Arbitration CAS 2018/A/5635 Clube de Futebol União da Madeira v. Fédération Internationale de Football Association (FIFA) & Club Renaissance Sportive de Berkane, award of 8 November 2008

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Enforcement of a sporting sanction decided by the FIFA Disciplinary Committee against a club
Discretion of CAS not to hold a hearing
Compliance with the the principle of ne ultra petita
CAS power of review regarding the reassessment of disciplinary sanctions
Exclusion of mediation regarding the imposition of disciplinary measures
Scope of review of the CAS regarding the joint liabilities of debtors
Consequences of the failure to summon a respondent in the arbitration

1. **Pursuant to Article R57, para. 2, of the CAS Code, after consulting the parties, a CAS panel may, if it deems itself sufficiently well informed, decide not to hold a hearing. A hearing in a CAS appeals procedure is not mandatory, a party's right to be heard can be fully respected even without a hearing. Simply holding a hearing because the appellant requested one, and forcing all parties to incur costs in attending (even by Skype) when it would have served no purpose other than to repeat written submissions or add oral submissions which are irrelevant to the dispute is not justified.**

2. **Where the appellant has abandoned any request for relief regarding setting aside (and/or amending or reducing) the sanctions imposed in the appealed decision, to set aside or to amend the sanctions imposed in the appealed decision would violate the principle of *ultra petita*.**

3. **CAS panels should reassess disciplinary sanctions only if they are evidently and grossly disproportionate to the offence. Moreover, the claim of a party regarding its alleged financial situation is not a valid justification for its failure to meet its financial obligations.**

4. **A dispute involving an unpaid debt by a club to another club solely involves disciplinary measures imposed by the FIFA Disciplinary Committee in the appealed decision. The imposition of disciplinary measures is not a 'dispute' that can be mediated in the same way a financial dispute between two parties can be. The sanctions imposed by the FIFA Disciplinary Committee are disciplinary sanctions imposed by a governing body on one of its members for failing to comply with directives issued under the rules and regulations of that governing body. It cannot be negotiated or reduced by way of mediation.**

5. A debtor wishing to challenge its joint and several liability, should have done so through an appeal of the FIFA DRC Decision to the CAS. If it failed to do so, the FIFA DRC Decision is final and binding and the joint and several liability imposed on the debtor club under that decision cannot be addressed by the CAS panel in subsequent disciplinary proceedings as it is outside the scope of his powers to do so.

6. If the appellant did not include a player as respondent in the CAS appeal proceedings, the CAS panel would not have the competence to issue any order or direction against the player.

I. PARTIES

1. Clube de Futebol União da Madeira (the "Appellant") is a professional football club with its registered office in Funchal, Portugal. The Appellant is currently competing in third level in Portugal. It is a member of the Portuguese Football Federation, which in turn is affiliated to Fédération Internationale de Football Association.

2. Fédération Internationale de Football Association (the "First Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

3. Club Renaissance Sportive de Berkane (the "Second Respondent") is a professional football club with its registered office in Berkane, Morocco. The Second Respondent is currently competing in the Botola, the highest division of professional football in Morocco. It is a member of the Royal Moroccan Football Federation, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. These proceedings are regarding the enforcement of a decision rendered by the FIFA Disciplinary Committee (the "FIFA DisCo") against the Appellant.

A. Proceedings before the FIFA Dispute Resolution Chamber

6. On 13 October 2016, the FIFA Dispute Resolution Chamber (the "FIFA DRC") rendered its decision on a dispute between the Appellant, the Second Respondent and the player Danilo Leandro Dias (the "Player"), as follows (the "FIFA DRC Decision"):

> *"1. The claim of the [Second Respondent], against the [Player] and the [Appellant] is partially accepted.*
>
> *2. The claim of the [Second Respondent] against the Respondent III, Qarabagh FC, is rejected.*
>
> *3. The [Player] is ordered to pay to the [Second Respondent] within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of MAD 3,692,045.35.*
>
> *4. The [Appellant] is jointly and severally liable for the payment of the aforementioned compensation.*
>
> *5. In the event that the aforementioned amount is not paid within the abovementioned time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *6. The [Second Respondent] is directed to inform the [Player] and the [Appellant] immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
>
> *7. A restriction of four months on his eligibility to play in official matches is imposed on the [Player]. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.*
>
> *8. Any further claim lodged by the [Second Respondent] is rejected".*

7. On 8 November 2016, the Parties were notified of the grounds of the FIFA DRC Decision. No appeal was filed at the Court of Arbitration for Sport ("CAS") within the relevant deadline or at all, so the FIFA DRC Decision became final and binding.

8. On 22 December 2016, the Second Respondent provided the Appellant and the Player with its bank details for the payment of the amount due under the FIFA DRC Decision.

9. On 3 and 4 January 2017, the Second Respondent informed FIFA that the Appellant and the Player had failed to pay the amount due and requested the matter to be sent to the FIFA DisCo.

10. On 4 January 2017, the FIFA Players' Status Committee wrote to the Appellant and the Player reminding them of their payment obligations towards the Second Respondent and stated that if it failed to pay the amounts due by 16 January 2017, the case would be transferred to the FIFA DisCo.

11. On 19 January and 14 February 2017, the Second Respondent informed FIFA that the amounts due still remained unpaid.

12. On 14 February 2017, the Parties and the Player were notified that the matter had been transferred to the FIFA DisCo for its consideration.

B. Proceedings before the FIFA DisCo

13. On 5 December 2017, the FIFA DisCo opened disciplinary proceedings against the Appellant and the Player, and urged them to pay the outstanding debts by 19 December 2017.

14. On 12 January 2018, the Second Respondent notified the FIFA DisCo that the amounts were still outstanding and requested the FIFA DisCo to render a decision accordingly.

15. On 18 January 2018, the FIFA DisCo issued a final warning to the Appellant and the Player regarding the outstanding amounts.

16. On 31 January 2018, the FIFA DisCo rendered the following decision (the "Appealed Decision"):

> *"1. The [Appellant] and the [Player] are pronounced guilty of failing to comply with the [FIFA DRC Decision] and are, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
>
> *2. The [Appellant] and the [Player] are jointly and severally ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 60 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account … with reference to case no. 170924 dfl.*
>
> *3. The [Appellant] and the [Player] are granted a final period of grace of 60 days as from notification of the present decision in which to settle their debts to the creditor, the [Second Respondent].*
>
> *4. If payment is not made by this deadline, the creditor may demand in writing from FIFA for six (6) points to be deducted from the first team of the [Appellant] in the domestic league championship and/or for the case with regard to the [Player] to be resubmitted to the FIFA Disciplinary Committee. Once the creditor has filed this/these request(s), the points will be deducted automatically from the first team of the [Appellant] without a further formal decision having to be taken by the FIFA Disciplinary Committee and/or the case will be resubmitted with regard to the [Player]. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
>
> *5. If the [Appellant] still fails to pay the amount due even after deduction of the points in accordance with point 4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the first team of the [Appellant] to the next lower division.*
>
> *6. In regard to the [Appellant], the Portuguese Football Association, as a member of FIFA, is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the Portuguese Football Association does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*
>
> *7. The costs of these proceedings amounting to CHF 2,000 are to be borne by the debtors jointly and severally and shall be paid according to the modalities stipulated under point 2. above".*

17. On 12 February 2018, the outcome of the Appealed Decision were communicated to the Parties and the Player.

18. On 13 March 2018, the grounds of the Appealed Decision were communicated to the Parties and the Player.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 23 March 2018, pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed a Statement of Appeal challenging the Appealed Decision at the CAS requesting the following prayers for relief:

> *"1. To admit the present appeal;*
>
> *2. To stay the execution of the appealed decision (independently of being automatic and simply out of precaution) in view of its partially disciplinary nature;*
>
> *3. To entirely cancel the appealed decision and particularly exempt the Appellant from being imposed any sporting sanctions;*
>
> *4. To condemn the Respondents to bear all costs connected with the present procedure".*

20. In its Statement of Appeal, the Appellant requested that the matter be heard by a sole arbitrator.

21. On 28 March 2018, the CAS Court Office wrote to the Parties acknowledging receipt of the Statement of Appeal. Further, pursuant to Article R37 of the CAS Code, the CAS Court Office invited the Respondents to file their position on the Appellant's request for provisional measures.

22. On 3 April 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, that it agreed with the Appellant's request for the appointment of a sole arbitrator, and in relation to the request for provisional measures, stated the following:

> *"… taking into consideration its financial nature, the content of art. 124 par. 2 of the FIFA Disciplinary Code and the fact that a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal (Orders on Provisional Measures in the cases CAS 2004/A/780 Christian Maicon Henning v/ Prudentopolis Esporte Clube & FIFA), please be informed that we refrain from objecting to the Appellant's request to stay the execution of the challenged decision in question".*

23. On 3 April 2018, the Second Respondent wrote to the CAS Court Office stating, *inter alia*, that it agreed with FIFA's position regarding the Appellant's request for provisional measures and on the appointment of a sole arbitrator.

24. On 12 April 2016, pursuant to Article R51 of the CAS Code, the Appellant filed its Appeal Brief with the CAS Court Office, requesting the following prayers for relief:

"1. Accept the present appeal and submit the dispute to CAS mediation, following Articles S2 and S6 Par. 1 and 10 of the Code;

2. In case the Respondents reject CAS mediation, seek to resolve the present dispute by conciliation, following Article R42 of the Code;

Subsidiary:

3. In case conciliation is not reached, enforce the financial compensation on the Appellant only in case the Player fails to cancel the relevant debt after having been banned from any football activity worldwide;

4. Depending on the above decision to be taken, determine the liability for payment of proceeding costs and contribution towards the expenses incurred".

25. On 16 April 2018, the CAS Court Office wrote to the Parties inviting the Respondents to submit their Answers within 20 days of receipt of the letter, and also invited the Parties to confirm their respective position on the Appellant's request that this matter be submitted to CAS mediation.

26. On 19 April 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, that it did not deem it appropriate to submit this matter to mediation. On the same date, the Second Respondent wrote to the CAS Court Office stating, *inter alia*, that it too did not deem it appropriate to submit this matter to mediation.

27. On 20 April 2018, in accordance with Article R55 of the CAS Code, the Second Respondent filed its Answer to the Appeal. In its Answer, the Second Respondent made the following requests for relief:

"TO DECLARE the Appeal of UNIAO DA MADEIRA admissible but no founded;

TO CONFIRM the decision pronounced by the FIFA DC on 31 January 2018.

TO ORDER UNIAO DA MADEIRA to be born all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);

TO ORDER UNIAO DA MADEIRA to pay to RSB a total amount of CHF 5'000 as a contribution towards the expense incurred in connection with these arbitral proceedings".

28. On 30 April 2018, the CAS Court Office wrote to the Parties providing them with a copy of the Order on Request for a Stay rendered by the President of the CAS Appeals Arbitration Division. The Order stated as follows:

"The President of the CAS Appeals Arbitration Division Sport, ruling in camera, decides that:

1. The request for a stay of the decision issued by the Disciplinary Committee of FIFA on 31 January 2018, filed on 23 March 2018 by Clube de Futebol União da Madeira in the matter CAS 2018/A/5635 Clube de Futebol União da Madeira v. FIFA & Club Renaissance Sportive de Berkane, is granted.

2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".

29. On 2 May 2018, in accordance with Article R55 of the CAS Code, FIFA filed its Answer to the Appeal. In its Answer, FIFA made the following requests for relief:

"1. To reject the Appellant's appeal in its entirety.

2. To confirm the decision … rendered by the FIFA Disciplinary Committee on 31 January 2018 hereby appealed against.

3. To order the Appellant to bear all costs and to cover all legal expenses incurred within the present procedure".

30. On 4 May 2018, the CAS Court Office wrote to the Parties inviting them to inform the CAS Court Office whether they preferred for a hearing to be held in this matter or for an award to be issued solely on the written papers.

31. On the same date, the Second Respondent informed the CAS Court Office of its preference for an award rendered on the sole basis of the Parties' written submissions.

32. On 8 May 2018, the CAS Court Office wrote to the Parties informing them that Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom, was appointed as the Sole Arbitrator in this matter.

33. On 9 May 2018, FIFA wrote to the CAS Court Office confirming that it wished for an award to be issued on the sole basis of the written submissions.

34. On 11 May 2018, the Appellant informed the CAS Court Office of its preference for a hearing to be held in this matter.

35. On 24 May 2018, the CAS Court Office wrote to the Parties requesting, on behalf of the Sole Arbitrator, that the Appellant submit witness statements for the witnesses indicated in the Appeal Brief by 31 May 2018.

36. On 30 May 2018, the Appellant wrote to the CAS Court Office submitting witness statements for the two witnesses it listed in the Appeal Brief. The contents of these witness statements have been summarised in Section IV of this Award.

37. On 4 June 2018, the CAS Court Office wrote to the Parties inviting the Respondents to submit their comments on the Appellant's witness statements by 11 June 2018.

38. On 11 June 2018, FIFA wrote to the CAS Court Office submitting its comments on the Appellant's witness statements. FIFA's comments have been summarised in Section IV of this Award. The Second Respondent did not submit any comments.

39. On 14 June 2018, the CAS Court Office wrote to the Parties, confirming that the Sole Arbitrator did not consider a hearing necessary in this matter and that he would be issuing an award solely on the written submissions.

40. On 15 June 2018, the CAS Court Office sent the parties the Order of Procedure.

41. On the same date, the Second Respondent wrote to the CAS Court Office submitting a signed copy of the Order of Procedure.

42. On 18 June 2018, FIFA wrote to the CAS Court Office submitting a signed copy of the Order of Procedure.

43. On 18 June 2018, the Appellant wrote to the CAS Court office reiterating its request for a hearing to be held in this matter, stating *"its absolute need to have its appointed witnesses properly heard at a hearing instead of only having their brief written statements taken into consideration"*.

44. On 20 June 2018, the CAS Court Office wrote to the parties on behalf of the Sole Arbitrator as follows:

"The Sole Arbitrator notes that the requested stay of execution of the Appealed Decision was granted by the ICAS on 30 April 2018 and the parties did not reach any agreement regarding mediation/conciliation. Accordingly, save for the issues regarding the admissibility of the Appeal and costs (which will be dealt with in the Award), the Sole Arbitrator notes that the remaining issues at stake based on the Appellant's requests for relief appear to be as follows:

- *Whether the Appealed Decision should be cancelled and the Appellant be exempt from the imposition of any sporting sanctions from the Disciplinary Committee;*
- *Whether the Appealed Decision should be enforced against the Appellant only in case the Player fails to settle the relevant debt.*

The Sole Arbitrator provided the Appellant with the opportunity to submit witness statements for the two witnesses it listed. The Appellant duly did so, and the Respondents were provided an opportunity to respond to those statements. Neither of the Respondents requested the right to cross-examine the two witnesses at a hearing, nor indeed requested a hearing.

The Sole Arbitrator has taken note of the contents of the witness statements submitted by the Appellant and this will be taken into consideration when rendering his decision. However, the Sole Arbitrator struggles to see how any further oral testimony from the two witnesses at a hearing would assist in resolving the above listed issues.

Whilst the Sole Arbitrator is certainly conscious of the Appellant's right to be heard, he is also conscious of the delay and costs involved for the other parties in holding a hearing that neither have stated is necessary.

Accordingly, the Appellant is requested to set out exactly what it believes a hearing in this matter would achieve within ***seven (7) days****.*

The Respondents will be given an opportunity to respond to any submissions made in this regard by the Appellant".

45. On 26 June 2018, the Appellant wrote to the CAS Court Office stating, *inter alia*, that its request for a hearing was also aimed at *"eventually enabling the parties to discuss an amicable settlement"*. The Appellant's submissions in this letter have been summarised in Section IV of this Award.

46. On 27 June 2018, the CAS Court Office wrote to the Parties inviting the Respondents to comment on the Appellant's letter dated 26 June 2018, and also stated:

"… the Sole Arbitrator notes that the Appellant is stating that its request for a hearing would also be aimed at "eventually enabling the parties to discuss an amicable settlement" and draws the parties attention on the fact that the parties can directly discuss settlement proposals at any stage, even outside the context of a hearing".

47. On 28 June 2018, the Second Respondent wrote to the CAS Court Office stating, *inter alia*, that the Parties' rights had been respected. The Second Respondent's submissions have been summarised in Section IV of this Award.

48. On 3 July 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, that the Parties' rights have been respected and noted that the Appellant was even granted the chance to submit witness statements after its Appeal Brief was filed. Accordingly, it reiterated its position that no hearing was needed.

49. On 4 July 2018, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator confirming that in light of the comments by the Parties, the Sole Arbitrator did not reconsider his decision regarding a hearing, and that he would be issuing an award solely on the written submissions. The Appellant was invited to submit a signed copy of the Order of Procedure by 10 July 2018.

50. On 16 July 2018, the Appellant wrote to the CAS Court Office submitting a signed copy of the Order of Procedure. The Appellant crossed out the reference to the Sole Arbitrator deciding this matter on the written submissions, reiterating that it disagreed with the Sole Arbitrator's decision to not hold a hearing.

IV. SUBMISSIONS OF THE PARTIES

51. 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 all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant' submissions

52. In brief summary, the Appellant submitted the following in support of its Appeal:

53. The Appellant *"entirely rejects"* the conclusion of the FIFA DRC Decision, namely as it did not contribute to the Player's breach of his contract with the Second Respondent. Moreover, given that it considered that the Player was the *"true party morally in debt towards the Second Respondent"*, the Appellant considered it *"totally unfair, to say the least"* that the Player could continue with his football career *"without suffering any consequences"*.

54. The Appellant stated that at the time of filing its Appeal, the club was placed second last in the table for the Portuguese Second League. Accordingly, the Appellant submitted that if the Sole Arbitrator was to confirm the Appealed Decision, *"the Appellant would most surely be relegated to the next lower division"*. Relegation *"would automatically entail an absolute absence of TV rights revenues"* and would result in the club suffering *"irreparable sporting and financial damages that could lead to bankruptcy from which none of the parties would benefit"*. The Appellant suggested a payment plan in 36 equal monthly instalments.

55. The Appellant was negotiating the sale of the club to foreign investors, so that it could settle its immediate debts (such as the one owed to the Second Respondent) and attempt to be promoted back to the first division in Portugal. However, in its currently financial position it was *"impossible"* for the Appellant to pay the amount owed to the Second Respondent, and it *"has always been open to reach an amicable solution within the context of a payment plan with several monthly instalments, i.e. a realistic, feasible plan"*.

56. In light of the above, the Appellant suggested the matter be submitted to CAS mediation or failing that, for the Sole Arbitrator to seek to resolve the dispute by conciliation.

a) The Appellant's witness statements

57. The witness statement submitted for Mr Aurélio Sousa (Financial Director of the Appellant) stated as follows:

> *"Acting as the Appellant's Financial Director, I may testify as to the general aspects involving the transfer of the* [Player] *to* [the Appellant]. *Moreover, I am also perfectly aware of the Appellant's good faith concerning the negotiation of its employment contract with the* [Player], *as well as of the* [Player's] *inducement into mistake regarding his contractual relationship and inherent termination with the Second Respondent. Finally, I can explain in detail the financial difficulties preventing the Appellant from immediately making the entire requested payment and the consequences which that would entail for the Appellant and the Second Respondent as well"*.

58. The witness statement submitted for Mr Filipe Silva (President of the Appellant) stated as follows:

> *"Acting as the Appellant's President, I may testify as to any aspects involving the transfer of the* [Player] *to* [the Appellant]. *I am also perfectly aware of the reasons which led to the present appeal procedure, in particular, the Appellant's good faith concerning the negotiation of its employment contract with the* [Player] *and respective registration before the Portuguese FA*, *including the* [Player's] *inducement into mistake with regard to his contractual relationship and inherent termination with the Second Respondent. Finally, amongst other aspects which the Sole Arbitrator may deem as important to clarify, I can explain in detail the financial difficulties*

preventing the Appellant from immediately making the entire requested payment and, above all, its absolutely unfair and disproportionate nature, not to mention the disastrous consequences of its enforcement which most surely will determine the Appellant's end".

b) Submissions on the parties' right to be heard and need for a hearing

59. In relation to its repeated requests for a hearing to be held in this matter, the Appellant submitted the following:

"… the Appellant wishes to start by confirming its disagreement towards the Sole Arbitrator's position to decide upon the present appeal based solely on the Parties' written submissions, i.e. without the holding of a hearing, particularly since it understands that the right to be heard will only prevail if faced with the opportunity to orally address the facts in proper deepness, have its appointed witnesses heard regarding its and Mr Danilo Leandro Dias (the Player) inherent liability and explain its impossibility to comply with the relevant formal decision taken by the Dispute Resolution Chamber.

Under such context, it is of utmost importance to underline the fact that the Appellant was recently sportingly relegated to the Third Portuguese Football League, an amateur competition no longer organized by the Portuguese Professional Football League, a reality which entails the absolute essence of any income from TV rights (Note: being this the Appellant's former main income source), not to mention the obvious most considerable decrease of all other main sources of income (e.g. sponsorship, marketing and ticketing) and which clearly prevents it from generating the necessary amounts under dispute.

On the other hand, the Appellant considers as absolutely unfair to be held responsible for the immediate payment due by the Player and consequently deems that the latter – being the true and only responsible for his contractual breach with the Second Respondent – should be held exclusively liable for the payment at steak [sic], at least until all possible disciplinary sanctions are imposed on him for such purpose. Otherwise, with all due respect and sadness, kindly make sure that the Appellant will end its activity and no payment whatsoever will be made within the present procedure.

In view of the above, the Appellant entirely upholds its previous request for a hearing to be held, preferably via Skype (thereby avoiding unnecessary considerable costs), eventually enabling the parties to discuss an amicable settlement with a realistic payment plan".

B. FIFA's submissions

60. In summary, FIFA rejected the Appellant's arguments and argued that the Appellant failed to submit any proof justifying its failure to pay the amount due to the Second Respondent under the FIFA DRC Decision. Accordingly, there was nothing impeding it from complying with the FIFA DRC Decision and it simply chose not to do so and consequently, *"it is to be concluded that the Appealed Decision was correctly and proportionately passed by the* [FIFA DisCo]*".*

61. FIFA also submitted the following:

a) Breach of Article 64 of the FIFA Disciplinary Code

62. FIFA submitted that the spirit of Article 64 of the FIFA Disciplinary Code ("FDC") was:

> *"… to enforce decisions that had been rendered by a body, a committee or an instance of FIFA or CAS in a subsequent appeal decision, which are final and binding. The possible sanctions stipulated in this article and threatened to be imposed are designed to put the debtor under pressure to finally comply with the decision. This article provides FIFA with a legal tool ensuring to a certain extent that decisions passed by the relevant authority within FIFA (or CAS following an appeal) are respected and ergo the rights of creditors finally be guarded".*

63. FIFA argued that proceedings under Article 64 of the FDC should not be considered as enforcement proceedings *"but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law"*. The FIFA DisCo does not review or modify the substance of the decision being enforced, its sole task is to analyse if the debtor complied with the said decision (*CAS 2006/A/1008, CAS 2008/A/1610, CAS 2013/A/3323* and *CAS 2013/A/3380*). Similarly, in the present proceedings the CAS should only address the question of whether the Appellant respected and complied with the FIFA DRC Decision – not to review the subject or content of the said decision (*CAS 2012/A/3032*).

64. Accordingly, the fact that the Appellant *"entirely rejects"* the conclusion made by the FIFA DRC in the FIFA DRC Decision was, effectively, irrelevant. The present CAS proceedings was not the correct forum in which to question the contents of the FIFA DRC Decision, or whether it was correct to hold the Appellant joint and severally liable for the amount due to the Second Respondent.

65. FIFA submitted that it was *"clear and uncontested"* that the Appellant was joint and severally liable to pay the amount due to the Second Respondent and based on the evidence submitted to it during the FIFA DisCo proceedings, it was equally undisputed that the Appellant had not made any payment (not even a partial payment) in favour of the Second Respondent, nor had the Player.

66. This complete disregard of its financial obligations towards the Second Respondent was in spite of the fact that the Appellant was continually reminded of the said financial obligations and the potential consequences (i.e. disciplinary proceedings) for failing to meet them. FIFA noted that the FIFA DRC Decision was passed on 13 October 2016 and the FIFA DisCo opened disciplinary proceedings on 5 December 2017 (i.e. more than a year later) and in that entire period, the Appellant still failed to make any payment at all to the Second Respondent. Further, *"not only did the Appellant blatantly disrespect a final and binding decision of a FIFA body, but it also decided not to participate at all in the disciplinary proceedings".*

67. FIFA also rejected the Appellant's submissions regarding the difficult financial position it was in. FIFA argued that the CAS should not take this into account as it was an irrelevant argument, as established in CAS jurisprudence (*CAS 2005/A/957; CAS 2004/A/1008 (confirmed by the Swiss Federal Tribunal decision dated 5 January 2007 4P.240/2006)* and *CAS 2013/A/3358*), and in

any event, the Appellant failed to meet its burden of proof under Article 8 of the Swiss Civil Code ("CC") in establishing its financial problems.

68. Moreover, pursuant to Article 2 of the Swiss CC *"[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith"* (*CAS 2010/A/2144*) and the CAS has established that a *"difficult situation alleged by* [a debtor] *is not a justification for its failure to pay its debt to the* [creditor] *… Lack of financial means to satisfy an obligation of payment, or risk of bankruptcy, does not excuse the failure to make the required payment"*(*CAS 2013/A/3358*).

69. In summary, the FIFA DisCo correctly applied Article 64 of the FDC in the Appealed Decision.

b) The sanctions imposed on the Appellant are appropriate

70. FIFA submitted that even though the Appellant did not appear to be contesting the proportionality of the sanctions imposed in the Appealed Decision, the sanctions were nevertheless proportionate. FIFA also noted that notwithstanding its power to review the case *de novo* under Article R57 of the CAS Code, the Sole Arbitrator could only amend the sanctions set out in the Appealed Decision if he considered them to be *"evidently and grossly disproportionate to the offence"* or if he considered the FIFA DisCo *"acted arbitrarily"* (FIFA cited, *inter alia*, *CAS 2014/A/3562, CAS 2009/A/1817* and *CAS 2015/A/4271* as reference).

71. FIFA also stated that the FIFA DisCo deals with cases on a case by case basis taking into account all the relevant circumstances and the principle established by the CAS that *"similar cases must be treated similarly, but dissimilar cases could be treated differently"* (*CAS 2012/A/2750*). Moreover, it was not the intention of the FIFA DisCo to impose overly onerous sanctions that could create additional financial difficulties to the debtor *"that might compromise the payment of the outstanding amount due to another football stakeholder subject to enforcement"*. Excessive fines would not be proportionate whilst meagre fines would fail to encourage the prompt fulfilment of obligations or serve as a deterrent to parties who do not wish to comply with its financial obligations (*CAS 2010/A/2148*).

72. In that context, FIFA submitted that a fine of CHF 20,000 was appropriate and proportionate in light of the outstanding debt, i.e. MAD 3,692,045.35 – especially considering that the Appellant was joint and severally liable for this amount. In addition, FIFA noted that the Appellant was not actually contesting the proportionality of the sanctions.

73. FIFA also rejected the Appellant's argument that the potential deduction of points would *"most surely"* cause the relegation of the club's first team to the next lower division and would have dramatic financial repercussions. Not only did the Appellant fail to meet its burden of proof in establishing this (pursuant to Article 8 of the Swiss CC), but in any event this sporting sanction would only have potentially been imposed by the FIFA DisCo at a later stage if the Appellant had continued to avoid its financial obligations. Since the FIFA DisCo had not actually rendered a decision to impose the sporting sanction of a points deduction, *"it cannot be contested at this stage"*.

74. To prove that the fine imposed was proportionate and consistent, FIFA cited 5 other cases heard by the FIFA DisCo (which it acknowledged to be just a selection of a numerous amount of cases) in which similar amounts were in dispute. FIFA summarised those cases as follows:

Decision	Outstanding amount	Fine	Points to be deducted
130410 PST ZH	CHF 385,315	CHF 20,000	6 points
140113 PST ZH	CHF 426,187	CHF 20,000	6 points
140560 PST ZH	CHF 384,555	CHF 20,000	6 points
150743 PST ZH	CHF 334,092	CHF 20,000	6 points
160534 PST ZH	CHF 315,229	CHF 20,000	6 points

75. Accordingly, FIFA argued that the fine of CHF 20,000 for an outstanding amount of approximately CHF 390,000 in the present case was *"in accordance with the overriding principle of proportionality as well as in line with the* [FIFA DisCo's] *longstanding practice"*.

76. In summary, FIFA argued that the Appealed Decision was consistent with established FIFA DisCo, CAS and also Swiss Federal Tribunal jurisprudence (*CAS 2012/A/3032*; *CAS 2013/A/3358* and *SFT Decision 4P.240/2006 of 5 January 2007*). Moreover, the legality and proportionality of the enforcement system created by FIFA and the sanctions related thereto (including points deductions) have been confirmed by the CAS (FIFA cited, *inter alia*, *CAS 2005/A/944*, *CAS 2011/A/2646* and *CAS 2012/A/3032*).

c) Comments on the Appellant's witness statements

77. In response to the witness statements submitted by the Appellant, in summary FIFA stated the following:

- Issues regarding the transfer of the Player (and/or subsequent termination of his employment contract(s)) were considered in the FIFA DRC Decision which was final and binding, so any potential testimony regarding this would be irrelevant.
- According to CAS jurisprudence already cited (*CAS 2013/A/3358*, par. 59), the alleged financial difficulties which both witnesses would testify about would not, in any event, be justification for its failure to pay its debt to the Second Respondent. Moreover, the Appellant has had over one and a half years to pay its debt, but has failed to make any payment at all.
- *"Finally, it is to be noted that the alleged "disastrous consequences" that the enforcement of the* [Appealed Decision] *would entail, remain unsubstantiated and, in any case, any consequence thereof is sorely the result of the Appellant's omission to pay its debt in due time"*.

d) Submissions on the parties' right to be heard and need for a hearing

78. In response to the Appellant's repeated requests that a hearing be held in this matter, FIFA noted that the requests were made by the Appellant with a view to discussing an *"amicable settlement"*. In this regard, FIFA submitted that it *"cannot settle disciplinary sanctions imposed by one of its independent judicial bodies as a result of a violation of the FIFA regulations"*.

79. FIFA also submitted that if the Appellant wished to reach a settlement with the Second Respondent regarding the amounts outstanding under the FIFA DRC Decision, then it was free to do so at any point – a hearing was not needed to facilitate this.

C. The Second Respondent's submissions

80. In brief summary, the Second Respondent rejected the Appellant's arguments and submitted the following:

- The FIFA DRC Decision was final and binding, so it was undisputed that the Appellant was joint and severally liable for the outstanding amounts owed to the Second Respondent.
- The Second Respondent attempted to recover the outstanding amounts due under the FIFA DRC Decision from the Appellant numerous times but was always met with *"total silence"* by the Appellant. Thus it was *"particularly audacious"* for the Appellant to now claim that it *"has always been open to reach an amicable solution within the context of a payment plan with several monthly instalments…"*.
- The financial and sporting sanctions imposed in the Appealed Decision were proportionate and consistent with CAS jurisprudence (*CAS 2016/A/4595* and *CAS 2013/A/3358*).
- The argument raised by the Appellant that it was in a difficult financial situation and was attempting to negotiate the sale of the club to foreign investors was irrelevant – as confirmed by CAS jurisprudence (*CAS 2016/A/4402*).

a) Submissions on the parties' right to be heard and need for a hearing

81. In response to the Appellant's repeated requests that a hearing be convened in this matter, the Second Respondent submitted that the Appellant never responded to any of the letters sent by it, or indeed by the FIFA DisCo during the proceedings leading up to the Appealed Decision.

82. By commenting of the Player's alleged liability or responsibility, the Appellant was once again attempting to comment on the FIFA DRC Decision, which was final and binding. The merits of the FIFA DRC Decision were therefore *"not subject to a particular interpretation by the Appellant"*. Moreover, the difficult sporting and financial situation of the Appellant – which the Appellant's witnesses would have testified about – was irrelevant to this Appeal (*CAS 2013/A/3358*).

83. In response to the Appellant's suggestion of formulating *"a realistic payment plan"*, the Second Respondent stated that from the notification of the FIFA DRC Decision on 13 October 2016 onwards, the Appellant never once proposed a settlement agreement and also never paid any sum of money to the Second Respondent. Accordingly, the Second Respondent submitted that no hearing was necessary in this matter, and that the Parties' rights had been properly respected in these proceedings.

V. JURISDICTION OF THE CAS

84. Article R47 of the CAS Code provides as follows:

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

85. Moreover, the Appellant relied on Article 58(1) of the FIFA Statutes (2016 edition), which states:

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

86. The jurisdiction of CAS was not disputed by any of the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by all Parties.

87. Accordingly, it follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

88. The Statement of Appeal, which was filed on 23 March 2018, within the time limit stipulated by Article R48 of the CAS Code, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee. The Appeal Brief was filed on 12 April 2018 and, thus, within the time limit stipulated by Article R51 of the CAS Code.

89. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

90. 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".

91. Article 57(2) of the FIFA Statutes (2016 edition) states:

"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".

92. Accordingly the Sole Arbitrator rules that various FIFA regulations including the FDC (2017 edition) would apply, with Swiss law applying to fill in any gaps or *lacuna*, when appropriate.

VIII. MERITS OF THE APPEAL

A. The Main Issues

93. Firstly, the Sole Arbitrator notes that the Appellant has submitted various arguments regarding the purported unfairness and/or disproportionate nature of the payments it owes to the Second Respondent. However, the legality or fairness of the payments owed to the Second Respondent was an issue considered in the FIFA DRC Decision. That decision is final and binding as it was not appealed to the CAS, and therefore cannot be subject to any further appeal in the proceedings at hand.

94. The Appealed Decision in the present Appeal is a decision rendered by the FIFA DisCo, and solely concerns sanctions imposed by the FIFA DisCo on the Appellant (and indeed the Player, although he is not a party to the proceedings at hand) as a result of the Appellant's failure to comply with the final and binding FIFA DRC Decision. Accordingly, any arguments submitted by the Appellant regarding the alleged unfairness or the like of the underlying FIFA DRC Decision are rejected by the Sole Arbitrator without further consideration. The Sole Arbitrator will only consider the issues raised in relation to the Appealed Decision.

95. Additionally, the submissions (and the evidence of its witnesses, Messrs Sousa and Silva) relating to the alleged inducement or concealment by the Player of his contractual problems with the Second Respondent are equally rejected by the Sole Arbitrator. Firstly, as again these submissions have no relevance with regards to the Appealed Decision; and, secondly, as the Player is not a party to the proceedings at hand.

96. In light of the above, the Sole Arbitrator considers that the main issues to be resolved are:

a) Why a hearing was not required in the matter at hand.

b) What are the Appellant's prayers for relief?

c) Should this matter be referred to CAS mediation and/or conciliation?

d) Should the Appealed Decision be dependent on the Player?

The Sole Arbitrator will consider these issues in turn.

a) Why a hearing was not required in the matter at hand

97. The Sole Arbitrator notes that the Appellant repeatedly requested a hearing to be held in this matter and submitted that *"it understands that the right to be heard will only prevail if faced with the opportunity to orally address the facts in proper deepness, have its appointed witnesses heard regarding its and* [the Player's] *inherent liability and explain its impossibility to comply with* the [FIFA DRC Decision]*"*. For the reasons outlined below, the Sole Arbitrator nevertheless determined that a hearing was not required and rendered this Award solely on the written submissions.

98. Firstly, pursuant to Article R57, para. 2, of the CAS Code:

"After consulting the parties, the Panel may, if it deems itself sufficiently well informed, decide not to hold a hearing…".

In the case at hand, the Sole Arbitrator did consult with the Parties (twice) and does deem himself sufficiently well informed to deal with the matter on the papers, for the reasons below.

99. Secondly, as noted above, the Appellant submitted various arguments regarding the purported unfairness and/or disproportionate nature of the payments it owes to the Second Respondent under the FIFA DRC Decision. It also argued that it was unfair to be held responsible for the payments due by the Player. However, as noted by the Respondents, this is irrelevant to the dispute at hand. The FIFA DRC Decision was final and binding on the Parties and the Player, as such the Sole Arbitrator – even if he wanted to – was not able to amend any directions contained in that decision.

100. The Appealed Decision is a disciplinary decision issued by the FIFA DisCo. The Appellant did make some submissions (as did Mr Silva in his witness statement) regarding the potential consequences and proportionality of the sanctions imposed in the Appealed Decision in its Appeal Brief, but as explained further below, it did not in its prayers for relief actually request the Sole Arbitrator to amend those sanctions. Accordingly, the Sole Arbitrator saw no need to call a hearing to orally hear arguments about the FIFA DRC Decision which were outside of the scope of the present dispute.

101. Thirdly, the two witnesses put forward by the Appellant were going to testify at a hearing about *"the relevant transfer of the Player, the subsequent labor dispute with the Second Respondent and the Appellant's sporting and financial reality"*. The Sole Arbitrator, at his discretion, provided the Appellant with an opportunity to submit witness statements outlining what the two witnesses intended to testify. The two statements have been quoted verbatim in Section IV of this Award, but in summary they essentially repeated the same issues quoted above in slightly more detail.

102. For the reasons outlined above, the *"relevant transfer of the Player"* and *"the subsequent labor dispute with the Second Respondent"* are irrelevant to the present dispute as those were issues relevant to the FIFA DRC Decision. Additionally, any issues the Appellant may have with the Player

directly (for inducement or concealment) are outside of the scope of the matter at hand. There was therefore no need to hear the witnesses on these issues and the Respondents had no interest in examining them either.

103. With due respect to the Appellant's predicament, the *"Appellant's sporting and financial reality"* are also irrelevant to the present dispute as CAS jurisprudence is clear that alleged financial difficulties would not, in any event, be justification for the Appellant's failure to pay its debt to the Second Respondent (*CAS 2013/A/3358* and *CAS 2016/A/4402*).

104. In any event, the inability to pay the Second Respondent today, is of the Appellant's own making. It has had nearly two years to prepare for this eventuality. The process of FIFA in such matters is widely known. After a decision such as the FIFA DRC Decision, the debtor is ordered to pay the creditor. There can, as here, be two debtors, both joint and severally liable for the debt to the creditor. After a period of time, if this doesn't happen, then the creditor may complain to FIFA and ask the FIFA DisCo to open a procedure. In the case at hand it took approximately a year for the FIFA DisCo to open its procedure. The debtor(s) then get a request to pay. If that doesn't work, then the FIFA DisCo will usually fine the debtor(s) and then give a further period of grace to pay. If that grace period expires, then the creditor can request a points deduction (that the FIFA DisCo has already set) from the debtor club. If a further period elapses, then the debtor club can face relegation. This part of the process may take up to a couple of years. Debtor clubs know what's coming, but after the decision of the FIFA DisCo, what actually happens is in its own hands.

105. Accordingly, the Sole Arbitrator saw no need to hold a hearing to hear the oral testimony of the two witnesses who intended to testify about financial issues that are irrelevant to the present dispute.

106. Fourthly, the Sole Arbitrator notes that one of the reasons the Appellant requested a hearing was because it wished to reach an *"amicable settlement with a realistic payment plan"*. Both Respondents rejected this request for different reasons, and the Sole Arbitrator concurred with both their reasons. As FIFA noted, the disciplinary sanctions imposed in the Appealed Decision could not be 'mediated' (explained in further detail below). If the Appellant wished to mediate its financial dispute with the Second Respondent, then it was free to do so but FIFA would not have standing to participate in such a mediation.

107. From the Second Respondent's point of view, in the two years since the FIFA DRC Decision, the Appellant apparently never once responded to any of its correspondence, let alone proposed a settlement agreement or paid any sums due. Moreover, as the Sole Arbitrator informed the parties on 27 June 2018, the parties were free to directly discuss settlement proposals at any stage, even outside the context of a hearing. Accordingly, the Sole Arbitrator saw no need to call a hearing simply so that the parties could hold settlement discussions, which they could freely do at any time.

108. Finally, the Sole Arbitrator considers that a hearing in a CAS appeals procedure is not mandatory and despite the assertions of the Appellant, a party's right to be heard can be fully respected even without a hearing (see *CAS 2016/A/4387*, at paras. 157 and 158).

109. Simply holding a hearing because the Appellant requested one, and forcing all parties to incur costs in attending (even by Skype) when it would have served no purpose other than to repeat written submissions or add oral submissions which are irrelevant to the dispute was not in any Party's interests. The Sole Arbitrator considered that a hearing was unlikely to uncover any further material information or evidence which had not already been presented to him by the Parties in the written submissions.

110. As such, for all the reasons stated above, and in the interests of minimising the costs involved for all parties, pursuant to Article R57 of the CAS Code, the Sole Arbitrator concluded that a hearing was not required and that he was sufficiently informed to render this Award solely on the written papers. The Sole Arbitrator considered that while a hearing was not held, this did not amount to a violation of the Appellant's right to be heard or to be treated equally with the Respondents.

b) What are the Appellant's prayers for relief?

111. The Sole Arbitrator notes the Appellant requested the following prayers for relief in its Statement of Appeal:

> *"1. To admit the present appeal;*
>
> *2. To stay the execution of the appealed decision (independently of being automatic and simply out of precaution) in view of its partially disciplinary nature;*
>
> *3. To entirely cancel the appealed decision and particularly exempt the Appellant from being imposed any sporting sanctions;*
>
> *4. To condemn the Respondents to bear all costs connected with the present procedure".*

112. The Appellant then amended those prayers for relief in its Appeal Brief, to state as follows:

> *"1. Accept the present appeal and submit the dispute to CAS mediation, following Articles S2 and S6 Par. 1 and 10 of the Code;*
>
> *2. In case the Respondents reject CAS mediation, seek to resolve the present dispute by conciliation, following Article R42 of the Code;*
>
> *Subsidiary:*
>
> *3. In case conciliation is not reached, enforce the financial compensation on the Appellant only in case the Player fails to cancel the relevant debt after having been banned from any football activity worldwide;*
>
> *4. Depending on the above decision to be taken, determine the liability for payment of proceeding costs and contribution towards the expenses incurred".*

113. Both sets of prayers for relief requested that the Appeal be deemed admissible and had a request for a costs contribution from the Respondents. In the Statement of Appeal, the Appellant also requested a stay of the execution of the Appealed Decision pending the outcome of this present Appeal – which was granted by the CAS on 30 April 2018. However, the Sole Arbitrator notes that the remaining prayer(s) for relief were fundamentally different between the Statement of Appeal and Appeal Brief.

114. In the Statement of Appeal, the Appellant requested the setting aside of the Appealed Decision and in particular, requested to be exempt from any sporting sanctions imposed by the FIFA DisCo. However, in the Appeal Brief, this request was amended to request that the Appeal should be referred to CAS mediation or conciliation and failing that, only be enforced *"in case the Player fails to cancel the relevant debt after having been banned from any football activity worldwide"*. In short, the Appellant was no longer requesting the Appealed Decision to be set aside, rather asking that it would only have to pay if the Player defaulted.

115. As the Appeal Brief could be considered the final requests of the Appellant, the Sole Arbitrator therefore concluded that the Appellant had abandoned any request for relief regarding setting aside (and/or amending or reducing) the sanctions imposed in the Appealed Decision. Accordingly, the Sole Arbitrator concludes that to set aside or to amend the sanctions imposed in the Appealed Decision would violate the principle of *ultra petita*. The prayer for relief contained in the Statement of Appeal regarding setting aside the Appealed Decision and/or amending the sanctions contained therein was therefore not considered.

116. In concluding that the Appellant had abandoned its request for relief for regarding setting aside / amending the sanctions in the Appealed Decision, the Sole Arbitrator is comforted by his finding that in any event, he does not consider the sanctions to be grossly disproportionate.

117. The Sole Arbitrator concurs with FIFA's position and notes that according to well-established CAS jurisprudence, CAS panels should reassess disciplinary sanctions only if they are evidently and grossly disproportionate to the offence, cf. *CAS 2015/A/3875* (para. 108), where the Panel summarizes the CAS practice as follows:

"According to well-established CAS jurisprudence, even though the CAS panels retain the full power to review the factual and legal aspects involved in a disciplinary dispute, they must exert self-restraint in reviewing the level of sanctions imposed by the disciplinary body; accordingly, CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence".

118. In the present case, the Appellant failed to submit any evidence to convince the Sole Arbitrator that the sanctions were 'evidently and grossly disproportionate'. Indeed, FIFA submitted evidence that the sanctions were, in fact, proportionate. Moreover, pursuant to CAS jurisprudence (e.g. *CAS 2013/A/3358*), the Appellant's claims - which in any event were not substantiated with any evidence - regarding its alleged financial situation was not a valid justification for its failure to meet its financial obligations.

119. In light of the above, the final prayers for relief by the Appellant – i.e. those contained in the Appeal Brief – are considered further below.

c) Should this matter be referred to CAS mediation and/or conciliation?

120. As noted above, the primary prayers for relief requested by the Appellant in its Appeal Brief were as follows:

> *"1. Accept the present appeal and submit the dispute to CAS mediation, following Articles S2 and S6 Par. 1 and 10 of the Code;*
>
> *2. In case the Respondents reject CAS mediation, seek to resolve the present dispute by conciliation, following Article R42 of the Code".*

121. The Sole Arbitrator notes that the Respondents did not agree to the Appellant's request for mediation or conciliation and argued, *inter alia*, that given the present proceedings solely involve disciplinary measures imposed on the Appellant by the FIFA DisCo, it was not appropriate to submit this matter to mediation.

122. The Sole Arbitrator agrees with the Respondents' position. Whilst the underlying dispute in the present proceedings (i.e. the FIFA DRC Decision) involves an unpaid debt by the Appellant to the Second Respondent, the present CAS proceedings solely involve disciplinary measures imposed by the FIFA DisCo in the Appealed Decision.

123. The Sole Arbitrator acknowledges that the FIFA DRC Decision and the Appealed Decision are intrinsically linked as latter was a result of the former not being complied with. Nevertheless, the imposition of disciplinary measures is not a 'dispute' that can be mediated in the same way a financial dispute between two parties can be. The sanctions imposed by the FIFA DisCo are disciplinary sanctions imposed by a governing body on one of its members for failing to comply with directives issued under the rules and regulations of that governing body. It cannot be negotiated or reduced by way of mediation, as the FIFA DisCo has the sole discretion to determine the appropriate sanction in cases referred to it. As FIFA itself submitted, it *"cannot settle disciplinary sanctions imposed by one of its independent judicial bodies as a result of a violation of the FIFA regulations"*.

124. The only way the sanctions imposed in the Appealed Decision can be reduced at the CAS is if the Appellant requested it in its prayers for relief and the Sole Arbitrator believed the sanctions awarded were disproportionate and/or arbitrary. However, the present CAS appeal proceedings are not the appropriate forum in which the Parties could negotiate through mediation a reduction of those disciplinary sanctions.

125. That is not to say however, that the underlying financial dispute (i.e. the amounts due under the FIFA DRC Decision) cannot be negotiated or mediated. FIFA itself noted that a mediation could have taken place between the Appellant and the Second Respondent in relation to the underlying amounts due under the FIFA DRC Decision, however that was a matter to be agreed

between the Appellant and the Second Respondent, and FIFA did not have standing to participate in such a mediation / conciliation between those two parties.

126. Indeed, it appears to the Sole Arbitrator that the mediation/conciliation that the Appellant sought in these proceedings was not so much for the sanctions imposed in the Appealed Decision, but rather the payments due under the underlying FIFA DRC Decision. During these CAS proceedings, the Appellant proposed, *inter alia*, a 3 year payment plan – which the Second Respondent rejected. The Second Respondent also plainly rejected the Appellant's other requests for mediation/conciliation.

127. Accordingly, given that the Parties did not agree to it, the Sole Arbitrator did not deem it appropriate to refer this matter to mediation or conciliation as he does not have the authority to force the Parties to mediate against their wishes. Thus, the first two prayers for relief of the Appellant are dismissed.

d) Should the Appealed Decision be dependent on the Player?

128. As the Appellant's primary requests for relief were rejected, save for the request for relief relating to costs (dealt with in Section IX of this Award), the Sole Arbitrator notes that the final prayer for relief requested by the Appellant in its Appeal Brief was the subsidiary request as follows:

> *"3. In case conciliation is not reached, enforce the financial compensation on the Appellant only in case the Player fails to cancel the relevant debt after having been banned from any football activity worldwide".*

129. Before considering the merits of the above prayer for relief, the Sole Arbitrator notes that the Appellant appears to be addressing its joint and several liability under the FIFA DRC Decision.

130. Firstly, the Sole Arbitrator notes that if the Appellant wished to challenge its joint and several liability, it should have done so through an appeal of the FIFA DRC Decision to the CAS. It did not do so. Once again, the FIFA DRC Decision is therefore final and binding and the joint and several liability imposed on the Appellant under that decision cannot be addressed by the Sole Arbitrator in the present proceedings as it is outside the scope of his powers to do so.

131. Secondly, and in any event, the Sole Arbitrator notes that the Appellant did not include the Player as a respondent in the present CAS appeal proceedings. As such, the Sole Arbitrator would not have the competence to issue any order or direction against the Player.

132. Finally, the nature of joint and several liability is that both debtors (the Appellant and the Player) are liable for the debt, but the creditor can claim the full amount from either or both, as it sees fit. If it procures the debt from one, then it is for the two debtors to determine how that should be dealt with as between them. From the creditor's point of view, it has no obligation to treat one debtor as the primary debtor and to pursue that debtor first.

133. Accordingly, this prayer for relief by the Appellant is rejected.

B. Conclusion

134. As all the prayers for relief requested by the Appellant were dismissed (and/or abandoned by the Appellant itself), the Sole Arbitrator finds that the Appeal must be rejected in its entirety.

135. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Clube de Futebol União da Madeira on 23 March 2018 against the decision rendered by the FIFA Disciplinary Committee on 31 January 2018 is dismissed.

2. The decision issued by the FIFA Disciplinary Committee on 31 January 2018 is confirmed.

3. (…).

4. (…).

5. (…).

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