondent, given that it is the association that issued the Appealed Decision and imposed sanctions on both Appellants; as such, its submissions must be taken into account to the same extent as those of the Appellants and it is not limited to pleading only on the disciplinary sanctions imposed, but may also plead with respect to the facts which led to said sanctions even if based on a contractual dispute that, in itself, did not involve FIFA. Second, the Panel holds that SD Huesca's failure to submit an answer does not mean that the Panel must blindly accept the position of the Appellants. At the end of the day, the Panel is tasked with assessing whether the Appealed Decision should be confirmed or overturned, in part or in full, and it may make such assessment and reach a conclusion thereon even in the absence of one of the parties' answers in accordance with Article R55 of the CAS Code.

X. MERITS

111. In view of the Parties' differing positions on the substance of the matter, the Panel must determine the following issues:

(i) Whether Amiens SC has standing to be sued;

(ii) Whether the party to the FIFA case, against which the claim of SD Huesca was directed, was Östersunds FK Elitfotboll AB rather than "Östersunds Fotbollsklubb", that is the non-profit organization controlling the club;

(iii) Whether Östersunds FC and SD Huesca entered into a transfer agreement;

(iv) Whether the Huesca Employment Contract was invalid, impossible to *perform ab initio* and/or subsequently, and/or validly terminated by the Player for deceit or mistake; and

(v) If the Huesca Employment Contract was valid and not terminated with just cause by the Player, whether and to what extent (a) the Player is liable to SD Huesca under Article 17.1 RSTP and/or subject to sanction under Article 17.3 RSTP, and (b) Östersunds FC is jointly liable for any amount awarded to SD Huesca, if any, under Article 17.2 RSTP and/or subject to sanctions under 17.4 RSTP for inducement of breach of contract.

112. The Panel will discuss each matter separately below.

A. Amiens SC has no standing to be sued

113. The Appealed Decision held that Amiens SC was neither liable to pay SD Huesca compensation under Article 17.2 RSTP nor subject to sanctions under Article 17.4 RSTP. As no party challenged before the CAS that determination of the DRC nor raised any claims whatsoever against Amiens SC in the present proceedings, the Panel holds that Amiens SC has nothing at stake in the present arbitration and, therefore, has no standing to be sued (see CAS 2006/A/1189). The Panel therefore dismisses the appeals filed insofar and confirms the Appealed Decision as it relates to Amiens SC.

B. Östersunds FC's identity

114. Preliminarily, the Panel notes that this matter has nothing to do with the situation occurred in the well-known FC Sion case (CAS 2009/A/1880), where the appeal was intentionally brought not by the professional club FC Sion but by the associated amateur club by the same name, which tried to argue (misleadingly) that the amateur club was the actual addressee of the FIFA decision in lieu of the professional club (with the result that the Panel deemed the appeal

inadmissible due to the amateur club's lack of legal interest and standing to appeal against the FIFA decision). In the present case, as will be seen below, Östersunds FC has a fair concern related to the Appealed Decision and merely requests that this Award clearly indicates that this case only involves the professional club and not the non-profit organization having a similar name.

115. The issue actually derives from the fact that SD Huesca, in its claim to FIFA dated 30 August 2018, generically named as defendant the "Swedish club Östersunds FK", while the DRC, in the Appealed Decision, made generic reference to "Östersunds FC". However, it is clear to the Panel in the context of the claim and of the Appealed Decision that both SD Huesca and the DRC truly made reference to the Swedish professional club participating in the Swedish top football division (*Allsvenskan*), which had an employment contract with the Player and negotiated the Player's transfer in the Summer of 2018. Such club is generally known by the public in Sweden or abroad as Östersunds FK or Östersunds FC, but its full formal name is "Östersunds FK Elitfotboll AB". It is also clear that neither SD Huesca nor the DRC wished to involve in the case the association owning the club and named "Östersunds Fotbollsklubb", given that the latter does not employ professional players nor takes part in the top Swedish championship.

116. Indeed, in its first submission before the DRC, Östersunds FC clearly stated the following: *"For avoidance of any doubt, it needs to be clarified that it is Östersunds FK Elitfotboll AB and not Östersunds Fotbollsklubb that is part of this dispute. Östersunds FK Elitfotboll AB, reg. no. 559084-7T77, is a limited liability company owned by the nonprofit association Östersunds Fotbollsklubb. The Player was registered with Östersunds FK Elitfotboll AB, the Player had a valid player's contract with Östersunds FK Elitfotboll AB and it is Östersunds FK Elitfotboll AB that is responsible for all matters related to the representative team playing in the Swedish Premier League".*

117. No Party to the case contested or challenged the above assertion during the DRC proceedings, nor did the DRC deal with this matter in the Appealed Decision.

118. As a consequence, the Panel has no hesitation in finding that the DRC made no *"mistake"* (as the Swedish club characterizes it) in its decision but it simply made reference to Östersunds FK Elitfotboll AB by using the (admittedly ambiguous) abbreviated and anglicized form "Östersunds FC". Accordingly, as requested by this Appellant, the Panel will make sure to eliminate any ambiguity and, in the operative part of this Award, will clearly make reference to full formal name of the professional club Östersunds FK Elitfotboll AB.

C. Conclusion of the transfer agreement between Östersunds FC and SD Huesca

119. Preliminarily, the Panel rejects FIFA's submission that the Panel may not deal with the issue of the existence or not of the transfer agreement between Östersunds FC and SD Huesca because, pursuant to Articles 22(f) and 23 RSTP, it is the PSC and not the DRC which would be competent to adjudicate transfer disputes between clubs. The Panel finds that this could

be a pertinent objection if the core of the matter in dispute before it were a transfer dispute. This, however, is not the case and the Panel is of course allowed to assess and determine preliminary questions involving the alleged transfer agreement. In addition, the Panel notes that FIFA itself, acting through its body DRC, stated in the Appealed Decision that *"the DRC […], in accordance with art. 24 par. 1 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2019), […] is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a Spanish club, an Iranian player, a Swedish club and a French club"* (section II, para. 2 of the Appealed Decision, emphasis added). The Panel concurs with the DRC that the present case relates to an employment-related dispute, given that it originates from SD Huesca's claim based on the Player's termination of the Huesca Employment Contract. In any event, the Panel notes that FIFA does not ask the Panel to set aside the decision because the DRC supposedly violated the RSTP; on the contrary, in its motions for relief FIFA requests that the Panel confirm the Appealed Decision (see *supra* at para. 72). Nor was this matter raised by the Appellants as a reason to set aside the award. As a consequence, this is not even a matter that this Panel would need to adjudicate.

120. However, if the sense of this FIFA's submission is that the Panel would be prevented from dealing with the transfer agreement because this matter falls outside of the objective scope of the Appealed Decision, the Panel does not share FIFA's concern. Indeed, in the context of resolving the dispute concerning the alleged breach of the Huesca Employment Contract, the Appealed Decision did deal with the issue of whether a transfer agreement was concluded or not between Östersunds FC and SD Huesca (see section II, para. 7 *et seq.* of the Appealed Decision). As a consequence, within that same context the Panel also has the power to assess the transfer agreement; as a consequence, this FIFA's submission must be discarded.

121. This said, the Panel observes that Östersunds FC argues that it never entered into an agreement with SD Huesca for the transfer of the Player (see *supra* at para. 71). The Panel finds, however, that the clubs agreed on the object of the contract (the transfer of the Player from Östersunds FC to SD Huesca) and on the fundamental obligations of the Parties (Östersunds FC had to release the Player in favour of SD Huesca and the latter club had to pay the agreed remuneration to the former club); in short, the clubs agreed on the *essentialia negotii*, i.e. on all the essential elements necessary to form a valid and binding contract under Swiss law. Indeed, on 7 August 2018, SD Huesca sent Östersunds FC a formal offer to acquire the Player in exchange for EUR 3 million and a 20% sell-on fee, and on the same day Östersunds FC unequivocally accepted that offer in writing by replying that the *"offer is ok"* and requesting SD Huesca to send a draft written agreement (see *supra* at para. 10 *et seq.*).

122. The Panel:

(i) rejects Östersunds FC's submission that no transfer agreement had allegedly been reached because the Parties had yet to negotiate certain details of the transfer (such as whether the EUR 3 million would be inclusive or exclusive of training compensation and solidarity compensation, how the sell-on fee would be calculated, and the dates

on which payment would be due, etc.) or because the first draft of the transfer agreement contained certain errors as to the agreed-upon terms (for example, a reference to the transfer fee being EUR 2.3 million). In the Panel's view, only "secondary terms" were still to be agreed; accordingly, agreeing on those terms and correcting mistakes – which Östersunds FC offered to do itself (see *supra* at para. 13) – would have been part of the implementation of the transfer agreement; however, failure to do so did not affect the contract's existence. Indeed, pursuant to Article 2 SCO, *"where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms"*. For those *"secondary terms"* which the parties are unable to reach an agreement on, the court is empowered *"to determine them with due regard to the nature of the transaction"* (see Article 2 SCO).

(ii) rejects Östersunds FC's position that under the FIFA regulatory framework and/or industry practice a transfer agreement is allegedly only binding once it is formally signed. As just mentioned, the clubs became bound to the transfer under Swiss law as soon as they agreed by email to the *essentialia negotii*. The binding nature of that contract is thus unaffected by the fact that, thereafter, a signed document could still be necessary in order to move forward with registering the Player through TMS, i.e. that some formalities needed to be accomplished in order to implement the transfer under the RSTP.

(iii) rejects Östersunds FC's submission that the Parties allegedly intended to be bound by the transfer agreement only upon its signature. There is no proof of such an intention, either by mutual consent, by the expressed will of one Party, or even by an implied action.

- First, even if Östersunds FC was, as it claims, operating as if the transfer agreement would only be binding upon its signature on a formal document, when it accepted the *essentialia negotii* of the transfer by email of 7 August 2018, it did not make any reservation or express to SD Huesca – then or before – that it wished to condition that acceptance on the signing of a formal transfer agreement. The fact that, with its acceptance, Östersunds FC also requested SD Huesca to draft a transfer agreement was not, in the Panel's view, an expression of the Swedish club's alleged will to condition the transfer agreement on its signature, but only an indication vis-à-vis SD Huesca that it was moving forward in order to perfect the formalities needed to submit the transfer agreement to the FIFA TMS. In other words, the Swedish club became bound with the email of 7 August 2018 even if it was operating internally under the (false) assumption that the transfer agreement would not become binding until the signature of a formal document. In this respect, the Panel points out, making reference to CAS precedents applying Swiss law, that it is *"well known that in contractual negotiations, the parties must consider the risk to be bound at an earlier stage than they sought"* and that *"good practice requires from*

the parties to expressly mention that the document is not the final contract and that it does not represent the definitive agreement between the parties" (CAS 2008/A/1589 at para. 13).

- Second, SD Huesca indicated that it awaited Östersunds FC's considerations about said draft transfer agreement and requested its signature *after* the Parties had reached (through the aforementioned exchange of emails which culminated by the clear acceptance of the offer on 7 August 2018) their agreement on all the essential elements of the transaction; therefore, it is clear, as stated above, that the clubs were simply moving forward to implement their agreement through the formal documents needed for the FIFA TMS process. No term included in the draft written agreement can change the fact that the Parties had already reached an agreement on all the *essentialia negotii* of the transfer; of course, the Parties could have later agreed to supplement or even supersede the agreement previously reached by email but this did not occur, as the draft transfer agreement prepared by SD Huesca remained an inchoate document. In light of the above, the Panel finds inapplicable Article 16 SCO, which states that *"where the parties agree to make a contract subject to formal requirements not prescribed by law, it is presumed that the parties do not wish to assume obligations until such time as those requirements are satisfied"*; indeed, the formal requirements should have been agreed by the Parties before the exchange of emails that concluded the transfer agreement and this did not occur.

- Third, the fact that transfer agreements are ultimately included in a properly formalized contractual document (in particular, to comply with the TMS procedure) does not mean that the Parties intended the transfer agreement to be conditioned on its signing. As just mentioned, under Swiss law a transfer agreement is concluded as soon as all the *essentialia negotii* are agreed-upon, as occurred in the present case.

(iv) rejects Östersunds FC's argument that, pursuant to CAS 2016/A/4462, for a transfer agreement to be considered as valid and binding it must *"at least contain the following elements (i) the name of the parties (ii) the object (iii) the remuneration (iv) the date of the contract, and (v) the signature of the club's representatives"* (emphasis in Östersunds FC's Answer). The Swedish club misinterprets that case. The panel in CAS 2016/A/4462 simply found that the specific transfer agreement under analysis was effective and binding because it contained the aforementioned elements; it did not, however, hold that all of the elements mentioned were necessary in every case to find a transfer agreement effective and binding (i.e. that a transfer agreement could not have been reached (i) without one of those elements present, or (ii) in another manner altogether – for example, by email without the formal signature of the parties, as occurred in the present case).

(v) rejects Östersunds FC's submission that the transfer agreement is allegedly invalid because two of the three conditions inserted into the draft prepared by SD Huesca

were never satisfied (i.e. that Östersunds FC sends the ITC, prepares and submits the necessary documents to the RFEF, and that SD Huesca pays the first instalment). First of all, these conditions may not be used to assert the invalidity of the transfer agreement because they were never agreed upon by Östersunds FC and SD Huesca, with the consequence that the draft agreement prepared by SD Huesca remained, as said, an inchoate document that did not supersede the agreement reached by email on 7 August 2018. Second, those conditions inserted in the draft agreement were not essential elements of the transfer agreement but mere *"secondary terms"* mostly related to the administrative process implementing the transfer. In fact, the Panel considers it unfair for Östersunds FC to argue that SD Huesca did not fulfil these conditions, given that the Swedish club undermined the transfer agreement by not following through with the administrative formalization of the transfer agreement, pressuring the Player to terminate the Huesca Employment Contract against the Player's will, and then trading the Player for a higher amount to Amiens SC. The Panel observes that SD Huesca did attempt to fulfil the conditions. Indeed, on 14 August 2018, it in vain requested Östersunds FC to *"formalize in writing the transfer agreement and introduce in the TMS both the transfer order of the player and the information and documents required by the system"*.

123. In light of the above, the Panel holds that the Östersunds FC and SD Huesca did enter into an effective and valid transfer agreement. As a consequence, all of the Appellants' submissions claiming the invalidity or ineffectiveness of the Huesca Employment Contract due to the alleged lack of a transfer agreement, are bound to fail.

D. Validity of the Huesca Employment Contract

124. The Appellants argue that no breach of Article 17 RSTP could have occurred since there was no valid employment agreement.

125. The first reason why they do not consider the Huesca Employment Contract as valid is because pursuant to Article 151 SCO the contract was allegedly subject to certain necessary prerequisites or implied condition precedents, neither of which were fulfilled. More specifically, the Appellants argue that, before the Huesca Employment Contract, the clubs had to enter into a written transfer agreement and the Player had to terminate the Östersunds Employment Contract.

126. The Panel observes that there is no rule in the RSTP setting out the specific order of steps that must be taken to sign a player. While CAS panels have previously declared that the ideal or *"ordinary course"* of a transfer is the signature of a transfer agreement followed by the signature of the employment contract (see CAS 2016/A/4489 at para. 99), they have not – and rightfully so – considered that to be the only and mandatory way. In practice, transfers occur in a variety of different manners. For example, a typical way is for the parties to sign all agreements – the transfer agreement, the new employment contract, and the termination of the old employment contract – all in one sitting, with the specific aim to avoid the exact

complications that arose in the present case. As there is no mandatory sequence of events for the transfer of a player, the Panel finds that the validity of the Huesca Employment Contract was not preconditioned on the clubs entering into a written transfer agreement (which, in any case, as held *supra* at para. 121 *et seq*., the clubs did by email of 7 August 2018) or on the termination of an existing employment contract.

127. That said, for the sake of completeness, the Panel must reject FIFA's argument that, in order to reconcile the situation where a player signs multiple employment contracts, the signing of the second employment contract must be deemed – pursuant to the FIFA Commentary to the RSTP (according to which a player *"can only enter into one employment relationship at a time"* and that *"[i]f he signs a second contract, the player effectively terminates the first one"*) – to automatically terminate the first. As FIFA expressly acknowledged at the hearing upon questioning by the Panel, this is not a rule *per se* but, rather, only a commentary. There is in fact no such rule in the RSTP, and the Panel is of the firm view that the Commentary, by definition, may be of help in interpreting existing provisions but may not create new rules altogether. In any event, the Commentary's assertion is even contradicted by the RSTP, given that the application of Article 18.5 actually *presupposes* the existence at the same time of two employment contracts made by one player with two different clubs.

128. The Appellants then argue that the Huesca Employment Contract is not valid because it was impossible to perform *ab initio* (Article 20 SCO) and/or subsequently (*"impossibilité subséquente"*), as there was no signed transfer agreement, no entry was ever made into TMS, and no ITC was ever issued. The Panel finds that perfecting the documents needed to make an entry into the TMS system is only part of the administrative formalities that the parties must perform once the transfer agreement and the employment agreement are concluded. The fact that the formalities needed to complete the administrative procedure at FIFA were not accomplished only depended on the non-performance by Östersunds FC of its obligations under the transfer agreement. Of course, a breach of an agreement cannot transform something that can (and actually must) be done into something that is "impossible" to be done.

129. The Appellants then argue that the Huesca Employment Contract is invalid because it was entered into in violation of Article 18.3 RSTP. The relevant part of that provision states that a *"club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him. […] Any breach of this provision shall be subject to appropriate sanctions"*. First of all, the Panel finds that Article 18.3 RSTP is irrelevant for the purposes of determining the validity of an employment contract because the provision is disciplinary in nature only. Second, this rule is clearly meant to avoid that a club secretly contacts a player behind the back of the club that currently employs that player. However, based on the evidence on file and the conduct of the Parties, the Panel is persuaded that Östersunds FC was perfectly aware that SD Huesca would enter into negotiations with the Player. Even if Östersunds FC thought that the Player would not have *signed* yet an employment contract on

the occasion of his trip to Spain, it certainly knew that the Player would fly to Spain and *enter into negotiations* with SD Huesca.

130. Finally, Östersunds FC argues that, because SD Huesca allegedly never responded to the Player's Termination Letter, it consented to the Player's departure. The Panel observes, however, that on 20 August 2018, SD Huesca did in fact reply to the Player's letter and indicated that it would file a claim before FIFA (see *supra* at para. 25). Accordingly, this Östersunds FC's submission also fails.

E. No just cause to terminate the Huesca Employment Contract

131. The Player argues that even if the Huesca Employment Contract was valid and not impossible to perform (as the Panel has held), the Player terminated the contract with just cause. In support, the Player claims that he was deceived by SD Huesca's false misrepresentations about the status of the transfer negotiations between the clubs or, alternatively, that he entered into the contract by fundamental error due to SD Huesca's mistaken misrepresentations about the same.

132. For the following reasons, the Panel finds that the Player entered into the Huesca Employment Contract willingly and without fraud or mistake.

133. First, it is clear to the Panel from the Player's position and witness statement before the DRC that he believed the Termination Letter – which cited fraud, mistake and the lack of a transfer agreement as grounds for termination – to be *"full of lies"*. Indeed, the Player's *Duplique* before FIFA expressly *"confirms that he was manipulated in the interest of third parties to agree to sign a letter full of lies"* (*"confirme ainsi avoir été manipulé en faveur d'intérêts tiers afin d'accepter de signer une lettre mensongère"*).

134. Second, at the meeting with SD Huesca's representatives, the Player was assisted by the individuals of his choice (his brother, an intermediary, Mr. Pina, and a lawyer) and, above all, confirmed in this arbitration that he was fully aware he was signing an employment contract and that he understood and accepted the contents thereof. The fact that SD Huesca only provided the Player with a Spanish version of the Huesca Employment Contract and thus that the Player – who does not speak that language – was unable to read the contract himself does not affect its validity. This is because it is the Player's own responsibility to understand the content of an agreement he is signing (see CAS 2015/A/3953 & 3954 at para. 45). In any case, as acknowledged by the Player and his brother in their respective testimonies, Mr. Pina's lawyer actually translated the contract for the Player at the meeting held on the morning of 8 August, and discussed with him the proposed salary and bonus. The Player then, through Mr. Pina, even went on to counter the terms of the contract, which SD Huesca ultimately accepted. In other words, the Player was not only fully aware he was signing an employment contract, but was also aware of and accepted the specific contents of that agreement (in this regard, the Panel does not find plausible the Player's allegation that, once Östersunds FC translated the

Huesca Employment Contract into English, he noticed that the terms were allegedly different than those contained in the Spanish version as translated by Mr. Pina, given that he has repeatedly confirmed that he was very happy that he had signed the Huesca Employment Contract).

135. Third, the Player and the Spanish club were aligned as to the performance and consideration of the deal. Indeed, as already mentioned, the Player testified that during the meeting of 8 August 2018 he countered the terms first proposed by SD Huesca before coming to an agreement.

136. Fourth, SD Huesca neither purposely nor mistakenly misrepresented the status of the transfer negotiations between the clubs. No such fraud or fundamental error occurred because, as previously held *supra* at para. 121 *et seq.*, Östersunds FC and SD Huesca had in fact agreed, in a valid and binding manner, to transfer the Player by email of 7 August 2018. And the Player was fully aware of this agreement. Indeed, even though the Player now claims otherwise, the Panel is comfortably satisfied that his brother, who travelled with the Player to Huesca, received and showed to his brother said email. This is evident from the Player's own witness statement before the FIFA DRC in which he unequivocally declared that *"During our trip to Huesca, my brother received from Lalil Benyahia a copy of the email exchanged between Huesca and Östersunds in which Mr. Kindberg said 'the offer is ok …"*.

137. Fifth, the Player declared in his testimony that he was very happy with signing with SD Huesca and with the opportunity to play in *La Liga* and that he later regretted sending the Termination Letter.

138. As the Player was not coerced to enter into the Huesca Employment Contract by fraud or mistake, the Panel finds that he did not have just cause to terminate the Huesca Employment Contract.

F. No breach by SD Huesca of the principle of good faith

139. The Player argues that SD Huesca's behaviour breached the principle of good faith and, therefore, that the Spanish club does not deserve any legal protection under Article 2(2) SCC. Based on the evidence before it, the Panel does not consider SD Huesca's behaviour to have been in bad faith. As previously mentioned, the clubs had agreed to the transfer of the Player prior to his trip to Huesca. Therefore, SD Huesca did not mislead the Player regarding the status of the transfer deal and acted within its rights when it signed the Huesca Employment Contract. For the same reason the Panel rejects Östersunds FC contention that SD Huesca violated the legal principle of *nemo auditur propriam turpitudinem allegans*.

140. Actually, the Panel feels that, if there was one party that did not act fairly and transparently, this was Östersunds FC. In fact, it appears from the evidence on file that, while Mr. Kindberg was accepting by email SD Huesca's offer and acting vis-à-vis the Spanish club as if the Player's

transfer was a done deal (by embarking in the steps needed to implement the transfer to SD Huesca and by allowing the Player to go to Huesca, meet SD Huesca's representatives and undergo a medical examination), he was also negotiating with other clubs without informing SD Huesca. This is clear, in particular, from (i) the text messages of Mr. Kindberg to the Player on the morning of 8 August 2018, asking him to be prepared to go to the airport in Barcelona for further travel at any moment later that day to Birmingham and signalling that all doors would be kept open (see *supra* at para. 18), and (ii) the undue pressure put on the Player to terminate the Huesca Employment Contract against the Player's will and interests once Mr. Kindberg was certain that Amiens SC would have paid a higher transfer fee to Östersunds FC (see the timeline of the transfer negotiations, *infra* at para. 162).

G. Calculation of compensation

i. Criteria set out in Article 17.1 RSTP and in CAS jurisprudence

141. As the Player terminated the Huesca Employment Contract without just cause, the Panel must determine what, if any, is the compensation payable to SD Huesca for that breach.

142. Compensation for the unilateral, unjustified termination of an employment contract is calculated pursuant to Article 17.1 RSTP.

143. According to Article 17.1 RSTP: *"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".*

144. As repeatedly confirmed in CAS jurisprudence, the list of criteria set out in Article 17.1 RSTP is illustrative and not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, provided that there exists a logical nexus between the breach and loss claimed (CAS 2010/A/2145, 2146 & 2147, at para. 66; see also CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881). CAS precedents also indicate that, in the analysis of the relevant criteria, the order by which those criteria are set forth by Article 17.1 RSTP is irrelevant and need not be exactly followed by the judging body (see CAS 2009/A/1880 & 1881 at para. 79).

145. The Panel further observes that, according to CAS jurisprudence, it is for the judging authority to carefully assess, on a case by case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation under Article 17.1 RSTP (CAS 2008/A/1519 & 1520, at paras. 77 and 89; CAS 2010/A/2145, 2146, & 2147, at paras. 74 and

86). In particular, CAS precedents indicate that while each of the factors set out in Article 17.1 or in CAS jurisprudence may be relevant, any of them may be decisive on the facts of a particular case (CAS 2009/A/1880 & 1881, at para. 77). According to said CAS case law, while the judging authority has a *"wide margin of appreciation"* or a *"considerable scope of discretion"*, it must not set the amount of compensation in a fully arbitrary way, but rather in a fair and comprehensible manner (CAS 2009/A/1880 & 1881, at paras. 76 and 77; CAS 2008/A/1519 & 1520, at paras. 87 and 89). At the same time, as the CAS Code sets forth an adversarial rather than inquisitorial system of arbitral justice, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17.1 RSTP or set out in the CAS jurisprudence, if the parties do not actively substantiate their allegations with evidence and arguments based on such factor (CAS 2009/A/1880 & 1881, at para. 78).

146. The Panel also observes that there is an established consensus in CAS jurisprudence that the *"positive interest"* principle must apply in calculating compensation for an unjustified, unilateral termination of a contract under Article 17.1 RSTP (it has been applied, among other cases, in CAS 2008/A/1519 & 1520, CAS 2009/A/1880 & 1881, CAS 2013/A/3411, and CAS 2015/A/4046 & 4047). As aptly stated by another CAS panel, *"given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, it will be guided in calculating the compensation due by the principle of the so-called "positive interest" or "expectation interest"… [and] accordingly… determin[e] an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred"* (CAS 2009/A/1880 & 1881, at para. 80).

ii. Application of Article 17.1 RSTP

147. In accordance with Article 17.1 RSTP, normally a panel must first take into account any liquidated damages clause, also called penalty clause, contained in the employment contract. In the present case, SD Huesca and the Player did agree to a liquidated damages clause of EUR 40 million (Article 1.3). However, it was "disregarded" by the DRC as disproportionate and SD Huesca did not appeal that decision to the CAS. Therefore, that decision became final and binding and may not be reviewed by the Panel. As a result, even though the Panel believes that the DRC erred in "disregarding" the liquidated damages clause and that it should have, in accordance with Swiss law, reduced the amount to a proportionate level (see Article 163.3 SCO and its application by TAS 2008/A/1491 at paras. 98-101, CAS 2010/A/2202 at para. 28, CAS 2010/A/2317 at para. 28 and CAS 2015/A/4262 & 4264 at paras 138-143), the Panel does not have the power to take into account the liquidated damages clause. Accordingly, the Panel must assess damages based on the other criteria of Article 17.1 RSTP.

148. The Panel observes that the DRC calculated damages to be EUR 4 million because that was the Player's market value at the time of the breach, as evident from the transfer fee Amiens SC agreed to pay Östersunds FC for the Player.

149. The DRC, however, failed to deduct from that amount the costs that SD Huesca (i) would have incurred in obtaining the Player and (ii) would have saved due to the Player's departure,

as it should have done pursuant to CAS jurisprudence (CAS 2008/A/1519-1520, at paras. 123-124; CAS 2009/A/1880 & 1881, at para. 102).

150. In particular, the DRC failed to take into account that SD Huesca saved a relevant sum by never paying (i) the transfer fee of EUR 3 million agreed-upon for the transfer of the Player, and (ii) the Player's salary under the Huesca Employment Contract, which was EUR 600,000 for the 2018-19 season, EUR 300,000 for the 2019-2020 season (due to the club's relegation), EUR 600,000 for the 2020-2021 season (as SD Huesca has been promoted back to *La Liga*), and a minimum of EUR 300,000 for the remaining season. Taking both of these heads of cost into account and noting that SD Huesca has not cited any other losses (such as replacement costs), the Panel finds that SD Huesca has not proven that it suffered any damages from the Player's breach of the Huesca Employment Contract.

151. The Panel thus holds that no damages are to be awarded to SD Huesca under Article 17.1 RSTP.

H. Sanction against the Player

152. On the basis of the foregoing considerations, the Panel concurs with the DRC's conclusion that the Player breached the employment contract without just cause during the so-called protected period (i.e., for an under-28 player, the first three years of the employment contract). Consequently, the Appealed Decision correctly imposed a sporting sanction on the Player pursuant to Article 17.3 of the RSTP. The Appealed Decision imposed the minimum sporting sanction provided by the rule, that is a suspension of four months on the Player's eligibility to participate in official matches, and the Panel agrees that this is the appropriate sanction and rejects the Player's request that the sanction be set aside.

153. In any event, the Panel acknowledges that the Player already served his four-month ban to participate in official matches – as is undisputed among the Parties – and that, therefore, he already complied with the Panel's decision to confirm the Appealed Decision on this count.

I. Sanction against Östersunds FC

154. According to Article 17.4 RSTP, *"*[…] *sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach* […]*".*

155. The same provision provides that the sanction for inducement is a registration ban for two entire and consecutive transfer windows: *"The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods".*

156. Östersunds FC argues that it is not subject to an Article 17.4 RSTP sanction because (i) it is not the "new club" and therefore cannot be presumed as having induced the Player to breach the Huesca Employment Contract, and (ii) there is no actual proof of inducement.

157. The Panel recognizes that the Östersunds Employment Contract was never terminated and that the Player never formally de-registered with Östersunds FC or registered with SD Huesca. Nevertheless, the Panel finds that Östersunds FC must be deemed as the "signing club" (i.e. the *"club signing a professional who has terminated his contract without just cause"*) for the purposes of Article 17.4 RSTP.

158. As consistently held by the CAS, the FIFA rules must be interpreted in a way that reflects their true meaning (*ex multis*: CAS 2008/A/1673; CAS 2009/A/1810 & 1811; CAS 2017/A/5173). The clear purpose of Article 17.4 RSTP is to ensure contractual stability and ensure that the club behind or abetting a player's breach of contract within the protected period is punished. With this in mind, the Panel finds that the notion of "signing club" under Article 17.4 RSTP cannot be interpreted restrictively to mean only the club with which the Player first formally signs and registers after his unjustified termination of an employment contract; it must be interpreted more generally as the club which benefits from said termination by having the player at its disposal after the breach.

159. In the present case, it is obvious to the Panel that the benefiting club, having the Player at its disposal after the termination without just cause of the Huesca Employment Contract, was Östersunds FC, given that, after calling the Player back under the Östersunds Employment Contract, it transferred him to Amiens SC to obtain EUR 1 million more than it would have received under the transfer agreement with SD Huesca.

160. The Panel does not consider that CAS 2009/A/1909, CAS 2017/A/5339, or the FIFA DRC Decision no. 59674 dated 15 May 20019 are comparable to the present case. In those cases, the club with the first employment contract did not benefit from the player's early termination of the second employment contract.

161. As the "signing club" under Article 17.4 RSTP, Östersunds FC is presumed to have induced the Player into breaching the Huesca Employment Contract, and the Panel finds that it failed to rebut this presumption. But even disregarding such presumption, the Panel is persuaded that the evidence on file actually proves that Östersunds FC induced the breach (and Article 17.4 RSTP punishes not only the "new club" or "signing club" but *"<u>any club</u> […] found to be inducing a breach of contract during the protected period"*, emphasis added). The Panel observes that the Player testified before the DRC that he was pressured into signing the letter *"full of lies"* (see *supra* at para. 132), which is fully corroborated by (i) the WhatsApp messages between the Player and his brother (see Annexes 6.1, 6.2, 7.1 and 7.2 to the Player's witness statement), (ii) the Player's text conversation with Mr. Kindberg in which he declares that he was happy to sign with SD Huesca and to play in *La Liga* (see *supra* at para. 20), (iii) Mr. Kindberg's message to the Player that he should sign the Termination Letter (see p. 9 of Annex 3 to the Player's

witness statement), and (iv) the fact that Östersunds FC had a clear interest in transferring the Player to Amiens SC for a higher price than that agreed with SD Huesca.

162. Moreover, in conjunction with the above, the timeline of the events (based on the evidence on file) confirms that Östersunds induced the Player to terminate the Huesca Employment Contract, because the Swedish club already knew that Amiens SC was going to pay a higher transfer fee. Indeed, the Panel observes that:

- on 20 July 2018, Amiens SC wrote a letter to Östersunds FC, entitled Official Transfer Offer, *"to express AMIENS interest in a permanent transfer of the registration of Saman GHODDOS"*, with a draft contract proposing a *"fixed transfer fee"* of EUR 3,500,000, some *"contingent transfer fees"* depending on some individual achievements by the Player and some team achievements by Amiens SC, and a *"sell-on fee"* of 10% in case of a transfer to a third club;

- after some negotiations between the French club and the Swedish club, on 31 July 2018, Amiens SC sent to Östersunds FC another Official Transfer Offer, confirming *"AMIENS interest in a permanent transfer of the registration of Saman GHODDOS"* and including another draft contract with slightly modified terms;

- after further negotiations, on 1 August 2018, Amiens SC sent a third Official Transfer Offer to Östersunds FC, providing for an initial loan (for a fee of EUR 2 million) and a subsequent permanent transfer (for an additional fee of EUR 2 million), besides the usual contingent fees and sell-on fee;

- on 7 August 2018, Östersunds FC, by indicating by email that the *"offer is ok"*, accepted SD Huesca's proposal of the same day to transfer the Player for a fixed transfer fee of EUR 3 million and a sell-on fee of 20%;

- on the exact same day, the Player travelled to Huesca and, during his travel, was informed of the aforementioned acceptance email (see *supra* at para. 136);

- the next morning of 8 August 2018, the Player met with SD Huesca and signed the Huesca Employment Contract, with which he was happy (see e.g. *supra* at para. 19).

- on 9 August 2018, Östersunds FC received an official offer for the Player from Amiens SC for EUR 4 million for a permanent transfer, i.e. EUR 1 million more than what was agreed with SD Huesca, besides the contingent and sell-on fees (see *supra* at para. 29).

- on 18 August 2018, the Player sent to SD Huesca the Termination Letter (which, as previously mentioned, he has admitted in the witness statement of 6 March 2019 not to reflect his true will and to have been signed *"under immense pressure"* exerted on him

by Östersunds FC and having *"no personal interest in signing the Letter [as he] was very happy with such a transfer"*).

– on 21 August 2018, Amiens SC sent an amended final offer which was accepted by Östersunds FC and yielded the definitive transfer of the Player to the French club (in this regard, the Panel notes that this final Amiens SC's offer was built over time since the end of July and that, in particular, Amiens SC's offer of 9 August 2018 was already (i) very close to the final offer and (ii) substantially more rewarding than SD Huesca's offer of 7 August 2018).

163. Östersunds FC also claims that, in any case, it would be unreasonable to impose automatic sanctions under Article 17.4 RSTP because it acted in good faith and in line with its rights and obligations at all times. The Panel finds, however, that Östersunds FC did not act in good faith as it so claims. As previously mentioned, Östersunds FC pressured the Player into terminating the Huesca Employment Contract in order to sell his rights for a higher profit to Amiens SC. Moreover, the Panel finds that Östersunds FC did not *"act within its rights"*. In the Panel's view, Östersunds FC had no right to impede the Player from fulfilling the Huesca Employment Contract and to force him to first come back to Östersunds FC and then move to another club, since it had already entered into a valid transfer agreement with SD Huesca. In this respect, the Östersunds FC's reference to Swedish employment law is irrelevant; as stated *supra* at para. 87, the applicable law are the FIFA regulations and Swiss law.

164. In light of the above, and considering the breach indisputably occurred within the protected period, the Panel upholds the sanction imposed on Östersunds FC by the FIFA DRC. Accordingly, Östersunds FC shall be banned from registering any new players for two entire and consecutive transfer windows.

J. Further or different motions

165. All further or different motions or requests of the Parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Mr. Saman Ghoddos and Östersunds FK Elitfotboll AB against the decision rendered by the FIFA Dispute Resolution Chamber on 14 June 2019 are partially upheld.

2. The decision rendered by the by the FIFA Dispute Resolution Chamber on 14 June 2019 is amended as follows:

   – Items nos. 2, 3 4 and 5 of the appealed decision rendered by the FIFA Dispute Resolution Chamber on 14 June 2019 are set aside.

   – Item no. 6 of the decision rendered by the FIFA Dispute Resolution Chamber on 14 June 2019, suspending for four months the eligibility of Mr. Saman Ghoddos to play in official matches, is confirmed; it is hereby acknowledged that Mr. Saman Ghoddos already complied with that decision and served the suspension.

   – Item no. 7 of the decision rendered by the FIFA Dispute Resolution Chamber on 14 June 2019, banning Östersunds FK Elitfotboll AB from registering any new players either nationally or internationally for the two next entire and consecutive registration periods, is confirmed; accordingly, Östersunds FK Elitfotboll AB must serve that ban in the next two full registration periods following the notification of this Award.

3. (…).

4. (…).

5. All other or further request or motions submitted by the Parties are dismissed.