Arbitration CAS 2016/A/4664 Club Real Betis Balompié S.A.D. v. William Lanes de Lima, award of 24 April 2017

Panel: Mr Rui Botica Santos (Portugal), President; Mr Michele Bernasconi (Switzerland); Mr Ercus Stewart (Ireland)

Football
Termination of the employment contract with just cause by the player
Scope of application of Article 18 para. 4 RSTP
Just cause of termination
Application of Article 17 RSTP to the consequences of a termination of contract with just cause

1. **Whereas Article 18.4 of the FIFA Regulations for the Status and Transfer of Players (RSTP) states that *"[t]he validity of a contract may not be made subject to a successful medical examination (…)",* Article 18 RSTP in its very nature only contains special provisions relating to contracts between professionals and clubs. As such, Article 18.4 RSTP cannot be extended to contracts (such as loan agreements) entered into between two clubs.**

2. **Unless there exist any justifiable reasons for delayed payments, a player who does not receive his salary, provided the amount is not insubstantial or secondary, despite having placed his club on notice, may generally terminate his employment contract with just cause. The period mentioned in the FIFA Commentary, i.e. three months, shall not be considered a fixed minimum amount but is rather an example of a quantification that without any doubt can justify a termination without further notice.**

3. **It is generally accepted that in cases of termination of an employment contract by a player based on just cause, the consequences of Article 17.1 RSTP shall apply, notwithstanding the slightly misleading title of such provision, when compared with Article 14 RSTP. Article 17.1 RSTP essentially requires the deciding body to first look for the existence or not of a liquidated damages clause in the contract, and proceed to the other objective criteria in the absence of such a liquidated damages clause.**

I. THE PARTIES

1. Club Real Betis Balompié S.A.D., (the "Appellant" or "Betis") is a Spanish football club currently competing in La Liga, Spain's top professional association football division. It is a member of the Real Federación Española de Fútbol ("RFEF"), which is affiliated to the

football's world governing body, the Fédération Internationale de Football Association ("FIFA").

2. Mr. William Lanes de Lima (the "Respondent" or the "Player") is a Brazilian professional football player.

II. INTRODUCTION

3. On 14 November 2009, the Player filed a claim against Betis before the FIFA Dispute Resolution Chamber (the "FIFA DRC"). He claimed that Betis had breached his employment contract and sought a finding that he was justified in terminating the same. The FIFA DRC decided on 18 February 2016 (the "Appealed Decision") and the grounds of the Appealed Decision were notified to the Appellant on 2 June 2016. The FIFA DRC held *inter alia*:

> *"3. The Respondent, Real Betis Balompié, is ordered to pay the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 6,900 plus interest of 5% p.a. as of 14 November 2009 until the date of effective payment.*
>
> *4. The Respondent 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 622,800 plus 5% interest p.a. as of 14 November 2009 until the date of effective payment".*

4. The Appealed Decision found the Respondent to have had just cause to terminate his employment relationship with the Appellant which had arisen from an employment contract entered into with the latter on 16 May 2008 (the "Employment Contract"), concluding that the Appellant had breached its contractual duties by failing to pay the Respondent's salary for the months of August, September and October 2009. The Appellant was consequently ordered to pay the Respondent EUR 6,900 corresponding to his outstanding salaries and EUR 622,800 as compensation for the damages suffered for breach of contract. An annual interest rate of 5% was added to both amounts, payable as from 14 November 2009 until the date of full payment. The appeal that is the subject of the present proceedings seeks, *inter alia*, findings that the Appellant did not breach its contractual obligations towards the Respondent, and that the Respondent did not have just cause to terminate his contractual relationship with the Appellant.

5. The FIFA DRC proceedings were temporarily stayed in September 2011 as the FIFA General Secretariat was of the view that FIFA was not in position to entertain the Respondent's claim given that the Appellant had been placed under administration and was facing insolvency proceedings before the Spanish courts. The FIFA General Secretariat's decision was overturned following an appeal by the Respondent to the Court of Arbitration of Sport ("CAS"), which ordered the FIFA DRC to resume the proceedings (CAS 2011/A/2586).

6. Subsequent to the FIFA DRC proceedings, the Appellant, on 10 August 2010, filed a case before the Spanish Ordinary Courts in Seville, seeking findings to the effect that the Player had in fact breached the Employment Contract and was therefore liable to pay EUR 30,000,000, corresponding such amount to the sum of the liquidated damages fixed in the Employment

Contract. The Respondent appeared as a party before the Spanish Ordinary Courts but did not file any counterclaim against the Appellant. The Appellant's case was dismissed by the Spanish Ordinary Courts. The issue as to whether or not the Player breached the Employment Contract, and consequently whether he ought to pay Betis EUR 30,000,000 in compensation, was further heard and determined on appeal by the Andalusian Supreme Court, in a judgment dated 21 July 2016.

III. FACTUAL BACKGROUND

7. The facts leading to the present arbitration as presented by the Parties can be summarized as follows.

i. The Parties' Contractual Relationship

8. On 13 August 2007, the Parties entered into a five season employment contract under which the Appellant agreed to employ the Respondent as a professional player.

9. On 16 May 2008, the Parties terminated the aforementioned contract by mutual consent and entered into the Employment Contract. The Employment Contract was valid from the date of its signature until 30 June 2012, i.e. four seasons, and could be renewed for an additional season if the Player played at least 25 official matches for Betis in the 2010/2011 and the 2011/2012 season. The Employment Contract was however not renewed for the fifth additional season. In theory, the Player was entitled to a salary of EUR 32,200 per season and a total *"prima de contrato"* of EUR 1,110,400, divided as follows: EUR 341,800 for the 2009/2010 season, EUR 384,300 for the 2010/2011 season and EUR 384,300 for the 2011/2012 season.

10. The relevant parts of the Employment Contract read as follows:

> *"(…)*
>
> *Second – the following contract will have duration of 5 seasons (always determinate), starting its validity the date 8/07/08 and ends at the date 30 of June of 2012 (S/2011-2012).*
>
> *Third – the player will receive as a financial compensation the following amounts*
>
> *1º Mensual salary (obligatory) season 07/08, 3 mensualities of 2,300€ in the following seasons season/07-08, season/08-09, season/09-10, season/10-11, 14 mensualities of 2,300€ each one (including 2 paid bonus).*
>
> *2º Premium of contract (…) in the season/08-09, season/09-10 341,800€ in each of them, in the season/10-11 and season 11-12, 384,300€ per season. The amounts will be paid at the end of each season with 4 promissory notes with deadline on September, October, November and December.*
>
> *(…)*

ADDITIONAL CLAUSES

(…)

2º (…)

In case of unfulfilment of the present clause by any of the contracting party, a penal compensation clause will be agreed in concept of lawsuit for damages that will ascend to three million Euros 30,000,000€.

(…)

5º The following contracted will be renovated by both parts, in the season 2012-2013 only if the player (…) takes part in a total of 25 official matches in the Real Betis Balompié team in the seasons 2010-2011 and 2011-2012 (…)".

11. The Player sustained an injury on his right ankle in the 2008-2009 season while playing for Betis. The Respondent's medical staff submitted him to physiotherapy and advised him to rest for the remainder of the season.

12. The Player resumed training in the 2009-2010 pre-season and suffered a recurrence of the knee injury. He was again sent to physiotherapy by the Respondent´s medical staff and cleared to continue attending the training sessions.

ii. The Player's projected loan transfer to Clube de Regatas do Flamengo

13. On 10 August 2009, the Brazilian club Clube de Regatas do Flamengo ("Flamengo") made an offer ("Flamengo's Offer to Betis") to sign the Player on loan from Betis. Flamengo's Offer to Betis was subject to the Player passing a medical test with Flamengo and specifically read as follows:

"Clube de Regatas do Flamengo, comes herewith, to manifest their interest in contracting athlete William Lanes de Lima (…). The deal will be done on loan (…). The transaction will be made effective after athlete's wages are settled and medical examination performed (…)".

14. On the same date, Flamengo followed its offer with another letter to the Player ("Flamengo's Offer to the Player"), enclosing the employment terms and conditions it proposed to enter into with the Player. Flamengo's Offer to the Player read as follows:

"We confirm our interest in contracting you after the confirmation of loan by Real Betis, holder of your federative link, on the following conditions:

- *Employment contract until 06/30/2010;*
- *Monthly salary of R$95.000,00 (ninety and five thousand realis)*

- *Partial or integral purchase option of economical and/or federative rights by Clube de Regatas Flamengo.*

We communicate that the proposition presented will be effective after medical examinations are performed, which must occur until 08/20/2009 at the most".

15. On 12 August 2009, the two clubs entered into an agreement (the "Loan Agreement") under which Betis agreed to transfer the Player to Flamengo on loan from 12 August 2009 to 31 July 2010. The relevant parts of the Loan Agreement provided as follows:

"(…)

Second – the Player accepts the cession mentioned here of his federative rights and he compromise himself to integrate in the discipline of C.R. Flamengo, since today until the 31 of July 2010, being himself forced to be integrated to the Betis football team when the period ends.

The Player won't be able to ask the Real Betis Balompié S.A.D. his remuneration during the cession period (…) because during this period he will be transferred to C.R. Flamengo (…)".

16. On 18 August 2009, the Player travelled to Rio de Janeiro and was thereafter submitted to a medical examination by Flamengo on 19 August 2009.

17. On 21 August 2009, Flamengo's medical staff issued the results of the medical examination (the "Medical Report") stating that the Player had failed the medical on account of a chronic injury to his right ankle. The relevant parts of the Medical Report read as follows:

"(…)

Subject: Athlete William Lanes de Lima Medical Examinations

Athlete evaluated on August 19, 2009 by the medical department of C.R. Do Flamengo reports occurrence of severe sprain of right ankle in his club of origin in the month of February 2009. (…).

At the physical examination it was detected instability, moderate oedema and light pain of anterior right ankle. In the complementary examination with magnetic arthroresonance of right ankle performed on 08/20/2009 the following lesions were detected: marginal osteophyte on the anterior edge of distal extremity of tibia and talar beak; osteochondral lesion of the lateral portion of talar dome with bone marrow edema in adjacency; anterior talo fibular ligament poorly individualised suggesting lesion. Fibrocicatrical tissue in the deltoid ligament (…).

Conclusive opinion: the athlete has a chronic lesion of the right ankle and this department vetoes his admission.

(…)".

18. On 25 August 2009, Betis requested the RFEF to send the Player's International Transfer Certificate ("ITC") to the Confederação Brasileira de Futebol ("CBF").

19. After having communicated the results of the Medical Report to Betis, on 26 August 2009, the Player informed Betis that he remained at the Appellant's service and was looking forward to receiving its directions.

20. On 27 August 2009, Betis informed the Player that pursuant to Article 18.4 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), the operation of a loan or permanent transfer of a player could not be subjected to a medical examination. Betis informed the Player that they had already asked the RFEF to send his ITC to the CBF and further claimed that the Employment Contract with the Player had been terminated by mutual consent, following his projected transfer to Flamengo.

21. On 28 August 2009, Flamengo officially communicated the results of the Medial Report to Betis and informed the latter that they could not proceed with the Player's transfer, which was subject to the Player passing a medical examination.

22. On 31 August 2009, Betis informed Flamengo that pursuant to Article 18.4 of the FIFA RSTP, the operation of a loan or permanent transfer of a player could not be made subject to a medical examination. Betis further claimed that its Employment Contract with the Player had been terminated by mutual consent following the projected transfer of the Player to Flamengo and Betis' request to the RFEF to send the Player's ITC to the CBF.

23. On 9 September 2009, the Player informed Betis that he was still under contract with Betis and consequently he asked the club to provide a road map for his medical treatment and to undertake to pay his salary for the 2009-2010 season.

24. On 25 September 2009, the Player sought a second opinion on the injury to his right ankle from Mr. Rodrigo Campos Lasmar, an orthopaedist. Mr. Lasmar compiled a report ("Mr. Lasmar's Medical Report") finding that the Player had a chronic rupture in his right ankle and osteochondral lesions of the talus which required surgery. He was of the opinion that the Player was not in a position to resume his duties.

25. On 30 September 2009, the Player underwent a successful surgery to his right ankle at his own costs and expenses.

26. Thereafter, the Player sent several notices to Betis on 30 September 2009 and 27 October 2009 asking the latter to comply with its contractual obligations including paying his salary for the months of August, September and October 2009 and covering the surgical expenses he had incurred to treat his right ankle, failing which he would terminate the Employment Contract with just cause. However, his several notices to Betis were not answered.

27. On 10 November 2009, the Player invoked Article 14 of the FIFA RSTP and informed Betis that he had terminated the Employment Contract with just cause.

iii. The FIFA Players' Status Committee proceedings

28. On 14 November 2009, the Player filed a claim against Betis before the FIFA DRC. He claimed that Betis had breached the Employment Contract and therefore sought a finding to the effect that he was justified in terminating the same. He made the following prayers:

    a) That Betis be ordered to pay his outstanding salaries for the months of August, September, October and November 2009, totalling to EUR 9,200;

    b) That Betis be ordered to pay him EUR 1,248,000 in compensation;

    c) That Betis be ordered to pay him EUR 50,000 as a refund of the expenses he had personally incurred towards the surgery;

    d) That a 5% annual interest be attached on the amounts claimed; and

    e) That sporting sanctions be imposed on Betis.

29. In defence, Betis submitted that:

    a) The Employment Contract was suspended with the Player's loan transfer to Flamengo. Therefore, Betis did not owe any duties or obligations towards the Player;

    b) Pursuant to Article 18.4 of the FIFA RSTP, a transfer agreement cannot be subjected to a positive medical result;

    c) In any case, it was Flamengo who breached the Transfer Agreement. The Player must therefore be sanctioned for breaching his duties towards Betis under the Employment Contract; and

    d) Flamengo and the Player had fraudulently fabricated the Medical Report in order to enable the Player to join Flamengo on a free transfer basis.

30. On 25 March 2010, and through the CBF, the Brazilian club Atlético Rondoniense petitioned the FIFA Players' Status Committee ("FIFA PSC") for a provisional ITC in favour of the Player.

31. On 10 August 2010, Betis commenced separate proceedings against the Player before the Spanish courts seeking orders to the effect that the Player be found to have breached the Employment Contract and consequently ordered to pay Betis the liquidated damages clause of EUR 30,000,000 fixed therein. Betis' claim was dismissed via a judgment rendered by the Spanish Ordinary Higher Court in July 2016.

32. On 17 August 2010, the Player signed an employment contract with the Brazilian club Atlético Mineiro (the "New Contract"), valid from the date of signature to 19 June 2012. He was entitled to a monthly salary of 60,000 Brazilian Reals (approximately EUR 25,000). In total, the remuneration due to the Player's new employment contract with Atlético Mineiro amounted to EUR 575,000 (i.e. EUR 25,000 x 23 months).

33. On 17 January 2011, the RFEF informed FIFA that Betis had been placed under administration due to its insolvency.

34. On 6 September 2011, the FIFA General Secretariat informed the Parties that as a general rule, its judicial bodies *"(…) cannot deal with cases of clubs which are in a bankruptcy proceeding, i.e. inter alia under administration"*. He consequently, informed the Parties that FIFA did not appear *"(…)to be in a position to further proceed with the investigation in the present case"*.

35. On 27 September 2011, the Player filed an appeal *(CAS 2011/A/2568 William Lanes de Lima v. FIFA & Real Betis Balompié S.A.D)* with the CAS, appealing the FIFA General Secretariat's decision (the "FIFA Bankruptcy Decision") to decline to adjudicate his claim on account of Betis' insolvency.

36. On 13 June 2012, the Spanish courts lifted the administration orders placed on Betis, clearing the Appellant to resume normal operations.

37. On 4 October 2012, the CAS rendered its award in *CAS 2011/A/2568 William Lanes de Lima v. FIFA & Real Betis Balompié S.A.D* and set aside the FIFA Bankruptcy Decision. The CAS ordered that the Player's claim *vis-à-vis* Betis be referred to FIFA for hearing and determination.

38. On 18 February 2016, the FIFA DRC rendered the Appealed Decision and held as follows:

> *"1. The claim of the Claimant, William Lanes de Lima, is admissible.*
>
> *2. The claim of the Claimant is partially accepted.*
>
> *3. The Respondent, Real Betis Balompié, is ordered to pay the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 6,900 plus interest of 5% p.a. as of 14 November 2009 until the date of effective payment.*
>
> *4. The Respondent 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 622,800 plus 5% interest p.a. as of 14 November 2009 until the date of effective payment.*
>
> *5. (…)*
>
> *6. Any further claim lodged by the Claimant is rejected.*
>
> *(…)".*

39. The Appealed Decision was based on the following grounds:

    a) The Player's Employment Contract with Betis remained in force given that the Player never signed an employment contract with Flamengo. Betis was therefore under a duty to continue paying the Player's salaries, but breached this duty.

b) The Player had just cause to terminate the Employment Contract for having not been paid his August, September, October and November 2009 salaries in addition to Betis having failed to cater for his medical expenses.

c) Betis were liable to pay the Player EUR 6,900, being the Player's monthly salaries for August, September and October 2009, which were due prior to the termination of the Employment Contract.

d) The Player was to be compensated in accordance with Article 17.1 of the FIFA RSTP, and in particular the value remaining under the Employment Contract, which totalled to EUR 1,197,800, comprised of EUR 23,000 as salary for the 2009/2010 season, EUR 64,400 as salary for the 2010/2011 season, EUR 64,400 as salary for the 2011/2012 season and EUR 1,110,400 as "premium of contract" for the 2009/2010, 2010/2011 and 2011/2012 seasons. The monies due for the 2012/2013 season would not be considered given that the extension of the Employment Contract was subjected to certain terms and conditions. The amount of EUR 575,000 earned under the New Contracts had to be deducted from the compensation.

e) A 5% annual interest rate was to be added to all the amounts due, with effect from 14 November 2009, the date the Player filed his FIFA DRC claim; and

f) The Player's request for a reimbursement of the medical expenses had to be rejected as it *"lack*[ed] *a contractual basis"*.

IV. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

40. On 17 June 2016, the Appellant filed its Statement of Appeal pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). The Appellant named the Player and FIFA as respondents and nominated Mr. Michele Bernasconi, Attorney-at-law, Zurich, Switzerland, as arbitrator. The Appellant also sought a stay of the execution of the Appealed Decision.

41. On 24 June 2016, the CAS Court Office informed the Appellant that pursuant to CAS jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal, meaning there was no need for an application for stay. The Appellant was consequently granted 3 days to state whether it maintained its application for a stay.

42. On 27 June 2016, the Respondent nominated Mr. Ercus Stewart S.C., Barrister in Dublin, Ireland, as arbitrator.

43. On 28 June 2016 and 4 July 2016, the Appellant informed the CAS Court Office that it maintained its application for a stay.

44. On 27 and 29 June 2016, the Appellant filed its Appeal Brief together with exhibits it intended to rely on. The Appellant made, *inter alia*, the following evidentiary requests:

a) That FIFA be asked to produce a copy of the file leading to the Appealed Decision;

b) That FIFA be asked to produce a copy of the file involving the claim filed by Betis against Flamengo and the Player before the FIFA judicial bodies;

c) That FIFA and the CBF be asked to provide a list of all the clubs the Player had signed for from January 2010 to date;

d) That the RFEF be asked to produce a copy of the two employment contracts the Player had signed with Betis, and a copy of the contracts he had signed with Sport Clube Corinthians and Atlético Mineiro.

45. On 4 July 2016, FIFA sought to be discharged as a party from these proceedings on grounds that it merely acted as the decision making body leading to the Appealed Decision.

46. On 5 July 2016, the CAS Court Office invited the Appellant to state whether it wished to maintain FIFA as a respondent.

47. On 7 July 2016, the Appellant withdrew its appeal *vis-à-vis* FIFA.

48. On 7 July 2016, the CAS Court Office informed the Parties that FIFA had been discharged as a party. On the same date, the Respondent replied to the Appellant's application for a stay, and requested that the same be dismissed.

49. On 20 July 2016, the Respondent requested that his 20-day deadline for filing the Answer be fixed only after receipt by CAS of the payment by the Appellant of its share of the advance of costs. This application was granted.

50. On 15 September 2016, the President of the CAS Appeals Division rendered his ruling on the Appellant's request for a stay and dismissed the same.

51. On 22 September 2016, the Parties were informed that pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

President:	Mr. Rui Botica Santos, attorney-at-law, Lisbon, Portugal
Arbitrators:	Mr. Michele A. R. Bernasconi, attorney-at-law, Zurich, Switzerland
	Mr. Ercus Stewart S.C., Barrister, Dublin, Ireland.

52. On 18 September 2016, the Respondent filed his Answer together with exhibits he intended to rely on.

53. On 4 October 2016, the CAS Court Office invited the Parties to state whether they wanted a hearing or preferred to have the matter decided on the basis of their written submissions.

54. On 11 October 2016, the Appellant stated its preference to have the matter decided on the basis of the Parties' written submissions.

55. On 12 October 2016, the Respondent informed the CAS Court Office of his wish for a hearing. On the same date, the Parties were informed that the Panel had decided to hold a hearing.

56. On 26 October 2016, the CAS Court Office requested FIFA to produce a copy of the file leading to the Appealed Decision and also that leading to the appeal in *CAS 2011/A/2586 William Lanes de Lima v. FIFA & Real Betis Balompié S.A.D.*

57. On 16 November 2016, FIFA sent a copy of the files leading to the Appealed Decision.

58. On 2 December 2016, the Appellant filed its submissions on the issues arising from the FIFA file.

59. On 15 December 2016, the Respondent replied to the Appellant's submissions on the issues arising from the FIFA file.

60. On 16 December 2016, the CAS Court Office issued an Order of Procedure, which was returned duly signed by the Parties on the same day.

61. On 19 December 2016, a hearing was held in Lausanne, Switzerland. The Panel was assisted by Mr. Daniele Boccucci, Counsel to the CAS. The following persons attended the hearing:

For the Appellant

- Mr. Enrique Arnaldo Benzo, attorney-at-law, Seville, Spain
- Mr. Pablo de los Santos Parejo, attorney-at-law, Seville, Spain

For the Respondent

- Mr. Breno Costa Ramos Tannuri, attorney-at-law, São Paulo, Brazil
- Mr. William Lanes de Lima – the Player
- Mr. Fernando Benedini, as a witness, attending by conference call
- Dr. Rodrigo Campos Lasmar, as an expert witness, attending by conference call.

62. At the onset of the hearing, the Parties confirmed that they had no objection to the composition of the Panel, and went on to confirm the factual aspects of this case as set out in each other's pleadings. The Appellant also admitted the credibility and accuracy of the witness statements filed by Mr. Fernando Benedini and Dr. Rodrigo Campos Lasmar and therefore waived the right to cross examine and/or have these witnesses summoned to orally testify on the contents of their statements.

63. At the end of the hearing, the Parties stated that they were satisfied with the manner in which the hearing had been conducted and that their right to be heard had been respected. The Panel also invited the Parties to explore the possibility of reaching an amicable settlement and to report to the CAS Court Office. The Parties were open to this possibility and agreed on a deadline of 23 January 2017 within which to revert to the Panel in the positive or negative.

64. On 27 January 2017, the Parties informed the CAS Court Office that they had failed to reach a settlement.

V. THE PARTIES' RESPECTIVE POSITIONS

65. Below is a summary of the facts, allegations and submissions raised by the Parties. While the Panel has considered all the evidence, allegations, submissions and legal arguments presented by the Parties in the proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Appellant

a) Law applicable

66. The laws applicable to this dispute are Spanish law, the FIFA regulations and Swiss law. Spanish law because *"the parties have agreed before on the contract the application of a specific national law, Spanish law"*.

b) The Player was transferred to Flamengo

67. Flamengo's Offer to the Player had all the requisites of an employment contract as laid out in FIFA Circular No. 1171/2008. It contained the proposed salary and duration valid through 6 June 2010. It became a binding employment contract once the Player and Flamengo appended their signatures thereto. There was no need for these terms to be reflected in the Loan Agreement, and neither was there a need for Flamengo and the Player to specify these terms on a separate written agreement, given that Article 8.1 of Spain's Royal Decree 1/1995 recognises the validity of oral contracts.

68. Those parts of Flamengo's Offer to Betis and of Flamengo's Offer to the Player are ineffective by reason of Article 18.4 of the FIFA RSTP, which prohibits a transfer agreement from being subjected to a medical examination. This however does not render the rest of the Loan Agreement invalid. In any case, the Loan Agreement does not contain any clause subjecting its validity to the Player successfully passing a medical.

69. Betis' duties and obligations towards the Player ceased with his transfer to Flamengo, which had effectively been sealed when the RFEF sent his ITC to the CBF. In fact, pursuant to Article 10 of the FIFA Commentary on the FIFA RSTP (the "FIFA Commentary"), the effects of a player's employment contract with his original club remain suspended during the period in which a player is loaned to another club. This was reflected in the Loan Agreement, which is

clear that Betis' would no longer be obliged to pay the Player's salaries during his loan to Flamengo. The FIFA DRC thus erred by overlooking these provisions.

c) The Player's and Flamengo's liability towards Betis

70. By subjecting the Player's transfer to a successful medical examination, Flamengo contravened Article 18bis of the FIFA RSTP as this inevitably placed the Player's employment status in a dilemma. This equally interfered with Betis' contractual relationship with the Player, more so given the fact that the Player's ITC had already been sent to the CBF.

71. Flamengo further breached the Loan Agreement by failing to pay the Player's salary for a period of 3 months.

72. It is clear that Flamengo induced the Player to breach the Employment Contract by allowing him to train with it before proceeding to refuse to sign him on loan on grounds that he had failed the medical.

73. It follows that both Flamengo and the Player are liable, and should compensate Betis. The compensation should be determined following the principles established in CAS 2005/A/902, CAS 2008/A/1519 and CAS 2010/A/2147, considering the fact that:

    a) The Employment Contract had a liquidated damages clause of EUR 30,000,000;

    b) Betis had paid a transfer fee of EUR 2,380,000 to acquire the Player for a projected period of five seasons. However, the Appellant was unable to amortise EUR 1,698,000 of this amount as a result of the Player's premature termination of the Employment Contract;

    c) The Player had received EUR 1,100,000 in salaries during his time with Betis; and

    d) The termination took place in the protected period, for which sporting sanctions ought to be imposed on the Player.

74. Sporting sanctions should also be imposed on Flamengo for inducing the Player to terminate the Employment Contract.

d) The termination was unjustified

75. The Player had no just cause to terminate the Employment Contract. An ITC had initially been requested for him to join Flamengo, only for him to later change his mind and sign for Atlético Mineiro. In addition, Betis was not in a position to recall the Player and register him at the RFEF because they were not in possession of his ITC. The Player therefore terminated the Employment Contract without just cause.

76. The Player had already been transferred to Flamengo. His 3 months' salaries were therefore due from Flamengo and not Betis.

77. Even assuming that his transfer to Flamengo fell through, the Player would still have had no just cause to terminate the Employment Contract given that he had only gone unpaid for 3 months, and the season (2009-2010 season) was yet to end. Pursuant to Article 16 of the FIFA RSTP, a contract can only be terminated during the season by mutual consent.

78. The true reason as to why Flamengo declined to sign an employment contract with the Player is because they had failed to agree on the personal terms. The Medical Report was simply a disguise. This is evident in a letter dated 9 September 2009 from the Player's representative to Betis in which he informs Betis that *"our client and (…) Flamengo did not arrive at an agreement in terms of the employment terms necessary to agree the transaction"*. The Player fraudulently manufactured the failed medical examination in order to free himself from the Employment Contract and sign for Atletico Mineiro as a free agent. This is corroborated by the fact that he did not sign for Atlético Rondoniense despite having been granted provisional registration by FIFA.

e) The Player's representative must be sanctioned for inducement

79. The Player's representative induced the Player to breach the Employment Contract and must therefore be sanctioned in accordance with Article 17.5 of the FIFA RSTP.

80. After sending Betis the letter dated 9 September 2009, the Player's representative subsequently sent several letters to Betis asking them to recall the Player without filing any action against Flamengo, and ostensibly facilitated the FIFA Players' Status Committee petition to be provisionally registered for Atlético Rondoniense before proceeding to terminate the Employment Contract and suing Betis before the FIFA DRC.

81. The Player's representatives particularly (i) insisted that Betis were liable to pay the Player's outstanding salaries, notwithstanding the fact that he had been transferred to Flamengo and (ii) advised the Player to train with Atlético Mineiro while his Employment Contract was still in force.

82. It is apparent that the Player's representatives induced him to terminate the Employment Contract so that he could get better terms at Atlético Mineiro. The representatives must be sanctioned in accordance with Article 17.5 of the FIFA RSTP.

f) The compensation awarded to the Player is excessive

83. The compensation awarded to the Player is excessive because (i) Betis did not breach any law. Betis neither terminated the Employment Contract nor acted unfairly and (ii) the Player had in fact breached the Employment Contract by training with Atlético Mineiro without Betis' consent and (iii) the FIFA DRC overlooked Article 17.1 of the FIFA RSTP, particularly the issues highlighted at paragraph 73 above.

84. Pursuant to Article 15.1 of Royal Decree 1006/1985 of 26 June, the maximum amount of compensation payable for premature termination of contracts is 2 months' salary.

85. The FIFA DRC also ignored the administration proceedings facing Betis at the time the Player lodged his claim. It particularly arrived at the compensation in disregard of the fact that the Player had failed to enjoin himself as a creditor in the insolvency proceedings that were pending before the Spanish courts, or at least drawing the Spanish court's attention to his claim *vis-à-vis* Betis. This is an important factor which ought to mitigate the compensation.

g) Prayers and requests

86. The Appellant concludes by asking the CAS to find as follows:

> *"I. The Player and Flamengo should indemnify Real Betis Balompié, Regulations on the Status and Transfer of Players (version 2009) Article 10 Loan of professionals, Article 17 consequences of terminating a contract without just cause. Article 18bis Third-party influence on clubs.*
>
> *II. The contract of assignment is fully valid and contains the necessary labor obligations, Regulations on the Status and Transfer of Players (version 2009) Article 18 Special provisions to contracts between professionals and clubs 4. The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit.*
>
> *III. The Player contract was unilaterally … resolved … without just cause, so must be punished, Regulations on the Status and Transfer of Players (version 2009) Article 13 respect of contract. Article 17.3 consequences of terminating a contract without just cause. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period.*
>
> *IV. The attorney of the player must be sanctioned, Regulations on the Status and Transfer of Players (version 2009) Article 17.5 Any person subject to the FIFA Statutes and regulations (club officials, players agents, players etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned.*
>
> *V. The compensation to player is disproportionate considered by the Chamber is non reasonable and an unjustified amount and breaks article 2 of the Rules Governing the Procedures of the Players´ status Committee and the Dispute Resolution Chamber. It is not considering the Spanish national law nor the Spanish RD 1006/85 nor administration proceedings Spanish law 22/2003".*

B. The Respondent

a) Res judicata

87. The issue as to whether or not the Player breached the Employment Contract, and consequently whether he ought to pay Betis EUR 30,000,000 in compensation is subject of a final and binding decision, having been heard and determined by Spanish Ordinary Higher Court in the judgment of July 2016. It is therefore *res judicata* and cannot be re-litigated before the CAS. This, however, does not *"(…) prevent the CAS to consider the ongoing matter and provide an arbitral award but, certainly, it prevents the Appellant to claim any sort of compensation or indemnity from the Respondent".*

88. Therefore, any and all prayers or requests for compensation sought by Betis in these proceedings must be dismissed.

b) Standing to be sued

89. Betis' claims and requests against Flamengo are fatally defective as the latter lacks standing to be sued in these proceedings. This is corroborated by the fact that Flamengo was neither summoned nor named as a party in the FIFA DRC proceedings leading to the Appealed Decision, nor has it been named as a party in these appeal proceedings before CAS. Betis can only claim damages from Flamengo by filing separate proceedings before the FIFA PSC.

90. The Player's agent also lacks standing to be sued and the Appellant's prayers as sought against the agent must therefore be dismissed.

91. Notwithstanding the above, Article 18bis of the FIFA RSTP does not prohibit a third party or a lawyer from advising a player or club on transfer or employment related matters. Therefore, the Player's representative cannot be held liable for allegedly advising him to terminate the Employment Contract so as to secure better terms with Atlético Mineiro.

c) The Player was never transferred to Flamengo

92. The Player's termination of the Employment Contract was justified. He remained contracted to Betis notwithstanding the latter's conclusion of the Loan Agreement with Flamengo. The Loan Agreement cannot be deemed as a tripartite agreement. It does not contain the employment terms and conditions between the Player and Flamengo. The Player only signed the Loan Agreement as a sign of consent thereto (Article 10 of the FIFA RSTP as read together with the FIFA Commentary).

93. Article 18.4 of the FIFA RSTP does not extend to loan agreements. It only applies to employment contracts. In any case, pursuant to CAS jurisprudence (CAS 2013/A/3314), a transfer agreement may be subjected to the player passing a medical examination.

94. Betis' assertions that the RFEF had sent the Player's ITC to the CBF are misleading. The Loan Agreement was signed when the 2009 FIFA RSTP were in force, during which period the ITC procedure was performed manually, with a new club which could only have registered a player at the new association by depositing a copy of its new employment contact with the player. It is therefore impossible for the Player's ITC to have been issued to the CBF in the absence of a copy of the Player's employment contract with Flamengo. The CBF did not request the Player's ITC from the RFEF. No ITC was ever sent to the CBF.

95. The Player did not sign Flamengo's Offer to the Player. In any case, Flamengo's Offer to the Player cannot be regarded as an employment contract because it did not conform with all the prerequisites of a valid employment contract as enshrined under the FIFA RSTP. Betis knew that the Player's transfer to Flamengo was subject to him passing a medical test.

96. The medical test was performed by one of Brazil's most experienced and renowned doctors, and it is disrespectful for Betis to allege that the doctor conspired the Medical Report.

97. Flamengo's decision not to enter into an employment contract with the Player meant that the Player's employment Contract with Betis was not suspended.

d) Just cause

98. The Player's termination was justified. His August, September, October, and part of November 2009 salaries had remained unpaid notwithstanding several notices sent to Betis. Betis' breach had become unreasonable and persistent to an extent which justified the Player's termination, in line with the FIFA Commentary, as the Player had not been paid for more than three months.

99. Betis had also failed to reimburse the Player's surgery expenses. This was in breach of Article 328 of the Swiss Code of Obligations (the "CO"), pursuant to which an employer must take all reasonable measures to provide his employees with nursing and medical treatment.

e) Compensation

100. The amount and criteria adopted by the FIFA DRC are valid. The FIFA DRC rightly applied Article 17.1 of the FIFA RSTP and not Spanish law, the latter being inapplicable to this matter. It took into account the value remaining under the Employment Contract and the values due to the Player under his new employment contract with Atlético Mineiro. It eventually awarded the Player EUR 622,800, which was less than what he was entitled to, given that the value remaining under the Employment Contract was EUR 1,110,400.

101. In addition, the FIFA DRC overlooked the Player's entitlement to a refund of the expenses he had personally incurred for the surgery and the pay cut he had to take upon signing for Atlético Mineiro. It also ordered that the 5% p.a. interest be calculated with effect from 14 November 2009, the date the Player filed his FIFA DRC claim, as opposed to 10 November 2009, the date of termination.

102. The Player's FIFA claim was filed before Betis went into liquidation and/or receivership. Therefore, Betis cannot seek to have the compensation mitigated on grounds that the Appealed Decision was rendered in disregard of the insolvency proceedings that had been pending before the Spanish courts.

103. The compensation awarded to the Player is therefore fair and proportionate.

f) Prayers and requests

104. The Respondent concludes by asking the CAS to:

"FIRST – To dismiss in full the appeal lodged by the Appellant against the Respondent in front of the CAS;

SECOND – To confirm in full the Appealed Decision rendered by the FIFA DRC;

THIRD – To order the Appellant to pay the full amount of the CAS arbitration costs; and

FOURTH – To order the Appellant to pay a significant contribution towards the legal costs and other related expenses of the Respondent, at least in the amount of CHF 20,000 (twenty thousand Swiss Francs)".

VI. JURISDICTION OF THE CAS

105. 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 him prior to the appeal, in accordance with the statutes or regulations of that body".

106. The jurisdiction of the CAS, which is not disputed, derives from Article 58.1 of the FIFA Statutes (2016 edition) which states as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

107. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.

108. It follows that the CAS has jurisdiction to decide on the present dispute.

109. The Panel is however aware of the several procedural objections raised by the Respondent. It particularly claims that Flamengo and the Player's representative lack standing to be sued and raises a *res judicata* objection at paragraph 110 of its Answer, stating that it does not *"(…) prevent the CAS to consider the ongoing matter and provide an arbitral award but, certainly, it prevents the Appellant to claim any sort of compensation or indemnity from the Respondent"*. Paragraph 110 of the Answer is understood to be a subsidiary request. As such, it is meant to be considered, only once and if the Panel finds any merits to the appeal. For this reason, the Panel will address such objection at the end of the merits section.

110. In relation to the Appellant's prayers that CAS shall impose some orders on Flamengo and the Player's representatives, the Panel holds that no orders can be made against either of these two parties given that neither of them has been named as a party to the present appeal proceedings. Furthermore, FIFA is no longer a party and the prayers for sporting sanctions sought by FIFA are therefore moot. Accordingly, the CAS jurisdiction in these proceedings cannot be extended to Flamengo and/or the Player's representatives.

VII. ADMISSIBILITY

111. The grounds of the Appealed Decision were communicated to the Appellant on 2 June 2016. The Statement of Appeal was filed on 17 June 2016. This was in accordance with the 21-day deadline fixed under Article 58.1 of the 2016 edition of the FIFA Statutes.

112. The admissibility of the appeal is further confirmed by the Order of Procedure duly signed by the Parties and by the lack of any objection by the Respondent.

113. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

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

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

115. In addition to the FIFA regulations, the Appellant also pleads the application of Spanish law in a subsidiary manner, arguing that *"the parties have agreed before ... the contract the application of a specific national law, Spanish law".*

116. The Panel however notes that the Employment Contract does not contain any choice of law clause, or for that matter, any clause expressly providing for the application of Spanish law to govern any disputes or employment relationships between the Parties. As such, there exists no room for the application of Spanish law in as far as Article R58 of the CAS Code is concerned.

117. Reference must therefore be made to Article 57.1 of the FIFA Statutes, which provides as follows:

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

118. Therefore, the Panel finds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary. As for which edition of the FIFA RSTP is applicable, the Panel notes that pursuant to Article 26.1 and 26.2 of the FIFA RSTP 2016 edition *"[a]ny case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations".* Given that the Respondent's FIFA DRC claim was filed on 14 November 2009, it follows that as a matter of principle the 2009 edition of the FIFA RSTP shall be applicable to this particular case.

IX. MERITS OF THE APPEAL

119. The Parties have extensively addressed the Panel on the merits of their respective cases.

120. From the Parties' submissions, the Panel has narrowed down on the following main issues for determination in order to resolve this appeal:

a) Did the Player have just cause to terminate the Employment Contract?

b) If the answer to the above is in the affirmative, what are the legal consequences?

a) Did the Player have just cause to terminate the Employment Contract?

121. Betis' appeal is primarily based on the argument that the Player's termination of the Employment Contract was not justified. Betis submits that the club was under no obligation to pay the Player his salary and/or bring him back to Betis once he failed his medical examination at Flamengo, arguing that the Player had already been transferred to Flamengo and his ITC sent to the CBF. Betis further contends that Flamengo's Offer to the Player amounted to a valid and binding employment contract between Flamengo and the Player, and that his transfer was therefore so sealed with the conclusion of the Loan Agreement. Betis finally notes that Flamengo contravened Article 18.4 of the FIFA RSTP by subjecting the Player's transfer to a medical examination, and argues that the Loan Agreement contains no provision to the effect that the Player's transfer was subject to a medical examination.

122. The Player disputes the above and particularly reiterates that he never concluded an employment contract with Flamengo.

123. Looking at Flamengo's Offer to the Player, the Panel observes that even if it contained the proposed salary and the duration over which Flamengo intended to employ the Player (*cf.* paragraph 14 above), the offer as a whole did not contain all the essential elements of an employment contract. In addition to this, neither did the Player sign the offer, nor has Betis been able to produce a copy of an employment contract formally entered into between the Player and Flamengo. In other words, Betis did not discharge its burden of proof that the Player indeed signed and concluded an employment contract with Flamengo. Based on the evidence and the documents submitted to the Panel, the Panel is satisfied that Flamengo's Offer to the Player remained just that – an offer to employ the Player subject to him passing a medical examination, but it is not a validly binding employment contract nor a validly binding agreement to terminate another, existing employment contract.

124. As mentioned above, the Player failed the medical examination, and Flamengo's Offer did not materialise into a formal employment contract. Other than claiming that the RFEF had already sent the Player's ITC to the CBF, Betis has not produced any evidence to this effect. Its letter dated 25 August 2009 to the RFEF merely amounts to a request to the latter to send the Player's ITC to the CBF. Atlético Rondoniense's FIFA PSC petition dated 25 March 2010 for the Player's provisional ITC through the CBF further can be seen as a further element confirming

that the RFEF had not implemented Betis' requests and that Player's ITC had remained with the RFEF.

125. Based on the circumstances of the present case, the Panel is satisfied that it would be erroneous to construe the Loan Agreement as being a binding employment contract between the Player and his intended new club Flamengo and, at the same time, a binding termination agreement of the existing contractual relationship between Betis and the Player. By signing the Loan Agreement, the Player merely expressed his consent in principle to the transaction. This was and is perfectly in line with the guidelines contained at Article 10.1 of the FIFA Commentary, pursuant to which *"[a] loan contract is in principle only concluded between the two clubs. The player is, however, often asked to co-sign it so as to give his consent to the transfer on a loan basis"*.

126. Although the Loan Agreement is silent on whether the Player's transfer was subject to him passing a medical with Flamengo, Flamengo's Offer to Betis was however clear that they intended to sign the Player provided he passed a medical examination. Betis was aware of, and consented to, Flamengo's intentions and failed to insist on the insertion of a clause to the effect that the Loan Agreement was not subject to the Player passing a medical examination.

127. The Panel also hold Betis to have misconstrued Article 18.4 of the FIFA RSTP by claiming that it prohibits the subjection of a loan agreement to a medical examination. Whereas Article 18.4 of the FIFA RSTP states that *"[t]he validity of a contract may not be made subject to a successful medical examination (…)",* Article 18 of the FIFA RSTP in its very nature only contains *"[s]pecial provisions relating to contracts between professionals and clubs"*. As such, Article 18.4 of the FIFA RSTP cannot be extended to contracts (such as loan agreements) entered into between two clubs. The Panel's finding in this regard is comforted by the findings made on a similar issue in CAS 2013/A/3314, which stated as follows:

> *"44. The Panel notes that the prohibition laid down in Article 18.4 of the FIFA Regulations belongs to Section IV of the regulations, which concerns the "[m]aintenance of contractual stability between professionals and clubs", and is expressly qualified as a "special" provision "relating to contracts between professionals and clubs".*
>
> *45. Therefore, based on a prima facie literal reading, the prohibition in Article 18.4 cannot be applied to contracts between clubs".*

128. In view of the foregoing, the Panel holds that the Player remained Betis' employee. His intended transfer to Flamengo never materialised, and Betis was under a duty to call the Player back to Betis and to continue fulfilling its duties as employer, including paying the salaries due to the Player.

129. Betis, however, failed to pay the Player his salary for the months of August, September, October and part of November 2009, despite having received several reminders from the Player. Was the Player justified in terminating the Employment Contract on account of these outstanding salaries? Pursuant to Article 337(2) of the CO, just cause is defined as *"[a] valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be*

expected to continue the employment relationship". Whether or not there exists just cause depends on the specific facts of each case.

130. The Panel has however had the benefit of reviewing several awards previously rendered by the CAS on matters regarding delayed salaries, and notes the following:

(i) In CAS 2014/A/3584, the panel found the player to have had just cause to terminate his contract with the club after he had gone without pay for over 3 months. It stated as follows at para 87:

"(…) the Panel deems it crucial that the Club failed to pay the Player his salaries for over a period of more than three months. The Panel finds that such persistent non-compliance by the Club of its obligations under the Employment Contract legitimately caused the Player's confidence in the Club respecting its duties under the Employment Contract in the future to be lost. It is therefore not so much the amount of outstanding salaries that justify the Player's unilateral termination with just cause, but the persistent nature of the Club's breaches";

(ii) A similar finding was held in CAS 2012/A/2698, which stated as follows at para 124-125:

"124. As highlighted earlier, under Article 14.3 of the FIFA Commentary, a Player who has gone for over 3 months without being paid may in general terms and in the absence of any proven facts that legally justify such delay, be entitled to terminate his contract on condition that he has served his club with a notice of default.

125. Despite having not paid the Player's April, May and June 2009 salaries and receiving several notices from the Player dated 28, 29, 30 and 31 July 2009, and on 5 August 2009, the Club defaulted in settling these sums. This entitled the Player to terminate the Contract because persistent breach of the financial terms of a contract could severely endanger the position and existence of a player";

(iii) When referring to the judgment rendered by the Swiss Federal Tribunal on 2 February 2001 the panel in CAS 2006/A/1180 stated at paragraph 26 that *"[t]he non-payment, or late payment, of remuneration by an employer amounts, in principle, –and particularly if repeated– to "just cause" for the termination of the contract";*

(iv) The award in CAS 2006/A/1180 found the player to have terminated his contract with just cause after his monthly salary had been delayed by more than 90 days; and

(v) Several CAS awards determined that at the end what is relevant is that the unpaid salary causing the termination must be neither insubstantial nor secondary (cf. CAS 2012/A/2775; CAS 2008/A/1447; CAS 2006/A/1100; CAS 2005/A/893. See also the decision of the Swiss federal Tribunal ATF 4A_199/2008, at para. 2).

131. It therefore appears settled that unless there exist any justifiable reasons for delayed payments, a player who does not receive his salary, provided the amount is not insubstantial or secondary, despite having placed his club on notice, may generally terminate his employment contract with just cause. The period mentioned in the FIFA Commentary, i.e. three months, shall, therefore,

not be considered a fixed minimum amount but is rather an example of a quantification that without any doubt can justify a termination without further notice.

132. It follows that under the present circumstances, the Player had just cause to terminate the Employment Contract after having gone unpaid for the months of August, September, October and part of November 2009 and having sent several reminders to his employer.

b) The legal consequences

133. Having found Betis to have breached the Employment contract, it follows that the club must compensate the Player. In fact, it is generally accepted that in cases of termination of an employment contract by a player based on just cause, the consequences of Article 17.1 of the FIFA RSTP shall apply, notwithstanding the slightly misleading title of such provision, when compared with Article 14 of the same Regulations (CAS 2012/A/2775 at N. 126; CAS 2012/A/2910; see also the standing practice of the FIFA judicial bodies: FIFA DRC 97737_44579 (28.09.2007); FIFA DRC 10102000 (13.10.2010); FIFA DRC 6111201 (15.06.2011); FIFA DRC 811535 (10.08.2011); FIFA DRC 312724 (28.03.2012); FIFA DRC 412739 (26.04.2012). Similarly already CAS 2010/A/2202).

134. Betis questions the compensation awarded by the FIFA DRC to the Player. It avers that it is excessive, arguing that pursuant to Article 15.1 of the Royal Decree 1006/1985 of 26 June, the maximum compensation awarded for contracts prematurely terminated is an amount equal to two months' salary. It also argues that the compensation awarded is rendered excessive by virtue of the Player having breached the Employment Contract. On his part, the Player has not challenged the FIFA DRC decision. He merely seeks to have it upheld.

135. The Panel shall therefore confine its assessment of the legal consequences to the issue as to whether or not the compensation awarded by the FIFA DRC shall be confirmed or reduced: in lack of an appeal filed by the Player against the Appealed Decision, an increase is not possible.

136. Article 17.1 of the FIFA RSTP lays down the criteria for determining the compensation due for breach of contracts. It states as follows:

> *"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".*

137. Article 17.1 of the FIFA RSTP essentially requires the deciding body to first look for the existence or not of a liquidated damages clause in the contract, and proceed to the other objective criteria in the absence of such a liquidated damages clause.

138. Although there exists a liquidated damages clause of EUR 30,000,000 unilaterally in favour of the Club, the Player has neither appealed the FIFA DRC decision nor sought to have this clause operate bilaterally in his favour. The Panel is therefore satisfied that such amount of EUR 30,000,000 is not applicable in the case of a breach of contract through the Club, leading to the termination with just cause by the Player. Accordingly, the Panel shall look at all applicable objective criteria, with a view to establishing whether the amount awarded by the FIFA DRC shall be confirmed or reduced.

139. Based on the specific facts of the present case, the Panel deems appropriate to consider, *inter alia, "the remuneration and other benefits due to the player under the existing contract and/or the new contract"*.

140. Although the Employment Contract was valid for five seasons, the 5th season was subject to the Player meeting certain conditions, which in fact were not met. It is therefore accepted that the Employment Contract could have expired at the end of the 4th season, i.e. the 2011/2012 season.

141. The remuneration due to the Player from the date of termination up to its expected expiry date amounts to EUR 1,197,890 calculated as follows:

- EUR 23,000 corresponding to his salary for the 2009/2010 season
- EUR 64,400 corresponding to his salary for the 2010/2011 season
- EUR 64,400 corresponding to his salary for the 2011/2012 season
- EUR 1,110,400 corresponding to the "Premium of contract" for the 2009/2010, 2010/2011 and 2011/2012 seasons.

142. The Player, correctly, mitigated the damage suffered by entering the New Contract, through which he earned EUR 575,000. This amount must be deducted from the remuneration that was otherwise due to the Player up to its expected expiry date, leaving the final compensation at EUR 622,800. Indeed, this was the finding made by the FIFA DRC.

143. The Panel therefore finds the amount of EUR 622,800 granted as compensation by the FIFA DRC to be fair, proportionate and in line with the criteria set forth under Article 17.1 of the FIFA RSTP.

144. In view of the foregoing, the Panel finds Betis to have failed to discharge its burden of proof that the compensation awarded by the FIFA DRC is excessive or ought to be reduced. The Panel rejects Betis' arguments on Article 15.1 of the Royal Decree 1006/1985 of 26 June given that the Appellant was neither able to submit valid reasons to cause the Panel to apply Spanish law nor was it able to provide convincing arguments that the 2 months' salary compensation provided by Spanish law should prevail, under the present circumstances, over the compensation determined in accordance with the applicable FIFA regulations. Further, the Panel is satisfied that the Player did not breach the Employment Contract. Rather, it is Betis' breach which justified the Player's termination..

145. The Panel therefore upholds the EUR 622,890 compensation awarded by the FIFA DRC. In addition, Betis must pay the Player an amount of EUR 6,900, being this the amount of outstanding salaries for the period preceding his termination of the Employment Contract. The Panel therefore holds that interest as calculated by FIFA shall be confirmed, i.e. interest at an annual rate of 5% shall be added to these amounts with effect from 14 November 2009 until the date of effective payment. Another *dies a quo* cannot be determined by the Panel, in lack of any arguments and requests of the Appellant.

146. Following the outcome of these appeal proceedings, and in particular the Appellant's failure to succeed, the Panel sees no need to enter into a debate as to whether or not Betis' appeal is *res judicata* (cf. para. 109 above).

Conclusion

147. The Panel finds the Player to have terminated the Employment Contract with just cause. Betis's appeal is therefore dismissed and the Appealed Decision fully upheld. Against the background of this conclusion, any and all other requests of the parties shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Real Betis Balompié S.A.D. against the FIFA Dispute Resolution Chamber decision dated 18 February 2016 is dismissed.

2. The FIFA Dispute Resolution Chamber decision dated 18 February 2016 is confirmed.

3. (…).

4. (…).

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