Arbitration CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A., award of 9 September 2019

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football
Termination of employment contract by a player
Request for intervention of a party having failed to meet the deadline of appeal
Dismissal of a request for production of document whose relevance is not sufficiently established
Conditions for a "sporting just cause" to terminate a contract
Determination of an "established player"
Necessity to give prior notice or a warning to successfully invoke termination for sporting just cause
No just cause to terminate the contract
Compensation for damages according to Article 17(1) RSTP
Quantification of the positive interest
Genuine interest in the services of the player

1. **Intervention according to Article R41.3 of the CAS Code only provides participation as a formal party and not participation as a non-party (with restricted rights) in analogy to the provisions of the Swiss Code of Civil Procedure. Article R41.3 of the CAS Code is not designed to cure a failed deadline of a party that was entitled to appeal against the decision. Intervention according to Article R41.3 of the CAS Code requires a legal interest of the intervenor. By failing to meet the deadline of appeal, the party accepts the binding effects of the decision and, thus, looses any legal interest in participating in the proceeding as a party challenging said decision.**

2. **The amount of an unexercised buy-out clause can generally not be considered to reflect the market value of a football player. If it has not been submitted that the pertinent buy-out clause was exercised by the player, the added value of having a legal instrument providing for additional financial terms in the contractual relation between the player and the appellant club on file cannot be seen. Therefore, the request for production of such document shall be rejected.**

3. **According to Article 15 of the FIFA Regulations on the Status and Transfer of Players (RSTP), the conditions that need to be cumulatively met in order to legitimately invoke the application of "sporting just cause" are the following: 1) the player must be an "established player"; 2) he must have appeared in fewer than 10% of the official matches of his club; 3) the employment contract must be terminated on this basis within 15 days of the club's last official match of the season.**

4. **Only players that have a legitimate expectation to be (regularly) fielded may avail themselves of Article 15 RSTP and be considered as "established players". This,**

however, is not the case for players that have not yet finished their training. Accordingly, unless exceptional circumstances require determining otherwise, on the basis of Article 1(1) Annex 4 RSTP, players under the age of 21 cannot be considered "established professionals". However, the mere fact that a player reaches the age of 21, and therefore finished his training period in the sense of the training compensation system set out in the FIFA RSTP, does not automatically make him an "established player" within the meaning of Article 15 FIFA RSTP. In this respect, the distinction between "training" and "development" of a player in the sense that a football player does not stop learning and might still improve as a football player after the end of his training period should be accepted. Thus, within the age bracket of 21 until 23 not only the age of the player, but in particular his development as a player must be taken into account, in order to determine whether or not a player is an "established player". Consequently, the issue of whether or not – based on the overall circumstances – the player had a legitimate expectation of being fielded should be examined. Only as of the age of 23 is there room for a presumption that the player has turned into an "established professional".

5. **In order to legitimately invoke the application of Article 15 RSTP, it is incumbent on a player to give a prior warning to his club before terminating the employment contract. Such notice is vital because the termination of an employment contract is an *ultima ratio*. In principle, only when the employer is in good faith provided with an opportunity to cure the conduct that is considered unsatisfactory by the employee can an employment contract be terminated prematurely. This is also determined in case law of the SFT and consistently applied by CAS in respect of the concept of "just cause". There is no reason why this should not apply to an early termination based "sporting just cause", as it is not one of the categories of contractual breaches that are of such severity that no prior warning is required.**

6. **If a player does not give a prior warning to the club about his alleged dissatisfaction with the club's conduct, thereby preventing the latter from the opportunity to possibly change its course of action and preventing a termination on this basis, the player has no "just cause" to terminate his employment contract with the club.**

7. **The consequences of terminating an employment contract without "just cause" are set out in Article 17(1) RSTP. The purpose of Article 17(1) RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player. In respect of the calculation of compensation, the club's objective damages should be assessed by the CAS panel, before the latter applying its discretion in adjusting this total amount of objective damages to an appropriate amount if deemed necessary.**

8. **In order to calculate the positive interest, the value of the player's services must be assessed based on the average between the remaining value of the breached contract**

and the player's new contract. The predetermined value attached to lifting an option to buy the player's federative rights is only of direct relevance in assessing the value of a player's services when such option is indeed exercised. Further, the *pro rata* part of the salary already paid by the player's former club should be added to the latter's damage. Moreover, the approach according to which only the non-amortised transfer fee paid by the player's former club to the previous club of the player can be taken into account as a basis to determine the damages caused is not appropriate, because the transfer fee paid by the player's former club has already been fully amortised, while the player still represents a certain value on that club balance sheets. Finally, the investments made by the player's former club in training the player cannot be considered a damage because such investments are already covered by training compensation under the RSTP.

9. Genuine interest in the services of the player can stem from the fact that (i) the club has the possibility to field the player and to make use of his services by loaning him to another club, (ii) the player is regularly called upon to sit on the substitutes bench during official matches of the club's A team and is always training together with the A-team, (iii) the club wants and needs to create a good mix of young talented players and older experienced players.

I. PARTIES

1. FC Lugano SA (the "Appellant" or "Lugano") is a professional football club with its registered office in Lugano, Switzerland. Lugano is registered with the Swiss Football Association (the *Schweizerischer Fussbalverband* – the "SFV"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. FC Internazionale Milano S.p.A. (the "Respondent" or "Inter") is a professional football club with its registered office in Milano, Italy. Inter is registered with the Italian Football Federation (the *Federazione Italiana Giuoco Calcio* – the "FIGC"), which in turn is also affiliated to FIFA.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background facts

4. On 23 January 2012, the Italian clubs, Parma FC ("Parma") and Inter concluded an agreement for the transfer of Y., a football player of Ivorian nationality born on 20 January 1996 (the "Player"), from Parma to Inter for the amount of EUR 1,000,000, while the Player remained registered on loan with Parma for the rest of the season. Parma retained 50% of the Player's economic rights valued at an extra EUR 1,000,000.

5. Also on 23 January 2012, at the age of 16, the Player and Inter entered into an employment relationship for the official federal minimum salary of EUR 29,000 per year.

6. On 19 June 2014, Inter acquired the remaining 50% of the Player's economic rights from Parma for the amount of EUR 1,000,000.

7. In the 2013/2014 and 2014/2015 seasons, the Player regularly appeared in matches for Inter's *primavera* team (Inter's youth team).

8. In January 2015, the Player turned 19 and therefore became ineligible to play for Inter's *primavera* team.

9. On 14 July 2015, following multiple previous extensions (on 1 July 2012, 20 June 2013, 1 November 2014), Inter and the Player entered into their fifth employment contract (the "Employment Contract") for a period of three seasons, valid as from the date of signing until 30 June 2018. In accordance with the Employment Contract, the Player was entitled to a salary of EUR 115,750 for the 2015/2016 season and EUR 143,000 for the 2016/2017 and 2017/2018 seasons.

10. During the 2015/2016 season, the season of the Player's 20th birthday, the Player was loaned to the Italian club FC Crotone ("Crotone") for free, which club participated in the *Serie B* at the relevant moment in time (the Italian second division). During this season, the Player participated in 33 official matches (30 in the *Serie B* and 3 in the Italian Cup), of which 30 in the starting eleven, while allegedly missing 10 matches due to an injury. At the end of the season, Crotone was directly promoted to the *Serie A* for the first time in its history.

11. In the loan agreement that was concluded between Inter and Crotone, the latter was granted an option to definitely buy the Player's federative rights for EUR 1,000,000. Also, Inter was to pay *"possible development fees"* to Crotone for the amount of EUR 70,000 (EUR 50,000 after the 5th appearance, EUR 10,000 after the 10th appearance and EUR 10,000 after the 15th appearance).

12. At the start of the 2016/2017 season, after his loan spell with Crotone, the Player returned to Inter.

13. According to Inter, in July 2016, Olympique Gymnaste Club de Nice ("Nice") expressed its interest in the Player's services and the Player confirmed his interest in joining this club. At that moment, however, the Player had not been summoned to his youth national team and

therefore, according to French rules, he could not receive the necessary authorization to be registered for a French club.

14. According to Inter, towards the end of August 2016, Inter and the Player received an enquiry about the availability of the Player for a transfer on loan basis to Nice (the Player had been summoned sufficient times for his youth national team in the meantime). According to Inter, the Player and Inter gave their verbal consent to such transfer.

15. According to the Player, on 31 August 2016, i.e. the last day of the summer transfer window, Inter informed the Player's agent about an offer received from Nice. On 31 August 2016, the Player was in a training camp with the Ivory Coast U21 national team. The Player declined the offer. According to the Player, this was due to the fact that he did not have the opportunity to properly evaluate the offer because it was drafted in English, a language he allegedly does not speak.

16. What is not in dispute is that, by 31 August 2016, Inter and Nice had negotiated the terms of a loan agreement that was finally never executed because, on the last date of the relevant transfer window, the Player refused leaving for Nice and indicated his preference to stay with Inter. Inter and Nice had agreed that Nice would receive the Player on loan for the 2016/2017 season against the payment of EUR 200,000 with an option to definitely acquire the services of the Player for a further amount of EUR 3,500,000 net at the end of the 2016/2017 season, while Inter would be entitled to annul such lifting by paying an amount of EUR 1,000,000 to Nice. Nice also committed itself to assuming the responsibility to pay the Player's salary in accordance with the Player's Employment Contract with Inter.

17. Although the Player was part of Inter's A team during the 2016/2017 season and was regularly called upon as a substitute, the Player was not fielded in any of the 46 official matches played by Inter during this season. Never throughout the 2016/2017 season did the Player revert to Inter in connection with an alleged shortage of playing time.

18. On 7 June 2017, at the end of the 2016/2017 season, the Player informed Inter as follows:

"During the season 2016/2017 that ended on 28 May 2017, I have not participated in any match with your Club.

In addition to the detrimental nature that generates this situation, since for more than a year I have not participated in any competition, I cannot accept this situation anymore.

Referring to the provisions of Article 15 of the FIFA Regulations for the Status and Transfer and Players, I am therefore sorry to have to give notice of the termination of my contract for sporting just cause since I participated in less than 10% of official matches played by the Club during this season given that I am an established professional.

It is obvious that your Club has totally neglected me from a sporting point of view and that it is not interested in my services.

As this rupture is deeply prejudicial to me, I reserve the right to claim compensation for the consequential damage.

In this regard, and unless you agree to intervene with your Club, which can be envisaged on the minimum basis of a total contractual freedom, I also reserve the right to refer to the FIFA Dispute Resolution Chamber or any other competent decision-making body".

19. On 22 June 2017, as will be described in more detail below, the Player lodged a claim against Inter before the Dispute Resolution Chamber of FIFA.

20. During the summer 2017 transfer window, the Player received interest from several clubs amongst which SC Bastia and Nantes, both playing in the French *Ligue 1*.

21. On 20 July 2017, the Player and Lugano concluded an employment contract for one season, valid as from the date of signing until 30 June 2019 for a basic annual salary of CHF 100,000 net.

22. On 31 July 2017, upon Inter's instructions, the FIGC denied the issuance of the Player's International Transfer Certificate (the "ITC").

23. On 17 August 2017, upon Lugano's application and after the Player had already missed four matches with Lugano, the Single Judge of the Players' Status Committee authorized the SFA to provisionally register the Player for Lugano.

B. Proceedings before the Dispute Resolution Chamber of FIFA

24. On 22 June 2017, the Player lodged a claim against Inter before the Dispute Resolution Chamber of FIFA (the "FIFA DRC"), requesting as follows:

- To acknowledge that the Player had "sporting just cause" to terminate his Employment Contract with Inter;
- To award the Player the amount of EUR 143,000 as moral damage;
- To acknowledge that Inter does not have any right to receive compensation from the Player.

25. On 10 August 2017, Inter rejected the Player's claim in its entirety and lodged a counterclaim against the Player for the unjustified termination of the Employment Contract, requesting EUR 4,700,000 as compensation. Inter also requested Lugano, in its status as the Player's new club, to be held jointly and severally liable with the Player.

26. Lugano rejected Inter's claim in its entirety.

27. On 7 June 2018, the FIFA DRC rendered its decision (the "Appealed Decision") with the following operative part:

"1. The claim of the [Player] is rejected.

2. The counterclaim of [Inter] is partially accepted.

3. *The [Player] is ordered to pay to [Inter], **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 133,532.*

4. *[Lugano] is jointly and severally liable for the payment of the aforementioned compensation.*

5. *If the aforementioned amount in accordance with point 3. is not paid within the above-mentioned time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

6. *Any further claim lodged by [Inter] is rejected.*

7. *[Inter] is directed to inform both the [Player] and [Lugano], 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".*

28. On 29 October 2018, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:

- *[…] [T]he Chamber proceeded to analyse the claim of the [Player], who alleges that he had sporting just cause to terminate the contract on 7 June 2017. In particular, the Chamber noted that, according to the [Player], he complied with all the conditions specified in art. 15 of the Regulations. Namely, i) he is an established professional, ii) he participated in less than 10% of Inter's official matches and iii) he notified the termination within the 15 days following Inter's last official match. The Chamber then noted that the above line of argumentation is shared by Lugano which argued that, by analogy with training compensation, since the [Player] played for almost every single match with Crotone during the 2015/2016 season, he has clearly achieved the status of established professional as per art. 15 of the Regulations.*

- *Conversely, the Chamber observed that Inter claimed that the [Player] did not have sporting just cause to terminate the contract as, according to Inter, it cannot be concluded that, at any given time, the [Player] could be considered as an established professional. In this regard, Inter stressed that, during the 2016/2017 season, there were far more experienced players in Inter's squad than the [Player]. In this respect, the DRC noted that, according to Inter, in its squad there were a number of "established" players who played the same position as the player such as Joao Miranda, Jeison Murillo, Gary Mendel, Andrea Ranocchia and Marco Andreolli.*

- *[…] As a first remark, the members of the Chamber recalled the conditions that need to be met in order for art. 15 of the Regulations to apply as correctly described by the [Player] […], and underscored that it is undisputed between the parties that the conditions ii) and iii) are met. Indeed, it is a fact that the player played less than 10% of Inter's official matches during the 2016/2017 season and that he informed Inter about his decision to terminate the contract due to sporting just cause within the applicable time-limit, i.e. within the 15 days following Inter's last official match.*

- *Consequently, the Chamber concluded that the only point left to address in order to determine whether the [Player] had sporting just cause to terminate the Inter contract is to establish whether he can be considered as an established professional in the sense of art. 15 of the Regulations.*

- *At this stage, the DRC deemed essential to point out that the analysis as to whether a player can be considered as an established professional in the sense of art. 15 of the Regulations should always be done*

on a case-by-case basis. Indeed, the members of the Chamber highlighted that all the objective and subjective particularities of the specific case need to be analysed.

- *In this context, the DRC stressed that the objective aspects include the age of the [Player] at the time of the termination, his performance and participation during the past seasons as well as his experience analysed vis-à-vis that of his teammates with similar characteristics. As to the subjective aspects, these include the [Player's] perception and expectations that he might have regarding his participation in a given season depending on the club with which he is registered.*
- *Starting with the assessment of the objective particularities of the present matter, the DRC underlined first that, at the time of the termination of the Inter contract, the [Player] was 21 years old. As such, it would appear that his training and education period had, in principle, not ended yet. In this respect, the Chamber held that, although the [Player] apparently signed his first professional contract at the age of 16, it is also true that, whilst playing for Inter, he always participated in youth team matches. What is more, the Chamber outlined the fact that, during his loan to Crotone, Inter agreed to pay the latter certain fees depending on the number of matches that the [Player] would play with Crotone. In the Chamber's view, this is clearly an indication that the purpose of the loan of the [Player] to Crotone was to further develop the [Player's] skills.*
- *Along those lines, and while referring to Lugano's analogy with training compensation and the concept of termination of a player's training and education based on the number of matches played, the DRC underlined that in order for a player to be considered as an established professional, it needs to be concluded first and foremost, that his training and education period has ended. In other words, all established professionals in the sense of art. 15 of the Regulations should be considered as having ended their training period. Nevertheless, some players whose training period has ended may not be considered as established professionals due to their particular circumstances.*
- *Furthermore, it is also undisputed that Inter's squad had, for that particular season, at least 4 other players with similar playing characteristics than the [Player] and who were older and more experienced than him. Indeed, it remained undisputed that those 4 players are or, at least were, regulars in their respective national teams. Conversely, the members of the Chamber noted that the [Player] has never been part of the A national team of Cote d'Ivoire.*
- *Regarding the subjective particularities of the matter at hand, or, in other words, the expectations that the [Player] had to participate with Inter during the 2016/2017 season, the DRC emphasised that at the beginning of said season, Inter and Nice had, in principle, agreed upon his temporary transfer to the French club. As such, in the DRC's opinion, the [Player] should have been aware that his participation with Inter for that particular season was going to be limited. Moreover, the [Player] could not reasonably have expected that because he was a regular player in a Serie B club (Crotone) in the previous season, he was going to regularly participate with one of the most successful Serie A clubs.*
- *On account of all the above-mentioned considerations, and after an analysis of both the objective and subjective particularities of the present matter, the DRC came to the conclusion that, at the time the [Player] terminated the Inter contract on 7 June 2017, he could not have been considered as an established professional in the sense of art. 15 of the Regulations. In particular, the DRC was of the opinion that the argument regarding the number of matches that the [Player] played with Crotone in the season prior to the [Player] terminating his contract with Inter is insufficient to outweigh, in and of itself, the rest of the particularities of this matter as stressed above. Indeed, the DRC held that, at the time the player unilaterally terminated his contract with Inter, he was still a relatively young player in training and he*

was still gaining experience with one of the top professional clubs in Europe, competing with other very experienced players, and could thus not reasonably expect that he would become a regular player of the said club within the season 2016/2017.

- *Consequently, the members of the Chamber had no other option than to conclude that the [Player] did not satisfy one of the criteria of sporting just cause, i.e. that of being an established professional, and therefore that he did not have sporting just cause to terminate the Inter contract on 7 June 2017.*
- *As a final note, the DRC wished to stress that it was not blind to, and sympathised with, the frustration that the [Player] must have had due to his lack of participation with Inter during the 2016/2017 season. Nevertheless, the DRC was also of the opinion that in order to protect the cornerstone of professional football, namely, the principle of contractual stability, art. 15 of the Regulations, in particular the determination of whether a player can be considered as an "established professional", needs to be interpreted narrowly and, as mentioned above, carefully considering the specificities of each particular case.*
- *In continuation, the DRC established that, since the [Player] did not have a just cause to terminate his contract with Inter, in accordance with art. 17 par. 1 of the Regulations, the [Player] is liable to pay compensation for breach of contract to the latter club. Equally, according to art. 17 par. 2 of the Regulations, his new club, i.e. Lugano, shall be jointly and severally liable for its payment.*
- *Along those lines, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. […]".*
- In doing so on the basis of Article 17(1) of the FIFA Regulations on the Status and Transfer of Players, *"the DRC went to analyse the request of Inter. First, the Chamber noted that Inter requested EUR 4,700,000 mainly based on the purchase option contained in the loan agreement with Nice, on the buy-out clause contained in the contract of the [Player] with Lugano as well as on the [Player's] age.*
- *In this respect, the members of the Chamber wished to recall that the loan agreement with Nice was signed at the end of the 2015/2016 season. This is, one year before the termination of the Inter contract. What is more, the DRC highlighted that the [Player] spent the subsequent season without participating in any official match. Therefore, such purchase option cannot possibly be considered as a basis for the payable compensation.*
- *As to the buy-out clause contained in the [Player's] contract with Lugano, the members of the Chamber emphasised that such clause cannot serve as basis for the calculation of compensation either. Indeed, the DRC wished to emphasise that a buy-out clause generally does not accurately reflect the value of a player's services nor the damage which the club suffers in case the player prematurely terminates the contract. It merely grants a right to a party, in casu the [Player], to opt out of his contract at any moment and without any consequences for the said party, in particular sporting sanctions.*
- *Furthermore, the allegation of Inter that due to the termination of the contract it lost all the investment made on the [Player] cannot be followed as Inter is, in principle, entitled to receive training compensation for the training and education of the [Player] since January 2012, when Inter and the [Player] signed their first employment contract.*
- *On account of all the above-mentioned considerations, the DRC concluded that the only objective criteria put at its disposal in the present matter in order to calculate any compensation due to Inter is the average*

between the remaining value of the breached contract and the [Player's] new contract during the same period of time, in accordance with its long-standing and well-established jurisprudence.

- *In this context, the DRC established, on the one hand, that, at the time the [Player] terminated the contract, i.e. at the end of the 2016/2017 season, the Inter contract was to run for another entire season, i.e. the season 2017/2018. The contractual value for the latter seasons amounts to EUR 143,000, which constitutes the residual value of the 2017/2018 season. On the other hand, the Chamber noted that, for the same season, the [Player] was entitled to a total fixed remuneration of approximately EUR 105,000 with Lugano. On the basis of the aforementioned financial contractual elements, the Chamber concluded that the average of remuneration between the contracts concluded by the [Player] respectively with Inter and Lugano over the relevant period of time amounted to EUR 124,000.*
- *Furthermore, the DRC stressed that, as it remained undisputed that Inter paid the [Player] his salary for the month of June 2017 in the amount EUR 11,916, the pro rata part of said salary in the amount of EUR 9,532 needs to be included in the compensation.*
- *Consequently, on account of the afore-mentioned considerations, in particular the circumstances and the specificities of the case at hand, the Chamber decided that the [Player] must pay to Inter the amount of EUR 133,532, which is considered by the Chamber to be a fair and adequate amount as compensation for breach of contract.*
- *Furthermore, in accordance with the unambiguous content of article 17 par. 2 of the Regulations, the Chamber established that Lugano shall be jointly and severally liable for the payment of compensation.*
- *In this respect, the Chamber was eager to point out that the joint liability of a player's new club is independent from the question as to whether this new club has committed an inducement to contractual breach and finds a clear legal basis in art. 17 par. 2 of the Regulations. This conclusion is in line with the well-established jurisprudence of the Chamber that was repeatedly confirmed by the Court of Arbitration for Sport (CAS). Hence, the Chamber decided that Lugano is jointly and severally liable for the payment of the relevant compensation.*
- *The Chamber concluded its deliberations by establishing and [sic] any other claim lodged by the parties is rejected".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 19 November 2018, Lugano filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against Inter with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the "CAS Code").

30. On 26 November 2018, Lugano requested the CAS Court Office to assign the arbitration to a sole arbitrator.

31. On 29 November 2018, Inter indicated to have no objection against referring the present arbitration to a sole arbitrator.

32. On 19 December 2018, Lugano filed its Appeal Brief in accordance with Article R51 CAS Code.

33. On 20 December 2018, upon being invited to express its view in this respect, FIFA renounced its right to request its possible intervention in the present arbitration.

34. On 28 December 2018, the Player filed a request for intervention in French, premised on Article R41.3 CAS Code.

35. On 10 January 2019, considering that the language of the present arbitration is English, Inter requested that CAS orders the Player to produce an English version of his request for intervention. Inter also requested the request for intervention to be dismissed because it was filed late and that, as the Player was a party to the proceedings leading to the Appealed Decision, the latter decision became final and binding on him. Permitting the Player to intervene would allow him to circumvent the *res judicata* effect of the Appealed Decision.

36. On 14 January 2019, Lugano agreed to the Player's request for intervention and considered his participation essential. Lugano noted that in case the Sole Arbitrator would issue an award more favourable to Lugano than the Appealed Decision, there would be two contradictory decisions, for Lugano would remain jointly and severally liable with the Player in respect of the Appealed Decision. Lugano also requested that the Sole Arbitrator would decide on the request for intervention rather than the President of the Appeals Arbitration Division, so as to enable the Player a right to possibly contest an unlikely denial before the Swiss Federal Tribunal.

37. On 15 January 2019, Inter agreed that the Sole Arbitrator could decide on the request for intervention.

38. On 30 January 2019, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

    - Mr Ulrich Haas, Professor of Law, Zurich, Switzerland, as Sole Arbitrator

39. On 1 February 2019, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

40. On 7 February 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to reject the Player's request for intervention and that the reasons for this decision would be provided in the final award.

41. On 13 March 2019, Inter filed its Answer in accordance with Article R55 CAS Code, including a request for production of documents.

42. On 19 and 21 March 2019 respectively, upon being invited to express their views in this respect, Inter indicated that no hearing would be needed, whereas Lugano indicated to prefer

a hearing being held. Lugano also requested that a single hearing day would be set for the present arbitration and the proceedings referenced *CAS 2019/A/6096* since these proceedings are directly linked to each other and that the two matters are conducted by the same Sole Arbitrator.

43. On 21 March 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing and that the present arbitration and the proceedings referenced *CAS 2019/A/6096* would be heard consecutively on the same date.

44. On 25 March 2019, upon being invited to comment, Lugano objected to Inter's request for production of documents.

45. On 26 March 2019, Lugano requested Inter and CAS to evaluate the possibility to convene the hearing in Milan, Italy.

46. On 17 April 2019, following Inter's consent, the CAS Court Office confirmed on behalf of the Sole Arbitrator that the hearing would be held in Milan, Italy.

47. On 27 and 30 April 2019 respectively, Inter and Lugano returned duly signed copies of the Order of Procedure to the CAS Court Office.

48. On 27 May 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to reject Inter's request for production of documents and that the reasons for this decision would be set out in the final award.

49. On 4 June 2019, a hearing was held in Milan, Italy. The hearing in the present proceedings took place consecutively with the proceedings referenced *CAS 2019/A/6096*. At the outset of the hearing, both parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

50. In addition to the Sole Arbitrator, Mr Antonio de Quesada, Head of Arbitration to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

    a) For the Appellant:
        1) Mr Luca Baldo, General Secretary;
        2) Mr Luca Tettamanti, Counsel;
        3) Mr Alberto Roige Godia, Co-Counsel;
        4) Mr Luca Canuto, Interpreter.

    b) For the Respondent:
        1) Mr Gianpaolo Monteneri, Counsel;
        2) Mr Angelo Capellini, Counsel.

51. The Sole Arbitrator heard evidence from the following persons, in order of appearance:

1) Mr Giovanni Manna, Technical Director of Lugano, witness called by the Appellant (in person);

2) The Player, witness called by the Appellant (by telephone).

52. At the start of the hearing, Inter objected to the testimony of Mr Manna. Inter argued that the main question in the present arbitration is whether the Player had "sporting just cause" to terminate his Employment Contract with Inter. All the relevant factual circumstances occurred before the Player joined Lugano. Inter submitted that Mr Manna can therefore not be heard as a witness, but that he should be regarded as a party representative.

53. Inter also objected against the Player's testimony as he has an interest in the present proceedings. If he wanted to challenge the Appealed Decision he should have filed his own independent appeal.

54. Lugano answered that the relevance of Mr Mana's witness testimony is to be assessed by the Sole Arbitrator. Lugano indicated that it called Mr Mana as a witness to testify about the Player's period with Lugano. Lugano argues that Mr Mana is not a party representative, because he is an employee. Lugano is the party to the present dispute.

55. As to the Player, Lugano argued that it was not entirely sure whether the Player had accepted the Appealed Decision, because there had been a misunderstanding with his appeal and he tried to intervene in the present arbitration. Lugano insisted on hearing the Player as a witness and that it would subsequently be up to the Sole Arbitrator to assess the relevance of his testimony.

56. The Sole Arbitrator then decided to allow the testimony of Mr Manna as well as the Player and indicated that he would decide on the status of these two witnesses in the final award.

57. Both witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. Both parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses.

58. Although Lugano initially also called Mr Jean-Jacques Bertrand, lawyer of the Player, as witness, at the hearing Lugano renounced hearing such witness.

59. Both parties had full opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

60. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

61. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

62. The submissions of Lugano, in essence, may be summarised as follows:

- The FIFA DRC erred in limiting the scope of its analysis to Article 15 FIFA RSTP and the existence of a "sporting just cause". Article 17 FIFA RSTP also plays an important role in this matter.

a) As to the "sporting just cause" under Article 15 FIFA RSTP

- The FIFA DRC correctly held that two out of the three criteria set out in Article 15 FIFA RSTP were met. However, the FIFA DRC ruled that the third criterion was not existing in this case, namely that the Player was not an "established professional". Should CAS consider otherwise, no compensation is payable by FC Lugano to Inter for the Player's termination of his Employment Contract.
- The starting point is that the FIFA RSTP does not provide for a definition of an "established professional". The assessment of whether a player is to be considered an "established professional" is to be made on the basis of the criteria developed in the jurisprudence of CAS, in particular on the basis of *CAS 2007/A/1369*, where it was held that a 22 year old player who had played 27 matches in Bulgaria and then 19 partial matches in Russia was considered an "established professional", whereby the player's salary compared to his age was taken into account.
- The fact that the Player played 33 official matches for Crotone in the *Serie B* and that his salary had increased from EUR 29,000 to EUR 143,000 per year are indicative of the big talent of the Player, even before he was loaned to Crotone, and that he was far from being considered as a normal young footballer of Inter's youth sector or a player still under training.
- FIFA created an artificial set of "objective" and "subjective" aspects to apparently check whether the Player was an "established professional". These aspects are not listed in any rule or provision related to such concept.
- As to the first "objective criterion" taken into consideration by the FIFA DRC, i.e. the Player's age, the FIFA DRC gave inappropriate and erroneous weight to the Player's age in the Appealed Decision. Inappropriate because a presumption exists that the conclusion of the training period occurs when a player reaches the age of 21.
- Reference is made to CAS jurisprudence in accordance with which a player's training period is to be considered as having ended before the start of the season in which the player concerned becomes a regular player for the club concerned. In the matter at hand, the FIFA DRC disregarded the 33 matches played by the Player in a highly competitive league one entire season before his termination letter.
- The FIFA DRC also gave erroneous weight to the "valorization prizes" offered by Inter to Crotone during the Player's loan to allegedly support his fielding as a sign of Inter's

will to *"further develop his skills"*. The fact that Crotone fielded the Player in the starting eleven in 30 out of the 33 matches, while the "valorization prizes" only applied until 15 matches irrespective of the minutes played, mean that Crotone considered him ready to play without the need of any incentive.

- As to the second "objective criterion" taken into consideration by the FIFA DRC, i.e. the Player's performance and participation during the past seasons, the FIFA DRC did not perform any check of the Player's actual performances or recognised status at that time. In the 2015/2016 season, Crotone was the team with the lowest number of losses and second with lowest number of goals conceded. The Player also received recognition of some relevant media. It should be taken into account that the Player played in total six seasons as a professional before terminating his Employment Contract. The level of the *Serie B* can be perfectly equated to the first tier of numerous other football associations. Also the offer received by Inter from Nice, a French *Ligue 1* club, for a loan of the Player against EUR 200,000 and an option to buy him for EUR 3,500,000 denotes the level the Player had at the end of Crotone's 2015/2016 season.
- As to the third "objective criterion" taken into consideration by the FIFA DRC, i.e. the Player's experience vis-à-vis that of his teammates, this goes hand in hand with the "subjective criterion", meaning the expectations that the Player had to participate with Inter during the 2016/2017 season. The fact that the Player had four teammates with similar characteristics but that were older and regular players of their respective national teams, has nothing to do with the status of the Player as an "established professional". It is not because a professional is established in the Italian *Serie B* and not in the *Serie A* that he cannot enjoy the prerogatives of Article 15 FIFA RSTP. The offer received by Nice proves that the Player was a "name" in the international market. The Player did not have to be a regular starter with Inter, because there is *"a long path"* between being regular and to play at least 10% of the official matches. The fact that the Player was never called up for his national team is irrelevant in the case at hand. Being an "established professional" does not mean that he should be an "established international professional".

b) As to the "just cause" under Article 17 FIFA RSTP

- On a subsidiary basis, the *"reckless attitude"* of Inter towards the Player shall lead to the same legal consequences under the perspective of Article 17 FIFA RSTP, which argument was simply ignored by the FIFA DRC in the Appealed Decision.
- Inter displayed a lack of genuine interest in retaining the Player. With reference to Article 328 of the Swiss Code of Obligations (the "SCO"), prominent doctrine clarified that there are professions where the employees need to be active in their posts. Professional football players are included in this group. In the present case, what Inter did against the Player was a *de facto* deregistration, and the deregistration of a football player has been held to be decisive in the jurisprudence of the FIFA DRC and CAS. The *de facto* deregistration endangered the Player's career by blocking and preventing him to compete at all (sic!) during the course of an entire season which was fundamental for his future development.

c) As to the compensation granted by the FIFA DRC in the Appealed Decision

- In the unlikely event that CAS would consider that the Player did not have "(sporting) just cause" to terminate the Employment Contract, FIFA erred also in granting any compensation to Inter or, at least, not to set it at a proportionate level.
- By calculating the compensation due on the average between the remaining value of the Employment Contract and the Player's new employment contract with Lugano, the FIFA DRC did not apply the correct approach to determine the alleged and unproven damages suffered by Inter. Only the non-amortised part of the transfer fee paid to acquire the services of the Player could be taken into account as proven damage.
- With reference to CAS jurisprudence, no compensation should be awarded because Inter did not show any interest in keeping the Player, developing his qualities, allowing him to compete or offering him a renewal of his Employment Contract. Inter simply put the Player in a corner and abandoned him for an entire fundamental season for his career. Under such circumstances, an employer cannot be compensated.
- Finally, if not a zero-compensation situation, Inter's attitude is surely an aspect to consider to fairly reduce the compensation granted by the FIFA DRC.

63. On this basis, Lugano submits the following requests for relief:

"i. The appeal filed by FC Lugano SA is upheld;

ii. The Challenged Decision is set aside and annulled.

iii. FC Lugano SA shall not have to pay any amount to FC Internazionale Milano SpA.

<u>On a subsidiary basis</u>

iv. Only in the case CAS considers that FC Lugano SA has to pay any amount to FC Internazionale Milano SpA, such amount of compensation is highly reduced according to all the arguments set forth by FC Lugano SA in this submission.

<u>In any case</u>

v. FC Internazionale Milano SpA shall bear all the procedural costs of this arbitration procedure.

vi. FC Internazionale Milano SpA shall compensate FC Lugano SA for all the legal fees and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel".

B. The Respondent

64. The submissions of Inter, in essence, may be summarised as follows:

a) As to the "sporting just cause" under Article 15 FIFA RSTP

- At all times Inter duly and faithfully carried out its obligations as an employer. At the same time, at no stage did the Player express any dissatisfaction of sporting and/or financial reason towards Inter.

- Besides the three cumulative criteria that must be complied with in order to consider a football player as an "established professional" in the sense of Article 15 FIFA RSTP as mentioned by the Player, Inter maintains that *"the Player's personal circumstances"* shall also be taken into consideration as a fourth and separate cumulative criterion, which is in accordance with *CAS 2007/A/1369* and the assessment of the FIFA DRC in the Appealed Decision.
- The Player was not yet an "established professional", although Inter at all times to the best of its endeavours promoted the Player's development within its squads. For instance, Inter paid an incentive to Crotone in order to ensure the Player's participation in official championship matches of the *Serie B*.
- In Italy, contrary to many other European countries, first division clubs do not have a second team and consequently there is no championship for second teams and/or reserve teams that play a "parallel" championship to the first team. In Italian football there is only the *primavera* championship, in which only players between 15 and 19 can participate. As a consequence, when players reach the age of 19 it is usual that almost all these players go on loan to a *Serie B* club in order to have the possibility to develop and play regularly.
- It is obvious that the football conditions of the *Serie B* and the quality of the squads drastically differ from those at the *Serie A* level. The matches played with Crotone make the Player a good and promising one, with potential for the future; however, this does not mean that after one season spent with other young players in the *Serie B* made the Player an "established player" immediately capable to compete in the first division squad of Inter. Inter even financed the Player's loan additionally to stimulate Crotone for regular fielding of the Player in its matches.
- While being able to be loaned to Nice, the Player at the very last moment declined to move to Nice where he had more opportunities to play. The Player chose to remain with Inter where he knew that he did not have many chances to play because on his position there were already established players such as Joao Miranda (captain of the Brazilian national team), Jeison Murillo (regular player of the Colombian national team), Gary Medel (regular player of the Chilean national team), Andrea Ranocchia (Italian national team player) and Marco Andreolli. It was therefore clear for the Player that the more experienced and already established players were those who were regularly playing in official matches for Inter, whereas he had the role of a substitute. The Player was regularly included in the match list of Inter, which is already a big recognition of the qualities of the Player and represents the intention of Inter to develop the Player further in order for him to eventually reach the highest standard.
- The Player turned 21 on 20 January 2017. As, according to the FIFA RSTP, *"a player's training and education takes place between the ages of 12 and 23"*, the Player's training and education could not be considered completed at the moment he terminated the Employment Contract. An "established player" is first of all a player who has terminated and completed his training period. The Player was still in the period of his training and had not yet reached the similar level of skills comparable to those of his teammates of the first squad of Inter.

- Despite the fact that Crotone was promoted to the *Serie A* at the end of the 2015/2016 season, it did not make use of the purchase option in the loan agreement with Inter to definitely acquire the services of the Player. This demonstrates that Crotone clearly did not evaluate the sporting level of the Player as being good enough for the *Serie A*, since otherwise it would have made at least an effort to retain him for the future. Instead, Crotone preferred to hire the older and more experienced players Noë Dussenne and Massimo Ceccherini as central defenders.
- While Inter put lots of efforts into developing the Player, so as to ensure that at the end of the training period, on the day the Player could be considered as an "established player", it could eventually have a sporting return from the investments made up to that moment. The Player, however, betrayed the trust put in him by terminating the employment relationship by falsely alleging "sporting just cause".
- The jurisprudence cited by Lugano in respect of the end of the training period is not relevant for the matter at hand, because these cases concern training compensation and not the notion of an "established player". Having completed the training period is not sufficient for the recognition of a player as an "established player", which was also highlighted by the FIFA DRC in the Appealed Decision.
- As to whether the incentives paid by Inter to Crotone were not necessary to encourage Crotone to field the Player, it is hypothetical and useless to guess at this stage whether Crotone would have given the same playing opportunities to the Player without such incentive.
- The 6-year professional employment relationship is not an indication that the Player is an "established professional". This rather shows that since the Player was aged 16, Inter not only cared about the Player and contributed to his development, but also relied on his future performance and wanted to retain his services by properly rewarding him.
- With reference to *CAS 2007/A/1369*, the Sole Arbitrator in such case considered that *"the termination of an employment contract for sporting reasons cannot be accepted on the basis of mere compliance with formal requirements referred to above, unless the player has during the performance of his employment contract made the Club aware of his dissatisfaction with the fact that he is not actively participating in the team's games"*. In the present matter, the Player never until providing Inter with his termination letter, expressed his discontent.
- As to the Player's performance with Lugano, out of the 32 matches, he started in 7 matches, entered the squad as a substitute in 18 matches and was not inserted in the squad in 7 matches. Accordingly, bearing in mind the foregoing, one can observe that even for a middle size club like Lugano, playing in a minor championship like the Swiss one, the Player does not appear to be included in the group of established players that play regularly and in the starting eleven. The Player rather remains with the group of players that are inserted at the end of the match to collect some experience useful for the future development.

b) As to the "just cause" under Article 17 FIFA RSTP

- The Employment Contract clearly determined the mutual obligations of the Player and Inter. No claims or protests as to Inter's compliance with the Employment Contract were ever received. Inter was deeply astonished when faced with the reluctance of the Player to continue his career with Inter.
- Lugano's references to the deregistration of players have nothing to do with the relationship between the Player and Inter and every comparison is simply misplaced.
- By the time of the termination of the Employment Contract, the Player and Lugano had most likely already agreed on the terms of their employment relationship for a long time and only in a second stage officially signed the contract. Such conduct on the side of Lugano represents an obvious inducement for the Player to breach the Employment Contract.

c) As to the compensation granted by the FIFA DRC in the Appealed Decision

- It is worthy to remind that while establishing an amount of compensation on the basis of Article 17 FIFA RSTP, it is essential to focus first of all on the principle of positive interest. Inter acquired the rights for the Player from Parma for a transfer compensation of EUR 2,000,000, which represents a big financial investment considering the young age of the Player at the time.
- Under the loan agreement concluded between Inter and Nice, Inter was to receive a guaranteed loan fee of EUR 200,000. The value of the services of the Player for one single season were therefore worth at least EUR 200,000 at the end of August 2016. Considering that the Player spent the entire 2016/2017 season with the first squad of Inter, gaining experience, the value of his services for one season clearly became much higher. In case Nice would have liked to permanently register the Player, a net amount of EUR 3,500,000 would be payable to Inter. This represents the real current market value of the Player. Although the Player did not reach an agreement with Nice, Inter and Nice had signed the loan agreement, with such purchase option. The investments made by Inter in the Player's development was reflected in the amount of transfer compensation potentially payable to Inter in case of a definite transfer to Nice.
- Also the fact that the Player's salary with Lugano is higher than his salary with Inter demonstrates that that the Player clearly had financial motivations to breach his Employment Contract with Inter.
- The amount of EUR 1,000,000 adopted in the Addendum to the Player's employment contract with Lugano, which can be increased in accordance with the "Warranty Agreement", represents the value that these two parties gave to the services of the Player.

65. On this basis, Inter submits the following requests for relief:

"1. To reject the appeal;

2. To uphold the Challenged Decision;

3. To condemn the Appellant to the payment in favour of the Respondent of the legal expenses incurred;

4. To establish that the costs of the arbitration procedure shall be borne by the Appellant;"

V. JURISDICTION

66. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2018 Edition), as it determines that *"[a]ppeals 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"* and Article R47 CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.

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

VI. ADMISSIBILITY

68. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

69. It follows that the appeal is admissible.

VII. APPLICABLE LAW

70. Both parties agree that the present proceedings are to be decided based on the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and Swiss law on a subsidiary basis.

71. Article R58 CAS Code provides as follows:

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

72. Article 57(2) FIFA Statutes provides the following:

"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".

73. Accordingly, the Sole Arbitrator finds that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP (2016 edition), and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY ISSUES

A. The Player's Request for Intervention

74. On 7 February 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to reject the Player's request for intervention and that the reasons for this decision would be provided in the final award.

75. Also on 7 February 2019, the CAS Court Office had informed the Player that his request for intervention was dismissed for, *inter alia*, the following reasons:

"Article R41.3 of the Code only provides participation as a formal party and not participation as a non-party (with restricted rights) in analogy to the provisions of the CPC.

Article R41.3 of the Code is not designed to cure a failed deadline of a party that was entitled to appeal against the FIFA decision.

Intervention according to Article R41.3 of the Code requires a legal interest of the intervenor. By failing to meet the deadline of appeal the Player has accepted the binding effects of the FIFA decision and, thus, has lost any legal interest in participating in this proceeding as a party challenging said decision.

The present case is not a case of mandatory joinder, instead the matter in dispute between Inter and Lugano on the one hand and Inter and the Player are independent of each other".

76. In addition to the reasons set out above, the Sole Arbitrator in particular disagreed with Lugano's submission that in case the Sole Arbitrator would issue an award more favourable to Lugano than the Appealed Decision, there would be two contradictory decisions, for Lugano would remain jointly and severally liable with the Player in respect of the Appealed Decision.

77. Such fear of contradictory decisions that would both remain binding on Lugano is unwarranted. Indeed, the Swiss Federal Tribunal held the following in a similar football-related situation:

"[…] The joint defendants remain independent from each other. The behavior of one of them, and in particular his withdrawal, failure to appear or appeal, is without influence upon the legal position of the others (judgment 4P.226/2002 of January 21, 2003 at 2.1; Hohl, op. cit., n. 525; Schaad, op. cit., p. 76 f.; Gross and Zuber, op. cit., n. 19 ad Art. 71 CPC). As to the judgment to be issued, it may be different as to one of the joint defendants or the other (Jeandin, op. cit., n. 11 ad Art. 71 CPC). The independence of joint defendants will continue before the appeal body: a joint defendant may independently appeal the decision affecting him regardless of another's renouncing his right to appeal the same decision; similarly, he will not have to worry about the appeals of the other joint defendants being maintained if he intends to withdraw his own (Schaad, op. cit., p. 281 ff.). Among other consequences, this means that the res judicata effect of the judgment concerning joint defendants must be examined separately for each joint defendant in connection with the opponent of the joint defendants because there are as many res judicata effects as couples of claimant/defendant (Schaad, op. cit., p. 317 ff.).

In the light of these principles, the Appellant was blatantly wrong to deny that the CAS had any jurisdiction to address the Respondent's appeal against the DRC decision of June 15, 2011, on the basis of the Player's appeal against the same decision. Indeed, the withdrawal had no impact on the appeal proceedings between the Respondent and the Appellant. In other words, the Respondent could argue before the CAS, among other things,

that the DRC was wrong to find the Player in breach of his contract with the Appellant by demonstrating, for instance, that the contract had not become enforceable between these two parties, with a view to establish the extinction of the Player's obligation which had been jointly imposed upon the Respondent by Art. 17(2) RSTP (judgment 4A_304/2013 of March 3, 2014 at 3). It is immaterial that this may result in an award incompatible with the enforceable decision of the DRC as to the fate of the Player sued by the Appellant" (SFT 4A_6/2014 consid. 3.2.2).

78. Accordingly, in case the award in the present matter would turn out to be more favourable towards Lugano than the Appealed Decision, Lugano would not be jointly and severally liable for the difference between the two decisions, if any, but only for the part of the Appealed Decision that is confirmed.

79. Consequently, the Sole Arbitrator decided to reject the Player's request for intervention.

B. Inter's Request for Production of Documents

80. On 27 May 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to reject Inter's request for production of documents and that the reasons for this decision would be set out in the final award.

81. In its Answer, Inter submitted that it appears from the Addendum to the Player's employment contract with Lugano that they also signed a legal instrument referred to as the "Warranty Agreement" which provides for additional financial terms in the contractual relation between the Player and Lugano. Inter maintained that such document is clearly of particular importance for the estimation of the Player's real market value and therefore requested the Sole Arbitrator to order Lugano to produce such document.

82. Lugano objected to such request by arguing that Inter failed to demonstrate the relevance of such document. The market value of the Player shall not be calculated according to such buy-out clause, as was already determined by the FIFA DRC in the Appealed Decision. CAS jurisprudence has also held that such clauses are not relevant for calculating compensation. In any event, the amount of the buy-out clause is irrelevant because such clause has not been exercised by the Player so far. Lugano also argued that Inter has not substantiated to which extent or according to which legal basis the supposed "real market value" of the Player should be taken into account, this especially considering that Inter has not challenged the Appealed Decision to request a higher compensation that the one awarded by the FIFA DRC.

83. Considering the arguments submitted by both parties, the Sole Arbitrator decided to reject Inter's request because the Sole Arbitrator found that the relevance of such document was insufficiently established.

84. The Sole Arbitrator finds that the amount of an unexercised buy-out clause can generally not be considered to reflect the market value of a football player. Since it has not been submitted

that the pertinent buy-out clause was exercised by the Player, the Sole Arbitrator did not see the added value of having the "Warranty Agreement" on file.

C. The Status of the Witnesses called by Lugano

85. As indicated *supra*, the Sole Arbitrator decided at the outset of the hearing that he would allow the testimony of Mr Manna and the Player, despite the objections raised by Inter, but that he would decide on their status in the final award.

86. The Sole Arbitrator finds that Mr Manna is a party representative. As an (high-level) employee of Lugano with a wide-reaching mandate to act for Lugano he has an interest in the present proceedings. This is a circumstance that needs to be taken into account when evaluating the weight of the testimony. However, the Sole Arbitrator has no reason to believe that in this specific case Mr Manna's testimony was in any way biased. In any event, the Sole Arbitrator finds that the outcome of this case would not have been any different, if the status of a (true) witness would have been accorded to Mr Manna.

87. With respect to the testimony of the Player, the Sole Arbitrator decides that such testimony must be assessed by qualifying the Player as a witness. It is true that the Player's status may appear – at first sight – somewhat hybrid. On the one hand, he is currently employed by Lugano and may therefore have an interest in the present proceedings from that angle. On the other hand, the Player is not formally a party to the present proceedings, despite his attempt to intervene in the present arbitration. He, therefore, must be attributed the status of a witness. However, when weighing and assessing the testimony of the Player, the Sole Arbitrator took into account that the Player has a personal interest in the outcome of the present arbitration, as the joint liability of Lugano is at stake. In case Lugano would prevail in the arbitration, the Player would have to pay the compensation awarded to Inter in the Appealed Decision by himself, whereas in case Inter would prevail, Lugano would remain jointly liable with him to pay the compensation awarded to Inter in the Appealed Decision. In addition, the Player stated that Lugano would help him pay the amounts awarded to Inter, regardless of Lugano's joint liability. However, according to the Player no contract to this effect had been concluded.

IX. MANDATE

88. With reference to the jurisprudence of the SFT as cited above (cf. para. 77 *supra*), the Sole Arbitrator finds that he is not restricted in assessing the facts and the law of the present matter in accordance with Article R57 of the CAS Code. The mere fact that the Player is not a party to the present proceedings does not prevent him from deciding any preliminary questions of relevance for the present matter in dispute, such as – e.g. – whether the Player had "sporting just cause" or "just cause" to terminate his Employment Contract. Since the Appealed Decision held that Lugano is jointly liable with the Player to pay compensation to Inter for the Player's breach of the Employment Contract, Lugano has a legitimate interest in challenging the Appealed Decision on its own initiative, without the need to involve the

Player in the proceedings, as Lugano does not seek anything from the Player, but only from Inter.

89. Also the fact that the Player did not challenge the Appealed Decision and that a possible successful appeal of Lugano would lead to contradictory decisions insofar as the Player and Lugano are concerned does not prevent the Sole Arbitrator from adjudicating and deciding on Lugano's requests for relief insofar as this concerns the relationship between Lugano and Inter.

X. MERITS

A. The Main Issues

90. The main issues to be resolved by the Sole Arbitrator in the present case are as follows:

a. Did the Player have "sporting just cause" to terminate his Employment Contract with Inter?

b. If not, did the Player have "just cause" to terminate his Employment Contract with Inter?

c. What should be the financial consequences thereof?

i) Did the Player have "sporting just cause" to terminate his Employment Contract with Inter?

91. The concept of "sporting just cause" is set out in Article 15 FIFA RSTP, which provides as follows:

"An established professional who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such cases. The existence of sporting just cause shall be established on a case-by-case basis. In such a case, sporting sanctions shall not be imposed, though compensation may be payable. A professional may only terminate his contract on this basis in the 15 days following the last official match of the season of the club with which he is registered".

a) The Conditions for "Sporting Just Cause"

92. The parties largely agree on the conditions that need to be cumulatively met in order to legitimately invoke the application of "sporting just cause":

1) The player must be an "established player";

2) He must have appeared in fewer than 10% of the official matches of his club;

3) The Employment Contract must be terminated on this basis within 15 days of the club's last official match of the season.

93. The main difference between the parties' positions in this respect is that whereas Inter submits that the Player's circumstances shall be taken into account as a separate requirement, Lugano maintains that this is not a separate prerequisite.

94. In this respect, the Sole Arbitrator agrees with Lugano. The Player's circumstances are not a separate precondition, as it does not require any standard to be met. Rather, the Sole Arbitrator finds that the Player's circumstances are to be taken into account in assessing whether a player is an "established player" in the sense of Article 15 FIFA RSTP, i.e. whether the first prerequisite mentioned above is complied with.

95. It is not in dispute that the Player featured in less than 10% of Inter's matches in the 2016/2017 season. In fact, the Player was not fielded in any of Inter's official matches during this season.

96. It is also not in dispute that the Player terminated his Employment Contract within 15 days of Inter's last official match of the 2016/2017 season, invoking Article 15 FIFA RSTP.

97. Accordingly, the Sole Arbitrator is put to the task of assessing whether the Player was an "established player" within the meaning of Article 15 FIFA RSTP.

b) The term "Estabished Player"

98. Commencing with such analysis, the Sole Arbitrator finds that the term "established player" obviously seeks to exclude from the scope of application of Article 15 FIFA RSTP players that are not yet "established".

aa) Age

99. The Sole Arbitrator finds that this excludes – from the very outset – players that are still being trained and thus any players that have not terminated their training period. Since the termination of a contract shall only be available as an *ultima ratio*, the threshold cannot be set too low. Only players that have a legitimate expectation to be (regularly) fielded may avail themselves of Article 15 RSTP. This, however, is not the case for players that have not yet finished their training. Accordingly, unless exceptional circumstances require determining otherwise, players under the age of 21 cannot be considered "established professionals".

100. Article 1(1) Annex 4 FIFA RSTP provides as follows in this regard:

"A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, ***unless it is evident that a player has already terminated his training period before the age of 21****. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training"* (emphasis added by the Sole Arbitrator).

101. The Sole Arbitrator finds that it appears from the highlighted part of the above provision that a player's training period in principle terminates when he reaches the age of 21. Thus, before the age of 21 there is a presumption that a player is not an "established player".

102. At the moment the Player terminated his Employment Contract with Inter he was roughly 21 and a half years old, i.e. he had thus already concluded his training period.

bb) Other Circumstances to be taken into Account

103. The question, thus, is whether a player by reaching the age of 21 automatically becomes an "established player" or whether additional circumstances need to be taken into account. The Sole Arbitrator finds that no such automatism is warranted. Article 1(1) Annex 4 FIFA RSTP establishes that the education of a player goes on until the age of 23. Also, other CAS panels have pointed to the difference between "training" and the "development" of a player (cf. CAS 2006/A/1029, CAS 2011/A/2682). The Sole Arbitrator accepts this distinction between "training" and "development" of a player in the sense that a football player does not stop learning and might still improve as a football player after the end of his training period (cf. CAS 2017/A/5090 para. 96 *et seq.*). In CAS 2006/A/1029, the panel stated as follows:

"[T]he training period and the development of a player are different concepts. The training period is ruled and limited by FIFA with specific regulations and Circular Letters while the development of a player is not. The aim and the spirit of FIFA Regulations is to regulate the training and not the development of the Player. […]" (CAS 2006/A/1029, para. 23 of the abstract published on the CAS website).

104. Thus, the Sole Arbitrator finds that within the age bracket of 21 until 23 not only the age of the player, but in particular his development as a player must be taken into account, in order to determine whether or not a player is an "established player" (CAS 2007/A/1369, para. 52 of the abstract published on the CAS website). This is also in line with the Appealed Decision. According thereto, the mere fact that a player reaches the age of 21, and therefore finished his training period in the sense of the training compensation system set out in the FIFA RSTP, does not automatically make him an "established player" within the meaning of Article 15 FIFA RSTP. Consequently, the Sole Arbitrator must examine whether or not – based on the overall circumstances before him – the Player had a legitimate expectation of being fielded (which is required in order to be an "established player"). Only as of the age of 23 (i.e. with completion of his education) the Sole Arbitrator finds that there is room for a presumption that the player has turned into an "established professional".

105. A young football player opting to join a major football club should (and will) be aware that he may face more competition and less playing time than if he would join a less prominent club. Even if not regularly fielded, being registered with a major football club may well be beneficial for a young player's future career, as the experience of having trained among top football players is often regarded as a valuable asset.

106. In the case at hand it appears questionable whether or not the Player had a legitimate expectation to be regularly fielded. It is undisputed that the Player was provided with the

opportunity to be loaned to Nice for the 2016/2017 season. The details of such offer are in dispute between the parties. However, it is not disputed that although Inter and Nice had already reached a loan agreement, the loan finally did not materialise because the Player indicated that he did not want to be loaned to Nice. Although the Player was of course perfectly entitled to refuse such loan, the Sole Arbitrator finds that Inter's interest in loaning the Player to Nice is an indication that the Player should probably not have expected to be fielded regularly in Inter's A-team in the 2016/2017 season, particularly considering that Inter had a number of more experienced players in its A-team for the same position as the Player. By refusing to be loaned to Nice, the Player, at least to a certain extent, "accepted" that he would not be fielded regularly.

cc) The Necessity to give Prior Notice or a Warning

107. At the end of the day whether or not the Player had a legitimate expectation to be fielded can be left open in this matter. The Sole Arbitrator does not need to finally and conclusively determine whether the Player is an "established player", because even if this was the case, in order to legitimately invoke the application of Article 15 FIFA RSTP, it is incumbent on a player to give a prior warning to his club before terminating the employment contract. Such notice is vital because the termination of an employment contract is an *ultima ratio*. In principle, only when the employer is in good faith provided with an opportunity to cure the conduct that is considered unsatisfactory by the employee can an employment contract be terminated prematurely.

108. This is also determined in case law of the SFT and this case law is consistently applied by CAS in respect of the concept of "just cause" (cf. CAS 2006/A/1180, para. 25; CAS 2016/A/4846, para. 175 of the abstract published on the CAS website). The Sole Arbitrator does not see why this should not apply to an early termination based "sporting just cause". This view is also supported in the jurisprudence of CAS. Indeed, the sole arbitrator in CAS 2007/A/1369 determined the following:

"For all of the reasons detailed above and in order to preserve contractual stability, the termination of an employment contract for sporting reasons cannot be accepted on the basis of mere compliance with the formal requirements referred to above, unless the player has during the performance of his employment contract made the Club aware of his dissatisfaction with the fact that he is not actively participating in the team's games. Silence can communicate a sense of resignation, acceptance or even accommodation to the situation and give the impression that he lacked motivation.

The Club was accordingly not duly alerted to the player's dissatisfaction and so could not take corrective measures during the season with a view to an improved equilibrity between the Parties.

A player, who demonstrates by act or omission, during a sporting season that he is resigned to his position as an unused player, cannot subsequently avail himself of the said situation in order to justify the termination of his contract on the grounds of sporting just cause" (CAS 2007/A/1369, para. 172-174 of the award that was referred to by the parties).

109. According to the Swiss Federal Tribunal (the "SFT"), a prior warning is the norm, although it is not required under all circumstances:

"According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)" (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

110. Indeed, as held by CAS:

"Should the breach be of a minor severity, Swiss jurisprudence is of the opinion that it can still lead to an immediate termination but only if it was repeated despite a prior warning (ATF 130 III 213 v. 3.1 p. 221).

Nonetheless, the severity of the breach cannot lead by itself to a termination for just cause. What is decisive is that the facts adduced in support of the immediate termination have resulted in the loss of trust which is the basis of the employment contract (ATF 130 III 213 c. 3.1 p. 221; ATF 127 III 153 c. 1c p. 157 s)" (CAS 2014/A/3706, para. 82-83 of the abstract published on the CAS website).

111. The Sole Arbitrator finds that a termination for "sporting just cause" is not one of the categories of contractual breaches that are of such severity that no prior warning is required.

112. The Sole Arbitrator notes that the Player did not allege to have warned Inter of his dissatisfaction with the way he was treated. In fact, the Player confirmed that he did not complain and never asked to be reintegrated with the A-team because he *"could not go against such a big club"*. The Player stated that his agent and lawyer complained to Inter about his situation, but there is no evidence whatsoever on file supporting such contention.

113. Indeed, absent a prior warning from the Player, the Sole Arbitrator finds that Inter may well have been of the legitimate understanding that the Player was satisfied with the employment relationship and the opportunities given to him and was taken aback by the Player's sudden termination. Inter may well have been of the understanding that the Player was perfectly satisfied with gaining practical experience by training together with Inter's A-team and by regularly sitting on the A-team's substitutes bench during official games, even if not fielded. By failing to notify Inter of his alleged dissatisfaction, the Sole Arbitrator finds that the Player prevented Inter from possibly changing its course of action in an attempt to restore the Player's confidence in his employer. Under such circumstances, a unilateral and premature termination of an employment relationship is not warranted.

114. Consequently, the Sole Arbitrator finds that the Player did not have "sporting just cause" to terminate his Employment Contract with Inter.

ii) Did the Player have "just cause" to terminate his Employment Contract with Inter?

115. As a subsidiary argument in case his termination on the basis of "sporting just cause" would be dismissed, the Player submits that he terminated his Employment Contract with "just cause" on the basis of Article 14 FIFA RSTP.

116. Article 14 FIFA RSTP provides as follows:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

117. The Sole Arbitrator notes that besides the justification on the basis of "sporting just cause" and not being fielded for a full season, the Player also maintains that Inter lacked any genuine interest in his services and by not fielding him infringed his personality rights as an employee.

118. In addition, the Player during his testimony at the hearing, argued that Inter punished him for not accepting to be loaned to Nice. The Player submitted that he was side-lined by Inter and that he was left out of the group and was forced to train alone for about three/four months after 31 August 2016. Counsel for Inter strongly objected to this. The Sole Arbitrator does not consider this part of the Player's testimony credible in light of the fact that it is not disputed between the parties that the Player was regularly called upon as a substitute of Inter's A-team in official matches during the months of September, October and December 2016 (not in November 2016 due to an alleged injury). The Sole Arbitrator finds it unlikely that the Player would be called upon as a substitute if he was indeed forced to train alone. Furthermore, it does not appear from the Appealed Decision that any such argument was ever raised by the Player in the proceedings before the FIFA DRC.

119. Be it as it may, the Sole Arbitrator does not consider it necessary to enter into a detailed analysis of the different arguments exchanged by the parties in respect of whether or not there was "just cause" to terminate the contract. The Player's argument based on Article 14 FIFA RSTP must fail for the same reason as set out above, i.e. because the Player did not give a prior warning to Inter about his alleged dissatisfaction with Inter's conduct, thereby preventing Inter from the opportunity to possibly change its course of action and prevent a termination on this basis.

120. Consequently, the Sole Arbitrator finds that the Player did not have "just cause" to terminate his Employment Contract with Inter.

iii) What should be the financial consequences thereof?

121. The Sole Arbitrator observes that the joint liability of Lugano as such is not disputed. The Sole Arbitrator will therefore limit his examination to assessing the amount of compensation for which Lugano can be held jointly liable with the Player.

a) The Legal framework

122. The consequences of terminating an employment contract without "just cause" are set out in Article 17(1) FIFA RSTP, which provides 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".

123. Accordingly, Inter is entitled to be compensated for the damages inflicted upon it by the Player's breach of the Employment Contract.

124. The parties did not deviate from the application of Article 17(1) FIFA RSTP by means of a liquidated damages clause. The compensation for breach of contract to be paid to Inter by the Player is therefore to be determined in accordance with article 17(1) FIFA RSTP.

125. The Sole Arbitrator takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) FIFA RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in CAS 2008/A/1568, para. 6.37).

126. In respect of the calculation of compensation in accordance with Article 17 FIFA RSTP and the application of the principle of "positive interest", the Sole Arbitrator follows the framework set out by a previous CAS panel as follows:

"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.

As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4;

CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).

The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations" (CAS 2008/A/1519-1520, at para. 85 et seq.).

127. The Sole Arbitrator finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Sole Arbitrator will proceed to assess Inter's objective damages, before applying his discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

b) Quantifying the positive interest

128. In order to calculate the positive interest the Sole Arbitrator needs to assess the value of the Player's services. An indication of the value of the Player's services can be found in the remuneration paid by Inter as well as in the remuneration paid by Lugano. Based on these objective criteria the FIFA DRC calculated the compensation due based *"on the average between the remaining value of the breached contract and the [Player's] new contract during the period of time"*. The remaining value of the Employment Contract from June 2017 until the date of regular expiration (i.e. 30 June 2018) amounts to EUR 143,000. It remained undisputed that the Player earned a total of EUR 105,000 with Lugano during the 2017/2018 season. Various bonuses were mentioned in the employment contract, but it was not proven that any of such bonuses were triggered. Consequently, the average of both salaries for the remainder of the breached contract amounts to EUR 124,000. Considering that Inter had paid already the full salary for June 2017, the FIFA DRC added the *pro rata* part of this monthly salary (i.e. EUR 9,532) to Inter's damage. Thus, the total damage is – according to this calculation – EUR 133,532

129. The Sole Arbitrator finds the above approach of the FIFA DRC, i.e. to calculate Inter's damages by taking the average of the Player's salaries with Inter and Lugano, and subsequently adding the *pro rata* part of the Player's salary with Inter over June 2017 to be, in principle, appropriate. Lugano's approach that only the non-amortised transfer fee paid by Inter to Parma can be taken into account as a basis to determine the damages caused is not considered appropriate, because the transfer fee paid by Inter has already been fully amortised, while the Player still represents a certain value on Inter's balance sheets. Also the investments made by Inter in training the Player cannot be considered a damage, because such investments are already covered by training compensation under the FIFA RSTP, which issue is examined in *CAS 2019/A/6096*.

c) Need for adjustment

130. The Sole Arbitrator is not prepared to adjust the above amount based on the various option clauses in the different agreements by means of which the permanent services of the Player could be secured. They are of limited value in the present proceedings, because none of such options have been exercised. The Sole Arbitrator finds that the predetermined value attached to lifting an option is only of direct relevance in assessing the value of a player's services when such option is indeed exercised.

131. Lugano submits that the value of the services must be adjusted or reduced to zero in view of the fact that Inter had no use for or lacked any genuine interest in the services of the Player and – consequently – did not suffer any damage due to the Player's departure. The Sole Arbitrator does not concur with this view. Apart from the possibility of fielding the Player in matches, Inter, in principle, also had the possibility to make use of the services of the Player by loaning him to another club. Inter and Nice agreed on a loan fee for the Player in the amount of EUR 200,000 for the 2016/2017 season. The mere fact that the Player refused to move on loan to Nice does not take away the fact that Nice was willing to pay Inter this amount for the services of the Player for one season and that Inter was willing to release the Player for one season for such amount. In this respect, it is to be noted that Nice would assume the exclusive responsibility to pay salary to the Player during the 2016/2017 season. Although such contract was concluded at the start of the 2016/2017 season, while the Employment Contract was terminated at the end of the 2016/2017 season, the Sole Arbitrator finds that this fact shows that Inter valued the Player's services.

132. Furthermore, the Sole Arbitrator does not consider it otherwise proven that Inter lacked any genuine interest in the Player's services. The Player was regularly called upon to sit on the substitutes bench during official matches of Inter's A-team and was always training together with the A-team. The Sole Arbitrator also finds Inter's contention convincing that it required the Player in the A-team in order to create a good mix of young talented players and older experienced players. Young talented players are an important part of a team, even if not fielded in official matches, because they play an important role as potential substitutes. A premier football club like Inter cannot have a team of 23 star players, because such star players will not accept not being regularly fielded. There is, therefore, a need to have players in a team that are willing to assume the role of substitutes. Such role will generally be fulfilled by young players, such as, indeed, the Player. The value attached to the Player by Inter can therefore mainly be found, as was indeed contended by Inter during the hearing, in the need to have a team with a diverse mix of players. The Sole Arbitrator therefore finds that this is not a situation of a *de facto* deregistration of the Player or proof that Inter did not attach any value to the services of the Player.

133. However, a factor that leads to a decrease of the damages calculated according to the above formula is a fact of common knowledge that the market value of football players generally decreases once the date of expiration of an employment contract gets closer, because once it expires the player can leave as a free agent and therefore without any compensation being paid by the player's new club. In view of the above and in consideration of the discretion accorded

to him, the Sole Arbitrator decides that the positive interest of Inter regarding the services of the Player shall be set at EUR 120,000.

B. Conclusion

134. Based on the foregoing, the Sole Arbitrator rules that:

i) The Player did not have "sporting just cause" to terminate his Employment Contract with Inter.

ii) The Player did not have "just cause" to terminate his Employment Contract with Inter.

iii) Lugano is jointly liable with the Player to pay compensation for breach of contract to Inter in an amount of EUR 120,000.

135. The Sole Arbitrator is cognisant of the fact that the amount Lugano is ordered to pay to Inter in this Award differs from the amount awarded to Inter in the Appealed Decision. To a certain extent, these are therefore indeed contradictory decisions. Although this outcome may not be desirable from a policy perspective, it was the Player's decision not to challenge the Appealed Decision who thereby formally accepted the *res judicata* effect of the Appealed Decision and thus his liability to pay compensation in the amount of EUR 133,532 to Inter. It is not within the Sole Arbitrator's authority to cure this, while Lugano cannot be prejudiced by the Player's conduct.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 19 November 2018 by FC Lugano SA against the decision issued on 7 June 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 7 June 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed, save for para. 4 of the operative part, which shall read as follows:

FC Lugano SA is jointly and severally liable with the Player for the payment of compensation for breach of contract in the amount of EUR 120,000.

(…)

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