Arbitration CAS 2021/A/7690 GDSC Alvarenga Futebol S.A.D. v. Isidro Pitta Miguel Saldivar & Club Deportivo Santaní & Fédération Internationale de Football Association (FIFA), award of 23 September 2022

Panel: Mr Ricardo de Buen Rodríguez (Mexico), Sole Arbitrator

Football
Termination of the employment contract without just cause by the player
Standing of a club to request disciplinary sanctions

No regulation establishes the right for a club subject to an unjustified breach of an employment contract, to directly ask for disciplinary sanctions to be applied to the other party to the employment contract, for that unjustified breach. This is a legal power that only the FIFA's disciplinary bodies have.

I. THE PARTIES

1. GDSC Alvarenga Futebol, S.A.D., (the "Appellant" or "Alvarenga") is a professional football club based in Arouca, Portugal, and affiliated with the Federação Portuguesa de Futebol (the "FPF").

2. Mr Isidro Pitta Miguel Saldivar (the "First Respondent" or the "Player") is a Paraguayan football player.

3. Club Deportivo Santaní, (the "Second Respondent" or "Santaní") is a professional football club based in San Estanislao, Paraguay, and affiliated with the Asociación Paraguaya de Fútbol (the "APF").

4. The Fédération Internationale de Football Association (the "Third Respondent" or "FIFA") is the governing body of football worldwide, with its headquarters in Zurich, Switzerland.

II. FACTUAL BACKGROUND

5. The following is a summary of the relevant facts based on the Parties' written submissions. Although the Sole Arbitrator has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

6. On 5 January 2018, Alvarenga and the Player signed an employment contract (the "Labor Contract").

7. The relevant content of the Labor Contract was:

   a) Valid from 1 January 2018 to 30 June 2022.

   b) A Monthly Salary of EUR 1,000.00

   c) A subsidy to be paid to the Player, at the beginning of his vacation and in the Christmas season, equivalent to his remuneration.

   d) The right for the Player to receive a 10% increase in his remuneration in case the club gets promoted to a higher division.

8. The Player played for Alvarenga, during the second half of the 2017/2018 season.

9. At the middle of 2018, after the season 2017-2018 ended, the Player went to Paraguay to enjoy his vacation.

10. In June 2018, the Player and Alvarenga received an offer by the Portuguese first division club Sporting Clube de Braga-Futebol S.A.D. ("Braga"), seeking to get the Player to play for Braga. This offer finally did not lead to an agreement.

11. In July 2018, the Player and Alvarenga received an offer from the Paraguayan team Club Olimpia Asunción ("Olimpia"), with the intention of having the Player playing for Olimpia. This offer neither led to an agreement.

12. On 3 August 2018, the Player informed Alvarenga that he considered the Labor Contract with Alvarenga terminated, by exclusive fault of Alvarenga.

13. On 27 August 2018, Alvarenga informed the Player that the training activities of the mentioned club had begun on 21 August 2018.

14. The Player did never return to play with Alvarenga. The Appellant and the First Respondent have expressed their arguments regarding this issue. These arguments will be analysed further on in this award.

15. After a transfer instruction made through the Transfer Matching System (the "TMS") on 16 January 2019 by Santaní, to engage the Player permanently and the rejection of the FPF, on 1 February 2019, a Single Judge of the Players' Status Committee of FIFA (the "FIFA PSC") authorized the provisional registration of the Player with Sataní.

III. PROCEDURE BEFORE FIFA

16. On 10 October 2018, Alvarenga filed a claim in front of the FIFA Dispute Resolution Chamber (the "FIFA DRC"), against the Player for breach of contract, requesting a compensation of EUR 209,354.84 plus 5% interest as from 21 August 2018. The following are the concepts that were part of the financial claim:

- EUR 53,354.84 corresponding to the residual value of the contract.
- EUR 150,000 ("or EUR 180,000") corresponding to *"the lost opportunity to transfer [the player] which are the minimum sums that, respectively, BRAGA and OLIMPIA were willing to pay for the definitive transfer"*;
- EUR 6,000 as compensation due to the *"sporting loss, equivalent to, at least, 6 months of [the player's] average monthly remuneration"*.

17. On 23 October 2018, the Player filed a counterclaim, requesting EUR 49,000 plus 5% interest as from 3 August 2018, corresponding to:

- EUR 3,000 for the monthly salaries of May, June and July 2018.
- EUR 47, 000 corresponding to the residual value of the contract.

18. On 9 August 2019, the Player informed the FIFA DRC that he had signed an employment contract with Santaní, valid from January 2019 to December 2020, with a monthly salary of approximately USD 650.

19. On 13 July 2020, the Player informed the FIFA DCR that he and Santaní, terminated their employment contract in December 2019. He also informed that in January 2020, he signed a new employment contract with Club Deportivo Luqueño ("Luqueño"), with an initial monthly salary of approximately USD 3,000. This amount was paid only until March 2020, and then it was reduced, due to Covid 19, being that the Player only received the total amount of USD 5,100 from March to June 2020.

20. The Player informed FIFA that on 7 September 2020, he signed a new employment agreement with Olimpia, valid from 7 September to 31 December 2020, and that he was entitled to a monthly salary of USD 15,000, which could be reduced to USD 5,000.00 in case the competitions were suspended.

21. On 13 November 2020, the FIFA DRC issued a decision (the "Appealed Decision"), which grounds were notified on 19 January 2021, deciding the following:

"1. The claim of the Claimant/Counter-Respondent, GDSC Alvarenga, is partially accepted.

2. The Respondent/Counter-Claimant, Isidro Miguel Pitta Saldivar, has to pay to the Claimant/Counter-

Respondent, the following amount:

- EUR 12,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 October 2018 until de date of effective payment.

3. The Intervening party, Deportivo Santani, is jointly and severally liable for the payment of the aforementioned compensation.

4. Any further claims of the Claimant/Counter-Respondent are rejected.

5.The counterclaim of Respondent/Counter Claimant is rejected.

6. The Claimant/Counter-Respondent is directed to immediately and directly inform Respondent/Counter-Claimant and the Intervening party of the relevant bank account to which they must pay the due amount.

7. The Respondent/ Counter Claimant and/or the Intervening party shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated if applicable, into one of the official languages (English, French, German, Spanish).

8. In the event that the amount due, plus interest as established above is not paid by the Respondent ***within 45 days,*** *as from the notification by the Claimant/Counter Respondent of the relevant bank details to the Respondent/Counter Claimant, the following consequences shall arise:*

1. *The Respondent/Counter Claimant shall be restricted on playing in official matches up until the due amount is paid and for the maximum duration of six months. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

2. *In the event that the payable amount as per in this decision is not paid within the granted deadline, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 9 February 2021, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"), pursuant to the Code of Sports-related Arbitration (2020 edition) (the "Code"), against the Respondents challenging the Appealed Decision. The Appellant requested that the case be submitted to a Sole Arbitrator.

23. On 19 February 2021, the Appellant filed its Appeal Brief, together with supporting documents, further to Article R51 of the Code.

24. On 1 March 2021, after hearing the position of the parties, the CAS Court Office notified the parties that the Deputy Division President of the CAS Appeals Arbitration Division, had decided to submit the present matter to a Sole Arbitrator.

25. On 14 April 2021, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Ricardo de Buen Rodríguez, Attorney-at-law in Mexico City, Mexico, as Sole Arbitrator, further to Article R54 of the Code.

26. On 3 May 2021, and after some extensions given to the different Respondents, the Third Respondent filed its Answer in accordance with Article R55 of the Code.

27. On 14 May 2021, the First and Second Respondent filed, jointly, their Answer, further to Article R55 of the Code.

28. On 14 May 2021, the CAS Court Office invited the Appellant to comment on the First and Second Respondents' request for production of documents.

29. On 19 May 2021, the CAS Court Office acknowledge receipt of the Appellant's submission on the First and Second Respondents' request for the production of documents.

30. On 16 July 2021, after hearing the respective position of the parties regarding holding a hearing and the date for it, the CAS Court Office notified the parties that they were called to appear at a hearing, by videoconference, on 23 September 2021.

31. On 26 July 2021, the CAS Court Office sent the Parties the Order of Procedure, which was duly signed by the parties.

32. The hearing of the case was held on 23 September 2021, by videoconference, with the presence of the Sole Arbitrator and Mr Antonio de Quesada, CAS Head of Arbitration. The Appellant was represented by its lawyer Mr Felipe Augusto Loschi Crisafulli and by Mr Nuno Alexander de Almeida Saraiva with the translation of Mrs Claudia Sobral. The First Respondent attended the hearing in person and Mr Ariel Reck attended the hearing as the First and Second Respondents' lawyer. The Third Respondent was represented by Ms Erika Urbina and Mr Jaime Cambreleng. At the beginning of the hearing all the parties stated that they did not have any objection regarding the conformation of the Panel. All the parties had the opportunity to express everything they considered important, and the Sole Arbitrator heard all their arguments. At the end of the hearing the Appellant and the Respondents expressed that they were comfortable with the way the hearing had been held and stated that the right to be heard had been respected.

V. PARTIES' SUBMISSIONS

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

A. The Appellant's Position

34. The Appellant's position and arguments can be summarized as follows:

35. The applicable edition of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") in the June 2018 version.

36. Given that the FIFA DRC decided that there was an unjustified termination of the Labor Contract by the Player and that the Appellant is entitled to a compensation from the Player and Santaní, the Sole Arbitrator must confirm such breach and the right to a compensation.

37. When calculating the amount to be paid as compensation by the Player, Alvarenga could not take into account the salaries to be received by the Player from Santaní, Luqueño and Olimpia, so Alvarenga calculated the compensation only based in the Labor Contract.

38. After the unilateral termination of the Labor Contract by the Player, he signed several employment contracts with the previously mentioned Paraguayan clubs, which values were informed by him during the FIFA DRC's procedure, being that the values of those contracts are the ones that must prevail for the calculation of the compensation, because they are a better reflection of the real value of the services of the Player.

39. Alvarenga paid the Player the sum of EUR 3,000 to cover the respective salaries for August to October 2018, and not for amounts in arrears.

40. The amount of the compensation must be calculated considering the value of the salaries established in the Labor Contract until 13 January 2019, plus the amounts the Player was entitled to derived from the employment contracts with Santaní, Luqueño and Olimpia, for a total of EUR 351,640.17

41. If the Sole Arbitrator has a different view regarding the mentioned calculation, in relation to Olimpia's part, the Appellant asks that a minimum wage of EUR 18,000 for the Player be taken into account for the period between January 2021 and June 2022, resulting in a amount of EUR 99,640.17, plus the other amounts to be paid by the other clubs.

42. Alternatively, if the Sole Arbitrator considers that the "positive interest" or "expectation interest" doctrine must be applied, the Appellant shall be entitled to EUR 292,497.16

43. Also alternatively, if the Sole Arbitrator understands that the compensation should be calculated on the basis on an average of the previously mentioned amounts, the amount to pay is EUR 199,603.42

44. The FIFA DRC miscalculated the amount that the Player would receive from Alvarenga until June 2022, because it did not take into consideration the yearly holiday and Christmas subsidies.

45. Again alternatively, the calculation of the compensation must at least be led by the expectation interest of the Appellant (principle of positive interest), this is EUR 53,354.84. This option is in accordance with Article 24.1, of Law no. 54/2017 (the "Portuguese Sports Law").

46. The loss of opportunity (*lucrum cessans)* is also beyond dispute, specially concerning the move of the Player to Braga and to Olimpia. The proper compensation for the *lucrum cessans* shall be the sum corresponding to the 100% of the economic rights of the Player considering the offer performed by Olimpia in July 2018. Consequently, such amount totals USD 225,000 or EUR 191,250.

47. Alternatively, the amount related to the compensation of Alvarenga's *lucrum cessans* shall be the sum fixed as "Right option" in the offer of Braga, this is EUR 150,000 or at least EUR 100,000.

48. The sporting losses and damages are also incontrovertible, once the Player was the best Alvarenga's footballer, being the sum of EUR 6,000 the right amount to be paid for that concept.

49. The amount to be paid to Alvarenga is not mitigable. No mitigation should be applied in this case as the Player was the one that breached the Labor Contract during the protected period.

50. Alvarenga showed real interest on keeping the Labor Contract alive. This is proved with the notification sent to the Player in August 2018.

51. In the current case, the *specificity of sport* should lead to an increase of the compensation amount for all damages.

52. The conclusion regarding the Santaní's join liability, established in the Appealed Decision must stay.

53. In relation to the imposition of sporting sanctions on the First and Second Respondents, there are no excuses to not punish them, and the Appellant has standing to sue regarding this specific concept.

54. The Appellant's prayers for relief (expressed in the Statement of Appeal), were the following:

"(a) the present appeal be deemed admissible, and the appealed decision be reformed;

(b) the confirmation by THE CAS, insofar as it is necessary for the allowance of the present appeal, that the applicable edition of the FIFA RSTP in this case is the one dated June 2018 and that MR. ISIDRO PITTA terminated without just cause his employment contract concluded with ALVARENGA on January 2018 within its protected period (doc. 07 – this PDF file contains also the translation to English of such labour agreement);

(c) the recalculation of the amount related to the compensation for breach of contract without just cause that THE PLAYER and the PARAGUAYAN CLUB must pay to THE PORTUGUESE CLUB, which shall be higher than the one established in the appealed decision and never lower to that sum, as it would be tantamount to granting MR. ISIDRO PITTA and SANTANÍ a better situation than the one arising from the FIFA DRC DECISION and to some extent it would be contrary to the principle ne ultra petitia *(meaning that the Panel shall never make an award for an amount less than that fixed in the appealed decision, exactly as established in the jurisprudence of THE CAS);*

(d) the imposition of sporting/disciplinary sanctions on THE 1ST RESPONDENT and THE 2ND RESPONDENT/INTERVENING PARTY (Article 17, paragraphs 3 and 4, of THE FIFA RSTP);

(e) the confirmation, if necessary, that this appeal follows the general rule that the appeal does not have suspensive effect (Article 58, paragraph 4, of THE FIFA STATUTES);

(f) an order for THE 1ST RESPONDENT, THE 2ND RESPONDENT/INTERVENING PARTY and THE 3RD RESPONDENT to bear all costs, fees and expenses in relation to these proceedings, such as, but not limited to, any administrative costs, THE CAS Court fee, the arbitrator's fees, the attorney's fees (which shall be equal to 20% of the amount that ALVARENGA is entitled to), etc., including reimburse this petitioner for any and all payments made by it".

B. The First and Second Respondents' Position

55. The First and Second Respondents' positions and arguments, were presented together, and can be summarized as follows:

56. This is a clear example on how the agents act in conflict of interest in the football market.

57. The Player terminated the Labor Contract with just cause due to various breaches by the Appellant, including the outstanding salaries for 3 months, paid during the FIFA procedures. He did not appeal the Appealed Decision because he was not in a position to continue the legal dispute and a costly procedure.

58. Mr. César Ricardo Arguello González (the "Agent") was linked to the Player since December 2017.

59. The offers from Braga and Olimpia were solely managed by the Agent.

60. Based on different facts, the Player sent a letter to Alvarenga on 3 August 2018, declaring the termination of the Labor Contract.

61. The FIFA DRC considerations about the late payment of salaries shall be confirmed.

62. In relation to the request for Sporting Sanctions, the power to impose them on a member or affiliate for the violation of the FIFA Regulations is at sole discretion of FIFA and therefore a football club lacks such disciplinary power. Therefore the claim for sporting sanctions must be rejected for lack of standing.

63. Regarding the compensation, the criteria to establish compensation for breach under the applicable rule, Article 17 of the FIFA RSTP, has been set by FIFA and CAS on the basis of the so-called positive interest.

64. Speaking about the *lucrum cessans,* no such lucrum was proven. Both offers (from Braga and Olimpia) were loans free of costs with just options.

65. As to the positive interest, the approaches by the Appellant are incorrect. The only valid approach is the one that starts from the value of the Labor Contract, i.e. EUR 1,000 a month.

66. The Portuguese Sports Law is applicable in the present case, as long as it does not contradict FIFA Regulations and Swiss Law. Therefore, since Portuguese Sports Law provides a solution that is not contrary to the FIFA RSTP, such rule shall apply (i.e. Article 24.1) with a maximum compensation or the residual value of the terminated contract.

67. The Player only received the monthly remuneration and no allowance for Christmas or vacations since he was not registered as employee. Hence the remaining value of the contract is Euro 1,000.00 x 46 months, i.e. EUR 46,000 and this has to be the starting point of the calculation.

68. With regard to the specificity of sport, the criteria applied on this respect by the FIFA DRC, via *"special circumstances"* was right. The determinant elements were the breaches by the Appellant during the employment period, the lack of sporting interest by Alvarenga, the conflict of interest and the Player's situation after the termination.

69. As many CAS awards confirm, it is not for the appealing body to replace the first instance discretion with its own discretion.

70. The First and Second Respondents made the following requests for relief in its Answer:

"1.- Confirming the FIFA DRC decision in its entirety.

2.- Imposing to the appellant the legal costs of the present case and contribution towards the respondent's costs".

C. The Third Respondent's Position

71. The Third Respondent's position and arguments can be summarized as follows:

72. The applicable law is the RSTP and subsidiarily Swiss law.

73. The core of the present dispute essentially relates to the disagreement of the Appellant with the compensation imposed on the Player and the request for the imposition of sporting sanctions. The case exclusively relates to a horizontal dispute between Alvarenga, the Player and Santaní, and only one of the prayers of relief (i.e. the imposition of sporting sanctions) concerns FIFA.

74. The Appealed Decision is correct.

75. The FIFA DRC offers a dispute resolution system where FIFA is not a party but a neutral entity that is called to settle a strict contractual dispute between its indirect members.

76. It is evident that the Appellant's requests for relief are directed to the Player and Satani, solely concerning the contractual relationship between them. It is hence clear that FIFA does not have any standing the be sued in relation to the above-described requests for relief related to the mentioned contractual relationship.

77. There is lack of a legitimate interest of the Appellant to request the imposition of sporting sanctions. Alvarenga does not have any legitimate interest in the Player and Satani being banned from participating in official matches or from registering players, respectively. There is established CAS jurisprudence on this respect.

78. Consistent with the CAS jurisprudence, it is clear that the Appellant would gain absolutely nothing in case the Player is banned from playing official matches or Santaní is banned from registering players.

79. The Third Respondent made the following requests for relief in its Answer:

"(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the decision rendered by the Dispute Resolution Chamber on 13 November 2020;

(c) To order the Appellant to bear all costs incurred with the present procedure;

(d) To order the Appellant to make a contribution to FIFA's legal costs".

VI. JURISDICTION

80. Article R47 of the Code states the following:

> *"An appeal against a decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

81. CAS jurisdiction derives from Article R47 of the Code and from Article 58(1) of the FIFA Statutes (hereinafter referred to as the "FIFA Statutes").

82. In addition, all of the Parties have agreed that CAS has jurisdiction by signing the Order of Procedure.

83. It follows that CAS has jurisdiction to rule on this dispute.

VII. ADMISSIBILITY

84. According to Article R49 of the Code, *"[i]n 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"*.

85. Furthermore, pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal before CAS is 21 days from receipt of the appealed decision.

86. The Appealed Decision was issued on 13 November 2020 and the grounds were notified on 19 January 2021, and the Statement of Appeal was filed on 9 February 2021, within the 21-day deadline specified in the FIFA Statutes and the Code. No further stages of appeal against the Appealed Decision were available at the FIFA level.

87. The appeal therefore complies with the requirements of Article R48 of the Code. Accordingly, the appeal is admissible.

VIII. APPLICABLE LAW

88. Article R58 of the Code provides as follows:

> *"The Panel decides the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case the Panel gives reasons for its decision"*.

89. It is recalled that the Appealed Decision was issued by FIFA, which is a federation domiciled in Switzerland.

90. After analyzing the position of each of the Parties and based on Article R58 of the Code and the occurrence of the significant facts, the Sole Arbitrator concludes that FIFA Rules and Regulations, specifically the FIFA RSTP (June 2018 version), must be applied primarily, with Swiss law applying subsidiarily.

IX. MERITS

91. As a preliminary matter, the Sole Arbitrator notes that, according to Article R57 of the Code, he has the full power to review the facts and the law of the case, i.e., to undertake a *de novo* review. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

92. According to the Parties' written submissions the main objects of this arbitral dispute consist in the following:

- Does FIFA have standing to be sued in the economic dispute?

- Is there legitimate interest by the Appellant to request the imposition of sporting sanctions?

- Which is the scope of review for the Sole Arbitrator regarding the termination of the Labor Contract and its consequences?

- Which is the amount to be paid by the Player to Alvarenga?

93. Following, the Sole Arbitrator presents his analysis regarding each and every one of the issues to be solved:

A. Does FIFA have standing to be sued in the economic dispute?

94. The Sole Arbitrator has reviewed the arguments of the parties in this particular issue. From one side the Appellant, when referring to the economic claim - this is the request to increase the amount to be paid as a compensation - in its Statement of Appeal and in its Appeal Brief, does not specify if it is directed to all the Respondents or only to some of them.

95. On its side, FIFA makes a specific reference to its *"… lack of standing to be sued in the horizontal dispute between the Appellant, the Player and Santaní"*. The main argument is that the dispute for the amount of the compensation, is a horizontal dispute between Alvarenga, the Player and Sataní, in which nothing is sought against FIFA. It adds, that in this case, FIFA DRC has acted as a dispute solver and as a neutral entity to settle a dispute between its indirect members.

96. Taking into account the general arguments by Alvarenga and FIFA described in the two precedent paragraphs, the Sole Arbitrator has considered important to seek for more elements in relation to the intention of Alvarenga on calling FIFA as a party of the current arbitral procedure, finding an important statement made by the Appellant in its letter sent to the CAS on 22 February 2021.

97. In the mentioned letter, Alvarenga expresses that *"… the reason why FIFA must remain as a party to this procedure, that is, the fact that it has not imposed any sporting sanctions to the other two (2) respondents*

under the decision appealed from …".

98. With this Appellant's statement, it is more than clear that it is not calling FIFA as a party to ask the Sole Arbitrator to condemn it to be responsible of the payment of the compensation, but to ask the CAS for the imposition of disciplinary sanctions.

99. Taking into account that this is expressly stated by the Appellant, there is no need to go through the other arguments of the parties in this regard. Thus, specifically in relation to the economic claim made in this procedure, FIFA has no standing to be sued.

100. The issue of a possible legitimation by the Appellant to ask for sporting sanctions, is independent to the one of FIFA's standing to be sued in the horizontal dispute and will be separately analyzed as follows.

B. Is there legitimate interest by the Appellant to request the imposition of sporting sanctions?

101. The Appellant claims, expressed in a nutshell, that the Appealed Decision does not analyze the topic of the application of sporting sanctions and that under Article 17 of the FIFA RSTP, FIFA shall impose those disciplinary sanctions. It also claims that *"… the jurisprudence of both THE FIFA DRC and THE CAS, which is admittedly "contradictory to the wording of article 17(4)" of the FIFA RSTP and accepts the consistent practice of FIFA not to apply automatically a sanction as per Article 17, paragraph 3 and 4, of THE FIFA RSTP, deciding "on a case by case basis whether to sanction a player or not",* ***must be overhauled****, and this appeal, for sure, is the perfect moment for such a change".*

102. Alvarenga also states that its interest to ask for the application of sporting sanctions, arises not only from a legal point of view but also from a sporting point of view, since the Player and Santaní, may, in the future, be rivals of Alvarenga.

103. On the other side, FIFA argues that *"Several CAS panels have already answered the question whether a club or a player has any legitimate interest in requesting the imposition of sporting sanctions on a party that has breached the relevant contract. In this regard, there is already an established jurisprudence which answers the question negatively".*

104. The Third Respondent also argues that the Appellant would gain absolutely nothing in case the Player is banned from playing official matches or the Second Respondent is banned from registering players.

105. The First and Second Respondents also consider that Alvarenga does not have standing to request sporting sanctions when FIFA decides not to impose them.

106. After analyzing the mentioned contradictory positions, the Sole Arbitrator considers that, given the specific characteristics of this case, there is no reason to depart from the CAS' jurisprudence in this matter. The Appellant does not present any argument to consider this a

different case from the others similar cases solved by the CAS and that to conclude that there is legitimate interest for Alvarenga to ask for disciplinary sanctions.

107. The Sole Arbitrator does not find any regulation that establishes, in a case like the current, the right for Alvarenga, as a club subject to an unjustified breach of a Labor Contract, to directly ask for disciplinary sanctions to be applied to the other party in the Labor Contract, for that unjustified breach. This is a legal power that only the FIFA's disciplinary bodies have.

108. Following the established CAS jurisprudence – *CAS 2015/A/3999 & 4000, CAS 2014/A/3690, CAS 2018/A/6002* and *CAS 2020/A/7054* for example – Alvarenga does not have a legitimation to request the imposition of sporting sanctions directly to CAS.

109. Independently from the breach of contract, performed by one of the parties involved in this case, taking the above into account, the Sole Arbitrator considers that the application of such measures directly is out of his scope of review. Thus, no disciplinary sanction is applied.

C. Which is the scope of review for the Sole Arbitrator regarding the termination of the Labor Contract and its consequences?

110. As follows from the contain of the arbitration file, the Player and Sataní have not appealed the Appealed Decision. Only Alvarenga has done it.

111. This is important to express, due to its effect on the scope of review for the Sole Arbitrator in this case. In addition to the non-performance of disciplinary sanctions that has already been decided, all the other parts of the Appealed Decision that have not been appealed must remain.

112. Following the precedent idea, the principal issues of the Appealed Decision that are final and binding are:

a) The non-imposition of disciplinary sanctions.

b) The decision that the Player terminated the Labor Contract without just cause.

c) The decision that the Player has to pay Alvarenga a compensation.

d) The decision that Santaní is jointly and severally liable for the payment of the compensation.

113. Thus, the only element of the Appealed Decision that could potentially be changed is the amount of the compensation to be paid, which cannot be less that the quantity already established in the Appealed Decision, this is EUR 12,000 plus 5% interest per year. With respect of the date to start the calculation of the mentioned interested, it will be addressed later in this award.

D. Which is the amount to be paid by the Player to Alvarenga?

114. After all the previous analysis and decisions made by the Sole Arbitrator in this award, the remaining duty is now to define if the quantity of the compensation established in the Appealed Decision is right or not. If it is not right, then the Sole Arbitrator has to determine the right amount.

115. The Appellant and the First and Second Respondents have presented contradictory arguments with respect to the way the calculation has to be performed and the legal criteria to do so. On its side, FIFA has expressed, in general, that the whole Appealed Decision is correct.

116. The first step to take, in order to decide on the amount to be paid, is to establish the applicable rules and principles that have to be followed in this specific case.

117. As mentioned in the *"Applicable Law"* chapter of this award, the Sole Arbitrator has decided that the applicable law for this case is *"FIFA Rules and Regulations, specifically the FIFA RSTP (June 2018 version), must be applied primarily, with Swiss law applying subsidiarily"*.

118. First of all, the reason for the general application of FIFA RSTP is that we are in a conflict with an international dimension, which was solved in first instance by the FIFA DRC. The reason for the application of the June 2018 version, is that contrary to what is stated in the Appealed Decision, the relevant facts of the case occurred in August 2018 and the claim in front of FIFA was filed on October of the same year.

119. Secondly, the relevant article for the calculation of the compensation is Article 17 of the FIFA RSTP. The part of said article, to be considered for the calculation of the compensation, bearing in mind that we are talking about a compensation to be paid by a player to a club, is the following:

*"**17 Consequences of terminating a contract without just cause***

The following provisions apply if a contract is terminated without just cause:

1. *In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for the contract, compensation for the breach shall be calculated with the 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 …"*.

120. As it can be read, the mentioned article expresses the possibility, for the calculation of a potential compensation, to consider the law of the country concerned. It is true that even

though the inclusion of a national law is not automatic, depending on the circumstances of the case, it may be included.

121. In the case at stake, for its particular circumstances, the Sole Arbitrator considers that the national law, in this case the Portuguese Sports Law applies for the calculation of the compensation. The reasons considered by the Sole Arbitrator to apply in this specific case the mentioned national law, are the following:

a) Article 17 of the FIFA RSTP allows the application of national law for the calculation of a compensation.

b) The Labor Contract refers to Portuguese law and the First and Second Respondents agreed on its application regarding the calculation of the compensation.

c) Article 24 of the Portuguese Sports Law is consistent with Article 17 of FIFA RSTP. Article 24 of the Portuguese law reads as follows (translation filed by the Appellant and not contested by the Respondents):

"Article 24

Liability of the parties for termination of the contract

1.- In the cases provided for in letters c) and d) of paragraph 1 of the previous article, the party that causes the termination or that has unduly promoted it must compensate the counterparty for the value of the remuneration that would be due to the [sports] practitioner if the employment contract had ended at its expiry date.

2.- It may be fixed a compensation of an amount higher than that resulting from the application of the previous paragraph whenever the injured party proves that it has suffered damages of a higher amount".

For the sake of completeness, letters c) and d) of Article 23 of the Portuguese Labor Law, refer to the termination with just cause promoted by the sports employer or a player, respectively.

122. Departing from the conclusion that the legal basis to calculate the amount of the compensation to be paid to Alvarenga, are the ones contained in Article 24.1 of the Portuguese Sports Law in virtue of the possibility to do it established in Article 17 of the FIFA RSTP, the Sole Arbitrator has reviewed the different points of view of the parties with regards to the calculation criteria, and has concluded the following in relation to the concepts claimed by the Appellant:

A) As an initial matter, the Sole Arbitrator considers that the calculation must be made by following the principle of the positive interest, meaning as defined by the Appellant *"…*

that such amount shall basically put the petitioner (injured party) into the same position it would have had if that labour agreement was performed properly …".

This conclusion is in line with the application of Article 24.1 of the Portuguese Sports Law, that has, as the only element to make the said calculation, the value of the remuneration that would be due if the employment contract had ended at its expiry date. This means that, as the First and Second Respondents have argued, the value of the amounts contained in other agreements signed by the Player after the termination of the Labor Agreement must not be considered.

B) There is a second concept that has been put in the table by the Appellant, the supposedly loss of opportunity/earnings (*lucrum cessans)*, being this part of the specificity of sport. The Appellant asks for the payment of the value of the possible transfer of the Player to Braga and Olimpia.

According to Article 8 of the Swiss Civil Code *"Unless otherwise provided for by law, a person deriving his rights from the existence of an alleged fact shall prove the same".*

In the case of the alleged *lucrum cessans*, Alvarenga has not proven any fact from which it can be inferred that it has the right to receive it. Therefore, such lucrum cessans was not proven. The offers made by Braga and Olimpia to Alvarenga for the Player were made free of costs at the beginning. The possible payment to Alvarenga derived from each of the offers, was based on an option, meaning that there was no assurance that any amount was going to be paid to Alvarenga in none of both offers.

The Sole Arbitrator does not find the certainty needed to conclude that the termination of the Labor Contract by the Player lead directly to the lost opportunity to get a payment for Alvarenga from Braga or Olimpia. An additional element to consider, is that in order to execute one of those offers, the acceptance of the Player was needed, and it has never proved that he gave his consent for any of them.

Thus, no payment founded in *lucrum cessans* must be done.

C) A third element presented by the Appellant as part of the compensation to be paid, is the supposedly sporting losses and damages. As in the precedent concept, the Sole Arbitrator considers that, there is no evidence to conclude that the Appellant has the right for a compensation on sporting damages for this particular case.

Alvarenga claims that alongside with what is established in Article 17 of the FIFA RSTP, including the specificity in sport, this claim is based in Article 24.2 of the Portuguese Sports Law, previously reproduced in this award. Said article is clear and requires the damage to be proved, in order to increase the compensation. There is no evidence, on file, that the Player was the best of Alvarenga, as the Appellant claims, and no prove that there was a loss of EUR 6,000.00 for Alvarenga, caused by a sport reason in relation to the Player.

No payment derived from sporting losses and damages has to be paid by the First and Second Respondent.

123. Putting together all the conclusions related to the calculation of the amount to be paid as compensation, the Sole Arbitrator has concluded that only the remaining value of the Labor Agreement has to be considered.

124. In relation to the specific amount, the Sole Arbitrator concurs, in principle, with the Appellant, with regards to the specific sum of EUR 53,354.84, – which is one of the alternatives requested by the Appellant – sum that includes the salary from the termination date until the last potential day of the contract plus the Holiday and Christmas bonus that were also part of the value of the Labor Contract, and for that reason have to be considered. However, taking into account that the Sole Arbitrator considers the date of the termination of the Labor Contract happened the date of the notification from the Player, this is on 3 of August 2018 and not on 21 August 2018 (this was the initial day used by Alvarenga for the mentioned calculation), 18 days of salary must be added to the sum resulting in a total of EUR 53,935.49.

125. Another topic to be solved by the Sole Arbitrator, is whether or not a mitigation of the calculated compensation must be done.

126. The Appellant claims that there is no legal basis to perform such adjustment and the First and Second Respondents argue that the adjustment performed in the Appealed Decision, based on the specific circumstances of the case, were valid and have to prevail.

127. It is true that the facts of the case, include some specific circumstances related to Alvarenga's behavior that could be taken into account to adjust the amount. Those circumstances are the lack of payment or at least the late payment of salary, the lack of sporting interest by the Club in relation to the Player by willing to transfer him to another team without any initial payment. However, the Sole Arbitrator, finds he cannot depart from the fact the FIFA DRC considered a Player's unjustified termination of the Labor Contract was performed on August 3, 2108, almost 4 years before the term fixed by the parties, this is during the protected period, according with the FIFA RSTP definition. With these contradictory circumstances, the Sole Arbitrator considers that a mitigation of the compensation cannot apply.

128. The starting date for the calculation of the annual interest must be the date of the termination of the Labor Agreement, this is, on 3 August 2018.

129. The Sole Arbitrator has arrived at the following conclusions:

a) FIFA has no standing to be sued in the economic dispute.

b) The Appellant is not legitimated to ask for sporting sanctions. Thus, no sporting sanction can be applied.

c) The parts of the Appealed Decision that cannot be modified in this arbitral procedure are that i) the Player has acted in breach of the Labor Contract without just cause, ii) the Player has to pay Alvarenga a compensation, iii) Santaní is jointly and severally liable for the payment of the compensation.

d) The compensation to be paid jointly and severally by the Player and Santaní to Alvarenga is EUR 53,935.49.

e) The 5% annual interest accrued as of 3 August 2018.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 February 2021 by Alvarenga Futebol S.A.D., against the decision issued on 13 November 2020 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The decision issued on 13 November 2020 by the FIFA Dispute Resolution Chamber is confirmed, with the exception of point 2 of its operative part, which is modified as follows:

   "EUR 53,935.49. as compensation for breach of contract without just cause plus 5% interest p.a. as from 3 August 2018 until the date of effective payment".

3. (…).

4. (…).

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