Arbitration CAS 2019/A/6312 Ailton José Almeida v. Al Jazira Football Sports Company & Fédération Internationale de Football Association (FIFA), award of 4 August 2020

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football
Outstanding amounts under a settlement agreement
Applicable law
Scope of Art. 22(b) RSTP
Interpretation of the FIFA regulations
Validity of a clause referring an employment-related dispute of an international dimension to the CAS
Limitation of the "lex specialis" *doctrine*
Scope of CAS jurisdiction

1. **In the course of an appeal arbitration proceedings before CAS against a final decision passed by the adjudicatory bodies of FIFA, the FIFA Regulations – in the sense of the entire statutory regime of FIFA – apply primarily and recourse must be made to Swiss law only when questions on their interpretation arise. Accordingly, the law chosen by the parties applies to all the matters that are not addressed by the FIFA Regulations and therefore, do not require a globally uniform application because they are not part of the standards of the industry set by FIFA.**

2. **Article 22(b) of the FIFA Regulations on the Status and Transfer of Players (RSTP) applies not only to employment disputes between a club and a player in the narrow meaning of the term, which would refer only to disputes arising exclusively out of an employment agreement, but it also covers disputes between clubs and players that are related to the employment in general. *Employment relations* are wider than *employment agreements* and may cover areas that are not referred to in the written employment contract. Therefore, the notion of "employment-related disputes" includes a much wider range of disputes than just disputes arising over employment agreements. Consequently, the scope of Article 22 FIFA RSTP includes also disputes that may arise after the termination of the employment relationship and are "employment related". Pursuant to this approach, the arbitral tribunal is required to consider the overall nature of the dispute, in light of the circumstances of the employment relationship, for the sake of establishing whether the dispute is related with the employment relationship.**

3. **FIFA is a very large private entity domiciled in Switzerland and its regulations whose effects are felt worldwide should be interpreted in accordance with the principles established with regard to the interpretation of state laws, rather than those applicable to the interpretation of contracts.**

4. Neither the wording of the preamble to Article 22 FIFA RSTP, nor lit. b) of said article are sufficient to establish the validity of a clause referring an employment-related dispute of an international dimension between a club and a player to the jurisdiction of the CAS. However, the legitimacy of CAS to hear such disputes may derive from other legal instruments, as Article 22 FIFA RSTP is not a stand-alone provision but rather forms part of the regulatory framework of FIFA which is characterized by a distinct normative hierarchy. Articles 57 and 59 FIFA Statutes provide for an additional alternative to the respective dispute resolution scheme of FIFA, by authorizing CAS to decide as an arbitration tribunal upon any dispute between clubs and players. Therefore, the validity of an arbitration clause in favour of CAS to hear employment-related disputes of an international dimension is premised on Articles 57 and 59 FIFA Statutes which, as provisions of superior legislative force, prevail over Article 22 FIFA RSTP. It follows that parties to an agreement can validly nominate CAS to decide upon any dispute arising out of its execution, thereby excluding the competence of the FIFA adjudicatory bodies.

5. In case a comparative analysis between a provision of the FIFA RSTP and one of the FIFA Statutes leads to contradictory results, the provision of the FIFA RSTP cannot be considered *lex specialis* over that of the FIFA Statutes, as the legal doctrine *"lex specialis derogat legi generali"* is applicable only in case the legal provisions under examination are of the same regulatory force.

6. It would be incompatible with the nature of appeal proceedings if a CAS panel decided, despite adhering to the findings of the lower instance that the latter lacks jurisdiction, to disregard such ruling and to artificially handle the dispute as if the latter constituted a claim submitted before the CAS Ordinary Arbitration Division. The notion of *"de novo"* examination, established under Article R57 CAS Code, is not wide enough to warrant an assessment on the merits of the matter within an appeal proceeding when the CAS panel has found that the lower instance was right in denying its jurisdiction. Whereas it is undisputed that the arbitral tribunal is vested with full power to review the substance of the dispute under scrutiny, such review is conditional upon the determination on behalf of the CAS panel that the lower instance had erred in dismissing the claim on grounds of jurisdiction. Consequently, an evaluation on the merits of the matter is not to be warranted solely by the fact that the initial intention of the parties was to submit their pertinent disputes before CAS.

I. PARTIES

1. Mr. Ailton José Almeida (the "Appellant" or the "Player), is a professional football player of Brazilian nationality.

2. Al Jazira Football Sports Company (the "First Respondent" or the "Club") is a professional football club, with its registered office in Abu Dhabi, United Arab Emirates. It is affiliated

with the United Arab Emirates Football Association (the "U.A.E.F.A."), which in turn is affiliated with *Fédération Internationale de Football Association*.

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

4. The First and the Second Respondent shall be collectively referred to as the "Respondents".

II. FACTUAL BACKGROUND

5. 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

6. On 15 January 2017, an employment contract was concluded between the Player and the Club, valid as from the date of signing until 30 June 2017 (the "Employment Contract").

7. On an unspecified date after the expiry of the Employment Contract, the Player and the Club concluded a settlement agreement in order to amicably resolve all pending issues arising out of the Employment Contract and its termination (the "Settlement Agreement"). The Settlement Agreement provides, *inter alia*, the following:

> *"2. Release by* [the Player]
>
> *2.1 Notwithstanding anything to the contrary, excepting only the obligation of* [the Club] *created in clause 3 of this* [Settlement Agreement]*, the* [Player] *specifically releases, waives and forever discharges* [the Club], *its successors in interest, its past, present, and future assigns, officers, directors, subsidiaries, affiliates, insurers and underwriters, from any and all past, present, and/or future claims, demands, actions, liabilities, and causes of actions, of every kind and character, whether asserted or unasserted, whether known or unknown, whether suspected or unsuspected, in law and/or in equity, arising from or related to the* [Employment Contract] *and/or the* [Player's] *employment by* [the Club].
>
> *3. Payment by* [the Club]
>
> *3.1 The* [Player and the Club] *hereby agree that* [the Club] *shall, as full, complete and final settlement under the* [Employment Contract], *pay to the* [Player] *the total amount of Three Hundred Thirty Thousand EUR (only 330,000 EUR) as follows:*

a) First instalment: 7th of September 2017 an amount of Fifty thousand EUR only (50,000) – (the "First Instalment")

b) Second instalment: *17th of September 2017 an amount of Sixty thousand EUR only (60,000)* – (the "Second Instalment")

c) Third instalment: *15th of October 2017 an amount of One Hundred Ten Thousand EUR only (110,000 EUR)* – (the "Third Instalment")

d) Fourth instalment: *15th of November 2017 an amount of One Hundred Ten Thousand EUR only (110,000 EUR)* – (the "Fourth Instalment")

Note1: In the event [the Club] *fails to pay any of the instalments herein agreed within the agreed due dates, the overdue instalment shall be immediately considered payable and* [the Club] *shall immediately accomplish with the payment of the total remuneration of the due instalment only in such occasion (for example if the second instalment is not paid on the 17th of September 2017 then a penalty of 6,000 EUR will be applied and a monthly interest of 1% from the 60,000 which is equal to six hundred EUR only till the date of the second instalment payment is done). In such case, a fine of 10% plus interest will accrue on the full amount outstanding at the rate of 12% annual rate from the due date until the date of payment. i.e 10% penalty and a monthly interest of 1% from the date of payment till the date of the actual instalment payment with a maximum of 12% annually.*

[…]

4. Covenants not to sue

4.1 Notwithstanding anything to the contrary and without prejudice to the obligation created in clause 3 of this [Settlement Agreement], *the* [Player] *hereby irrevocably and perpetually covenants not to sue, and/or bring any other legal action against* [the Club], *its successors in interest, its past, present and future assigns, officers, directors,, subsidiaries, affiliates, insurers and underwriters, for any and all past, present, and/or future claims, of any nature, whether known or unknown, whether suspected or unsuspected, arising from or related to* [the Employment Contract] *and/or the* [Player's] *employment by* [the Club].

4.2. Notwithstanding anything to the contrary and without prejudice to the obligations of [the Club] *created in clause 3 of this* [Settlement Agreement], *the* [Player] *specifically, expressly and irrevocably agrees that this* [Settlement Agreement] *may be pleaded as an absolute and final bar to any complaint or legal proceeding that may hereafter be prosecuted by the* [Player] *arising from or related to the* [Employment Contract] *and/or the* [Player's] *employment by* [the Club].

[…]

8. Applicable Legislation and Resolution Disputes

8.1. This [Settlement Agreement] *shall be governed by and interpreted in accordance with its provisions, as well as the FIFA Regulations and the law of the United Arab Emirates.*

8.2. Any dispute arising from or related to this [Settlement Agreement] *will be submitted to the Court of Arbitration for Sport (TAS-CAS).*

9.Illegality

9.1 If any provision of this [Settlement Agreement] *shall be held by any competent body (including without limitation FIFA, the Court of Arbitration (TAS-CAS)) and/or any court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect …".*

8. On 7 September 2017, the Club executed the payment of the First Instalment to the Player, in accordance with the payment schedule provided under the Settlement Agreement.

9. On 16 December, the Player sent a default notice to the Club, asking it to proceed with the payment of the Second, Third and Fourth Instalment set out in the Settlement Agreement (the "Default Notice").

10. On an unspecified date after the receipt of the Default Notice, the Club proceeded with the payment of an amount equivalent to the Second Instalment. No other payment has been executed on behalf of the Club thereafter.

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 9 March 2018 the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") against the Club for the outstanding amounts under the Settlement Agreement, requesting, *inter alia*, the payment of the Third and Fourth Instalment, plus default interest of 1% per month as from the date each instalment became due, and the payment of EUR 22,000 (twenty two thousand) as contractual penalty under Article 3 of the Settlement Agreement. The Player's claim before the FIFA DRC can be detailed as follows:

"FIRST – To confirm that the Club disrespected the principle of respect of contracts by not paying the Player the amounts set out in the Settlement Agreement;

SECOND – To order the Club to pay to the Player EUR 110,000 due since 16 October 2017, plus default interest at the rate of 1% per month until the date of effective payment;

THIRD – To order the Club to pay to the Player EUR 110,000 due since 16 November 2017, plus default interest at the rate of 1% per month until the date of effective payment;

FOURTH – To order the Club to pay EUR 22,000 due as penalty plus default interest at a rate of 5% p.a. as from the date in which a decision is rendered regarding the matter at hand;

FIFTH – To impose the entitled disciplinary sanctions on the Club for having not complied with its financial obligations towards the Player as set out in the Settlement Agreement […]*; and*

SIXTH – To open the proceedings regarding the present dispute and notify the Club […]*".*

12. The Player argued that despite the arbitration clause in favour of the Court of Arbitration (the "CAS") provided under Article 8.2 of the Settlement Agreement, FIFA is the competent body to decide upon the matter at hand. In this regard, the Player referred to Article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), claiming that the exception to the competence of the deciding bodies of FIFA contained therein regarding employment-related disputes of an international dimension is not applicable in that case, since CAS has not been established at national level or within the framework of a national football association and/or a collective bargaining agreement and it does not respect the principle of equal representation between players and clubs.

13. The Club on the other hand contested the competence of FIFA to deal with the Player's claim. Based on Article 8.2 of the Settlement Agreement, the Club argued that CAS is the only competent body to decide upon any dispute arising out of the Settlement Agreement. As to the substance, the Club did not deny its undertaking to pay the two remaining instalments, but rather pointed out that it could not execute the payment of the Third and Fourth Instalment due to a *"deteriorated financial situation"*.

14. On 6 December 2018, the FIFA DRC issued its decision (the "Appealed Decision"), rejecting the Player's claim as inadmissible.

15. On 7 May 2018, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia,* the following:

"[…]

7.[…] *[F]irst and foremost, the members of the* [FIFA DRC] *established that the claim of the* [Player] *for allegedly outstanding remuneration is solely based on the* [Settlement Agreement]*, which was apparently signed after the date of expiry of the* [Employment Contract].

8. At this stage, the members of the [FIFA DRC] *recalled the content of the aforementioned art. 8.2 of the* [Settlement Agreement]*, which provides that "Any dispute arising from or related to this SETTLEMENT AGREEMENT will be submitted to the* [CAS].

9. In this respect, the Chamber first outlined that said clause unambiguously identifies the [CAS] *as exclusively competent to deal with disputes arising out of the* [Settlement Agreement]. *Furthermore, the* [FIFA DRC] *was eager to point out that the relevant clause was freely included in the agreement and resulted from the common will of the parties.*

[…]

11. Having stated the foregoing, the members of the Chamber highlighted that the choice of forum is a fundamental right of the parties to a contract which, as a matter of principle, needs to be respected. In this context, the member of the [Chamber] *referred to the first sentence of art. 22 of the* [FIFA RSTP]*, which establishes that "Without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes". The Chamber underlined that a player and a club thus have the right to refer*

a labour dispute to a court other than FIFA. The only limit to the parties' above-mentioned freedom is that the chosen forum respects the fundamental principles of due process, which an ordinary court is presumed to do.

12. Along those lines, the Chamber wishes to emphasize that it is undisputed that CAS guarantees the respect to the fundamental procedural rights of the parties, i.e. the principle of parity when constituting the tribunal, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment.

13. In fact, the members of the [FIFA DRC] *were eager to point out that the Swiss Federal Tribunal has recognized CAS as a true arbitral tribunal, the decisions of which have the same effect as those of an ordinary court judgement.*

14. With those considerations in mind, the [FIFA DRC] *took into account that, as stated above, according to the first sentence of art. 22 of the* [FIFA RSTP]*, as a general rule, any player or club can seek redress before a civil court for employment – related disputes and, in this respect, determined to follow the criteria established by the Swiss Federal Tribunal according to which CAS is considered to have the same level of independence and impartiality as an ordinary court and that an arbitral award of the former produces the exact same legal effects as a judgement of the latter. In other words, the* [FIFA DRC] *came to the conclusion that the main objective of the first sentence of art. 22 is to give the parties the liberty to choose a forum other than FIFA to resolve their employment – related disputes, the only limit being, as established above, the respect of fundamental principles of procedural law, which the CAS undoubtedly fulfils.*

15. Having established all of the above, the members of the [FIFA DRC] *concluded that there is no reason not to respect the choice of forum explicitly made by the parties in the* [Settlement Agreement] *and therefore that the* [Club's] *objection to the competence of FIFA to deal with the present matter is to be upheld. As a result, the* [FIFA DRC] *decided that it is not competent, on the basis of art. 8.2 of the* [Settlement Agreement]*, to consider the present matter as to the substance".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 28 May 2019, the Appellant filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellant requested that the matter at hand be submitted to a three-member Panel.

17. On 17 June 2019, following an agreement between the parties on the extension of the time limits to submit the Appeal Brief, the Appellant submitted the Appeal Brief.

18. On 8 July 2019, the Appellant requested that due to the Respondents' refusal to pay their respective shares of the advance of costs, CAS will reconsider the composition of the Panel and submit the matter at hand to a Sole Arbitrator.

19. On 11 and 15 July 2019 respectively, FIFA and the Club provided the CAS Court Office with their comments on the Appellant's request for the production of information filed on 8 July 2019. On same communications the Respondents stated their preferences with respect

of the composition of the Panel. While the Club agreed to the submission of the dispute to a Sole Arbitrator, FIFA objected to any alteration on the composition of the Panel.

20. On 23 July 2019, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, after having taken into consideration the circumstances of the case, had decided to submit the matter at hand to a Sole Arbitrator.

21. On 13 August 2019, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division has decided that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Sole Arbitrator: Mr. Efraím Barak, Attorney-At-Law, Tel Aviv, Israel

22. On 30 August and on 3 September 2019, following a series of agreed extension requests, the Respondents submitted their respective Answers.

23. On 12 and 16 September 2019, all the parties informed the CAS Court Office about their preference for a hearing to be held in the present dispute.

24. On 11 September 2019 and on behalf of the Sole Arbitrator, the CAS Court Office invited the Respondents to file their comments in respect with the Evidentiary Request (*infra* par. 24) within 7 days. By means of the same letter, the Parties were advised that Mr. Antonios Georgios Vogiatzakis, Attorney-At-Law in Thessaloniki, Greece, had been appointed as an *ad hoc* clerk.

The Evidentiary Request

25. In the Appeal Brief the Appellant requested, *inter alia*, the following:

"162. In order to clarify the status as a "repeated offender", we kindly request FIFA to provide the Panel with copy of all decisions rendered by the FIFA Players' Status Committee or the FIFA DRC against the Club in the last 3 years, which led to the imposition of sanctions" (the "Evidentiary Request").

26. On 18 September 2019, the Club informed the CAS Court Office about its objection to the Evidentiary Request. To support its view in this respect, the Club argued that the Player had failed to demonstrate that the documents sought were likely to exist and to be relevant with the present dispute. Further, the Club indicated that said documents would not serve the purpose of helping the Panel to decide the matter at hand, as the Sole Arbitrator *"has no authority to impose disciplinary sanctions on the parties, as such authority lies exclusively with the competent bodies of the federation"*.

27. On 19 September 2019, the CAS Court Office noted that FIFA also objected to the Evidentiary Request. The arguments of FIFA can be summarized as follows:

- The Appellant had failed to prove why the documents sought are relevant to the present dispute and therefore, to meet the requirements set in Article R44.3 of the CAS Code.

- The notion of "repeated offender", which the Appellant wishes to clarify through the Evidentiary Request, is basically linked with the prerogative of FIFA to impose sporting sanctions pursuant to Article 12 *bis* of the FIFA RSTP. In this regard, it has already been established in the Answer submitted by FIFA that the Appellant lacks any legitimate interest in requesting the imposition of sporting sanctions, which in turn renders the Evidentiary Request *"useless and irrelevant"*.

- The Evidentiary Request is overly broad and vague, failing to meet the standards for production of documents set in Article R44.3 of the CAS Code. The vague and generic reference to all decisions issued by the adjudicatory bodies of FIFA that led to the imposition of sanctions on the Club, confirms that the Appellant has undertaken a *"fishing expedition"*.

- The information sought by the Appellant is publicly available in the respective databases maintained by the CAS and FIFA. Moreover, FIFA is bound by Data Protection Policies and therefore, it is not in position to voluntarily produce documents of legal nature related to transactions to which the Appellant was not a party.

- Yet, at the preliminary stage of the proceedings, the Sole Arbitrator is requested as part of the requests for reliefs to impose sanctions on the Club pursuant to Art. 12 bis of the FIFA RSTP. As long as this request is not yet dealt with and decided, and in order to maintain the right balance between the solidness of the arguments of both parties, the Sole arbitrator decided to order FIFA to produce the information but, at this stage, only to him.

28. On 23 September 2019, the CAS Court Office, pursuant to Article R44.3 of the CAS Code and on behalf of the Sole Arbitrator, informed the Parties as follows:

"[…] *FIFA is requested to submit by 1 October 2019 a list of the decisions issued by the Dispute Resolution Chamber of FIFA ("DRC") between June 2016 and June 2019 in which imposed sanctions on the First Respondent in accordance with Article 12bis of the FIFA RSTP* […]

Moreover, the Parties are advised that the Sole Arbitrator has decided that the requested information will be submitted only to him (i.e. without giving a copy to the other Parties".

29. On 26 November 2019, all the parties filed the signed Order of Procedure.

30. On 13 January 2020, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all parties confirmed not to have any objection or comments as to the constitution and the composition of the arbitral tribunal nor in respect of the conduction of the proceedings up to that moment.

31. In addition to the Sole Arbitrator, Mr. Fabien Cagneux, Counsel for CAS, Mr. Antonios Georgios Vogiatzakis, *Ad hoc* Clerk, the following persons attended the hearing:

- For the Player:

  1) Mr. Breno Costa Ramos Tannuri, counsel;

- For the Club:

  1) Mr. Bernardo Palmeiro, counsel;

  2) Mr. Ahmed El Fattah, Al Jazira's Sports and Legal Affairs Manager;

- For FIFA:

  1) Mr. Miguel Liétard, FIFA Director of Litigation;

  2) Mr. Jaime Cambreleng, Head of FIFA Litigation Department;

  3) Mr. Mark Lecat, Legal Counsel at FIFA;

32. All the parties had a complete opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

33. Before the hearing was concluded, all the parties expressly stated that they did not have any objection with the procedure followed by the Sole Arbitrator and that they are satisfied and confirm that their right to be heard had been respected.

34. The Sole Arbitrator confirms that he carefully heard and took into consideration all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Player

39. The submissions of the Player may be summarized, in essence, as follows:

1. The choice of forum made in the Settlement Agreement

- As a general rule, Article 59 par. 2 of the FIFA Statutes establishes that in respect with issues falling within the jurisdiction of the deciding bodies of FIFA, recourse to national courts is prohibited unless specifically provided for in the various FIFA regulations. In that context, jurisdictional issues about employment-related disputes with an international dimension, are regulated by Article 22 of the FIFA RSTP, which provides specific alternatives to the jurisdiction of FIFA deciding bodies in this respect, namely national courts and independent arbitration tribunals established at a national level within the framework of the national association and/or a collective bargaining agreement;

- Although CAS is an arbitral tribunal that guarantees fair proceedings, its structure does not conform with the rest of the requirements provided under Article 22 of the FIFA RSTP and the FIFA Circular Letter 1010 namely, CAS does not respect the principle of equal representation between players and clubs and it does not operate within the framework of a national football association. The fact that CAS has a pre-established list of arbitrators, the construction of which is not equally affected by the interested parties (clubs and players), renders the attempt, made by the FIFA DRC by virtue of the Appealed Decision, to compare CAS with the national courts completely invalid and consequently, CAS cannot be accepted as a valid alternative choice to the jurisdiction of the deciding bodies of FIFA under Article 22 of the FIFA RSTP. As a result, the jurisdiction of the decision-making bodies of FIFA is not excluded due to the arbitration clause contained in the Settlement Agreement and the Player could choose freely whether to submit his claim before FIFA or CAS;

- Even though the arbitration clause in favour of CAS was voluntarily included by the Parties in the Settlement Agreement, it contravenes Articles 2 par. 2, 19 and 20 of the Swiss Code of Obligations, which prohibit contracts that are abusive, impossible, unlawful, immoral or contravene public policy or personal rights, a prohibition that supersedes the recognized under Swiss law principle of party autonomy. The fact that an award issued by the CAS Ordinary Arbitration Division in this case could only have been enforced through the judicial system of the United Arab Emirates, renders the arbitration clause under examination abusive against the Player as it would have entailed additional costs for him and an award that could only have been enforced through a controversial judicial system.

2. The legality of the penalty clause and the default interest rate under the Settlement Agreement

- *"*[…] *[I]t is important to stress that the application of a fine of 10% (ten percent), as well as default interest at an annual rate of 12% (twelve percent) is in accordance to the well-established jurisprudence of CAS"*;

- *"Furthermore, it is fundamental to clarify that the last two instalments are outstanding for a very considerable period, notably, for almost 2 years, without the Club having provided any reason or explanation for the said financial failure"*.

3. The issue of sporting sanctions

- The Player acknowledges that in principle, CAS would not examine *de novo* issues of sporting sanctions, unless an action such as the violation of a fundamental legal principle, the abuse of rights or an act of arbitrariness has taken place. Nonetheless, the arbitrary refusal of the FIFA DRC to examine the claim of the Player on its merits, *"provides the necessary legal framework"* for the Sole Arbitrator to consider the imposition of sporting sanctions against the Club;

- *"*[…] *[T]he Club a well-known so-called repeated offender … and as such, to the application* (sic) *of a severe sanction is not only required but is in accordance with the well-established practice of the decision-making bodies of FIFA within these circumstance".*

40. On this basis, the Player submits the following requests for relief:

a *"FIRST - To dismiss in full, the Appealed Decision;*

b *SECOND – To order the Club to pay to the Player EUR 110,000 (one hundred and ten thousand Euros) due since 16 October 2017, plus default interest at rate of 12% per annum, until the date of effective payment;*

c *THIRD – To order the Club to pay to the Player EUR 110,000 (one hundred and ten thousand Euros) due since 16 November 2017, plus default interest at rate of 12% per annum, until the date of effective payment;*

d *FOURTH – To order the Club to pay to the Player EUR 22,000 (twenty-two thousand Euros) due as penalty, plus default interest at a rate of 5% per annum as from the date in which the arbitral award is passed by the Panel;*

e *FIFTH – To impose on the Club disciplinary sanctions, notably a fine of CHF 20,000 (twenty thousand Swiss Francs), as well as ban it from registering any new players, nationally or internationally, for two entire consecutive registration periods;*

f *SIXTH – To order FIFA to comply with the* [Evidentiary Request] *made in paragraph 161 and 162 above;*

g *SEVENTH – To order the Club to pay all arbitration costs and be ordered to reimburse the Player the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; AND*

h *EIGHTH – To order the Player to pay to the Club any contribution towards the legal and other costs incurred regarding the ongoing proceedings in the amount of CHF 10,000 (ten thousand Swiss Francs)".*

B. The Club

41. The Club provided the following summary of its submissions in its Answer:

1. The choice of forum made in the Settlement Agreement

- The Player and the Club signed two distinctive contracts, each of different legal nature. While the Employment Contract regulated the employment relationship between the parties, indicating FIFA as the competent body to resolve any dispute arising out of it, the Settlement Agreement provides only for the payment of certain outstanding amounts and nominates CAS to decide upon any dispute arising out of its execution;

- The conclusion of the Settlement Agreement led to the termination of any obligation arising out of the Employment Contract. The wording of the Settlement Agreement corroborates the will of the parties to enter into a new agreement and since then, be bound only by the provisions contained therein;

- The Player has failed to prove that the choice of CAS as the competent dispute resolution body under the Settlement Agreement constitutes an abuse of rights or a violation of the principle of good faith;

- The judicial system of the United Arab Emirates is fully democratic and functional so as to guarantee the enforcement of decisions issued by CAS Ordinary Arbitration Division, while the costs in that case would have been equal to the costs incurred by the Player to challenge the Appealed Decision before CAS. Alternatively, the Player could have waited until the new FIFA Disciplinary Code come into force, on 15 July 2019, in order to be able to enforce through the FIFA Disciplinary Committee, an award rendered by the CAS Ordinary Arbitration Division, pursuant to Article 15 of the FIFA Disciplinary Code (2019 Edition);

- The Swiss Federal Tribunal has already confirmed that CAS constitutes a *"true arbitral tribunal the decisions of which have the same effect as those of an ordinary court"*.

2. The legality of the penalty clause and the default interest rate provided in the Settlement Agreement

- The inability of the Club to fulfil the obligations undertaken with the Settlement Agreement is solely due to its poor financial state, as for the past 2 years, the Club had to deal with a large number of outstanding financial obligations;

- *"The application of both the penalty and the default interest represents a disproportionate consequence given the interests at stake, the amount in dispute and the duration of the contract"*.

3. The issue of sporting sanctions

- *"The penalty amount requested as well as the contractual default interest requested cannot be considered as overdue amounts for the sake of article 12bis, in accordance with the regulations and FIFA's jurisprudence, and therefore it is the First Respondent's contention that article 12bis of the RSTP is not applicable and no sanction shall be imposed"*.

42. On this basis, the Club submits the following prayers for relief:

a. *"Confirm that FIFA does not have jurisdiction and/or competence to decide on the claim lodged by* [the Player]*;*

b. *Find that CAS does not have jurisdiction and/or competence to decide on the claim lodged by* [the Player]*;*

c. Rule that the costs of these proceedings shall be paid by [the Player] *in full.*

Subsidiarily, should it consider that FIFA DRC should have considered itself competent to analyse the dispute at stake,

d. Annul the appealed decision and send the case back to the FIFA DRC for its decision on the merits;

Subsidiarily, should it consider that FIFA DRC should have considered itself competent to analyse the dispute at stake, and decides to pass a decision on the merits,

e. Reduce the amounts claimed by [the Player] *to the amount considered appropriate by the Sole Arbitrator considering* [the Club] *submissions, in particular regarding the requested penalty amount and the contractual default interest;*

f. Rule that Article 12bis is not applicable to the matter at stake;

g. Rule that the costs of these proceedings shall be paid by the parties in equal amounts and each one should bear its own costs and other related expenses".

C. FIFA

43. The submissions of FIFA may be summarized, in essence, as follows:

1. The choice of forum made in the Settlement Agreement

- *"*[…] *[T]he second Respondent wishes to highlight that a teleological interpretation of art. 22 lit. B) (i.e., an interpretation oriented at the purpose/aim of the relevant provision) clearly provides that the DRC is competent, in principle, to entertain employment-related disputes of an international dimension, but it allows exceptions, notably in order to protect the parties' fundamental right to choose an independent and impartial judge which, as the case may be, can be, in principle, a civil court or an independent national arbitration tribunal. Nevertheless … the parties to an employment-related dispute of an international character can submit … their disputes to the Court of Arbitration for Sport, the latter, as confirmed by the Swiss Federal Tribunal, being an independent and impartial tribunal, comparable to state courts"*;

- Pursuant to Articles 57 (1), 58 and 59 of the FIFA Statutes, in conjunction to which Article 22 of the FIFA RSTP should be read, it is clear that FIFA recognizes CAS as an independent and duly constituted first instance decision-making body, before which, employment-related disputes between players and clubs can be validly submitted;

- By means of the Appealed Decision, the FIFA DRC reiterated prior jurisprudence of the Swiss Federal Tribunal and the European Court of Human Rights, confirming that *"the independency and impartiality of CAS is at the same level of the ordinary courts"*;

- In accordance with the principle of party autonomy, the parties were free to choose an independent and impartial judge to resolve their disputes and as such, they also accepted the consequences of that choice, including the procedure that has to be followed on each case, in order to enforce the award rendered by the designated body;

- *"*[…] *[W]hen FIFA proposes to the ICAS arbitrators for the football list the principle of equal representation between players and clubs is complying with notably with the proposal of 25 arbitrators by players via FIFApro* (sic) *and 25 arbitrators proposed by clubs".*

2. The issue of sporting sanctions

- The Player has no direct and legitimate interest to request the imposition of sporting sanction to the Club, under Article 12 *bis* par.4 of the FIFA RSTP.

44. On this basis, FIFA submits the following requests for relief:

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

b. To confirm the decision rendered by the [FIFA DRC] *on 6 September 2018.*

c. To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure".

V. JURISDICTION

45. The Player submits that the jurisdiction of CAS derives from Article 58(1) FIFA Statutes, as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"* and Articles R47 of the CAS Code and 24 par.2 of the FIFA RSTP.

46. The First Respondent states that *"[p]ursuant to Articles 57 & 58 of the FIFA Statutes, the Court of Arbitration for Sport (the "CAS") has jurisdiction to consider appeals against final decisions passed by FIFA's legal bodies".*

47. The Second Respondent submits that according to Articles 58(1) of the FIFA Statutes and R47 of the CAS Code, the CAS has jurisdiction in relation to the present appeal.

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

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

VI. ADMISSIBILITY

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

51. It follows that the appeal is admissible.

VII. APPLICABLE LAW

52. Article 8.2 of the Settlement Agreement provides that *"[t]his* [Settlement Agreement] *shall be governed by and interpreted in accordance with its provisions, as well as the FIFA Regulations and the law of the United Arab Emirates.*

53. The Appellant submits that pursuant to Article R58 of the CAS Code in conjunction with Article 57(2) of FIFA Statutes, Article 25 par. 6 of the FIFA RSTP (2018 edition) and Article 2 of the FIFA Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules" – 2018 edition) the Sole Arbitrator shall primarily apply the regulations of FIFA and, additionally, Swiss law, while taking into account the *"specificity of sports"*.

54. The First Respondent argues that, pursuant to Article R45 of the CAS Code and Article 8.1 of the Settlement Agreement, the Sole Arbitrator should primarily apply the FIFA Statutes and regulations, whilst considering the provisions of the United Arab Emirates legislation.

55. The Second Respondent indicates that, pursuant to Articles 57(2) and 58 of the FIFA Statutes, the Sole Arbitrator should decide the present dispute in accordance with the FIFA RSTP and additionally, Swiss law.

56. Article 57 (2) of the 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".*

57. Article R58 of the CAS Code provides as follows:

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

58. The Sole Arbitrator notes that the Parties agree on the primary application of the various FIFA regulations (the "FIFA Regulations") on the matter at hand which in turn, provide for the additional application of Swiss law. Nonetheless, the parties to the Settlement Agreement have explicitly agreed that the latter shall additionally be governed by the law of the United

Arab Emirates, a choice of law that is not to be airily disregarded. Because of the potential conflict, the question arises as to how one delineates the scope of application of each body of law on a given case. The pertinent question has been thoroughly dealt by Prof. Dr. Ulrich Haas in his article *"Applicable law in football-related disputes"* published in the CAS Bulletin 2015/2 (pag.7 *et seq.*). The author explains (*idem*, page 15), that *"FIFA lays down the standard for a particular sports industry in its rules and regulations*[…] *[c]onsequently the purpose of the reference to Swiss law in Art. [57] (2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry"*. Then he deals with the relations between the CAS Code, the FIFA Statutes, and the agreement of the parties on the application of a specific national law, and concludes the following (*ibid* pag.17):

"(2) In CAS proceedings the parties have invariably made a choice of law, since the agreement on the CAS as the court of arbitration always also entails an implicit (and indirect) agreement in relation to the provision of Art. R58 of the CAS Code.

(3)This implicit agreement on Art. R58 of the CAS Code takes precedence over any explicit choice of law by the parties (for example in the contract), since the purpose of Art. R58 of the CAS Code is to restrict the autonomy of the parties. This Article provides for a mandatory hierarchy of the applicable legal framework, which the parties cannot change. Consequently the parties are entitled to freedom of choice of law solely within the limits set by Art. R58 of the CAS Code, with the result that they can only determine the subsidiarily applicable law. In contrast, under Art. R58 of the CAS Code the "applicable regulations" always primarily apply, regardless of the will of the parties.

(4) If for their part the "applicable regulations" contain a reference to a national law (see for example Art. [57(2)] *of the FIFA Statutes), then the scope of application of the national law thus invoked must be delineated from the law chosen by the parties. Swiss law as invoked in Art.* [57(2)] *of the FIFA Statutes does not prevail over the choice of law made by the parties. Rather, this gives rise to a co-existence of the "applicable regulations", Swiss law and the law chosen by the parties.*

(5) The application of Swiss law is confined to ensuring uniform application of the FIFA regulations. Art. [57(2)] *merely clarifies that the FIFA regulations are based on a normative preconception, which is borrowed from Swiss law. Therefore if questions of interpretation arise over the application of the FIFA regulations recourse must consequently be made to Swiss law in this regard.*

(6) Accordingly any other issues (regarding interpretation and application) that are not addressed in the FIFA regulations, i.e. for which FIFA has not set any uniform standards of the industry, are subject to the law that has been chosen by the parties".

59. These conclusions are fully endorsed by the Sole Arbitrator. If to summarize them, one can say that in the course of an appeal arbitration proceedings before CAS against a final decision passed by the adjudicatory bodies of FIFA, the FIFA Regulations - in the sense of the entire statutory regime of FIFA - apply primarily and recourse must be made to Swiss law only when questions on their interpretation arise. Accordingly, the law chosen by the parties applies to all the matters that are not addressed by the FIFA Regulations and therefore, do not require a globally uniform application because *"they are not part of the standards of the industry set by FIFA"*.

60. In view of the abovementioned remarks, the Sole Arbitrator accepts that the parties to the Settlement Agreement have chosen the United Arab Emirates law to govern any disputes arising out of its execution. This view is further corroborated by Article 19(1) Swiss Private International Law Act, providing that *"If, pursuant to Swiss legal concepts, the legitimate and manifestly preponderant interests of a party so require, a mandatory provision of a law other than that designated by this Code may be taken into account if the circumstances of the case are closely connected with that law"*.

61. Consequently, the Sole Arbitrator concludes that the FIFA Regulations apply primarily on the matter at hand, while Swiss law shall apply only if questions of interpretation arise over the application of the FIFA regulations. In turn, the law of the United Arab Emirates shall govern all legal issues that are not specifically addressed by the FIFA Regulations.

VIII. MERITS

A. The main issues to be addressed by the Sole Arbitrator

62. The main issues to be resolved by the Sole Arbitrator are:

(i) Have the parties to the Settlement Agreement validly chosen CAS to decide upon any dispute arising out of its execution thereby excluding the FIFA DRC jurisdiction?

(ii) If the answer under (i) is of the affirmative, and the FIFA DRC was not competent to deal with the claim, is the Sole Arbitrator competent to decide on the merits of the matter at hand within these proceedings?

(iii) Following and depending on the decision regarding the jurisdiction of the DRC, to decide on the reliefs regarding the legality of the penalty clause and the question of sporting sanctions.

(i) Have the parties to the Settlement Agreement validly chosen CAS to decide upon any dispute arising out of its execution thereby excluding the FIFA DRC jurisdiction?

63. As a preliminary observation, the Sole Arbitrator notes that the Settlement Agreement provides, in essence, for the amicable resolution of claims arising exclusively out of the employment relationship between the Club and the Player. Consequently, and contrary to the argumentation brought forward by the First Respondent, the Sole Arbitrator does not see any reason to derogate from the conclusions of the FIFA DRC regarding the legal nature of the Player's claim against the Club, i.e. the claim constitutes an employment-related dispute of an international dimension between a club and a player, thus falling within the *ratione materiae* of Article 22 lit. b) of the FIFA RSPT.

64. Indeed, Article 22(b) FIFA RSTP applies not only to employment disputes between a club and a player in the narrow meaning of the term, which would refer only to disputes arising exclusively out of an employment agreement, but it also covers disputes between clubs and

players that are related to the employment in general. As a matter of fact, *employment relations* are wider than *employment agreements* and may cover areas that are not referred to in the written employment contract. Therefore, the notion of "employment-related disputes", as clearly stipulated in this relevant article of the FIFA RSTP, includes by all means a much wider range of disputes than just disputes arising over employment agreements. Consequently, the scope of Article 22 FIFA RSTP includes also disputes that may arise after the termination of the employment relationship and are "employment related", such as the Settlement Agreement at the case at hand. Pursuant to this approach, CAS jurisprudence requires the arbitral tribunal to consider the overall nature of the dispute, in light of the circumstances of the employment relationship, for the sake of establishing whether the dispute is related with the employment relationship (cf. CAS 2015/A/3923).

65. In this regard, the validity of the chosen forum, pursuant to Article 8.2 of the Settlement Agreement that provides for the jurisdiction of CAS to decide upon any dispute arising out of its execution, is contested between the parties. Whereas both the Respondents maintain with their submissions the validity of said jurisdiction clause, referring the pertinent disputes to CAS, the Appellant maintains that the choice of forum contained in the Settlement Agreement contravenes Article 22 of the FIFA RSTP, as the latter clearly designates the adjudicatory bodies before which an employment-related dispute of an international dimension between a club and a player can be submitted.

66. Article 8.2. of the Settlement Agreement provides as follows:

"Any dispute arising from or related to this [Settlement Agreement] *will be submitted to the Court of Arbitration for Sport (TAS-CAS)".*

67. Which of the above views is to be followed depends first and foremost on the interpretation of the relevant rules within the applicable regulatory framework, i.e. FIFA Regulations; FIFA is a private entity domiciled in Switzerland and its regulations should be interpreted in accordance with the principles established with regard to the interpretation of state laws, rather than those applicable to the interpretation of contracts. The Sole Arbitrator concurs with that view, which is also in line with the long-standing jurisprudence of CAS and the Swiss Federal Tribunal on that matter and stipulates the following:

"According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5).

[…]

According to the SFT, the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (SFT 4A_392/2008, at 4.2.1 and references). However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith. The subjective interpretation will be required only when a very little number of stakeholders are concerned (SFT 4A_235/2013, at 2.3 and 4C.350/2002, at 3.2).

FIFA is a very large legal entity with over not only two hundred affiliated associations, but also far more numerous indirect members who must also abide by FIFA's applicable regulations (SFT 4P.240/2006). It is safe to say that FIFA's regulations have effects which are felt worldwide and should therefore be subject to the more objective interpretation principles" (CAS 2017/O/5264 & 5265 & 5266 par. 199, CAS 2013/A/3365 & 3366, par. 139 and 143-144. Also, CAS 2017/A/5173 par. 74, CAS 2017/A/5356 par. 86, CAS 2012/A/2187 par. 107).

68. The Sole Arbitrator fully adheres to these conclusions and principles and therefore, starts his analysis by reviewing the wording of the heading and lit. b) of Article 22 FIFA RSTP:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: […]

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at a national level within the framework of an association and/or a collective bargaining agreement".

69. The Sole Arbitrator observes that by virtue of the preamble of Article 22 FIFA RSTP, the presumption of competence to hear employment-related disputes of an international dimension between clubs and players belongs either to "civil courts for employment-related disputes" as well as to the deciding bodies of FIFA. The term "civil courts for employment-related disputes" obviously refers to the national courts that are competent in national level to deal with employment disputes (these may be either "labour courts" or any other court that is competent to deal with such disputes under the applicable national laws). Whereas it is undisputed that CAS guarantees the respect to all fundamental principles of due process and that awards issued by CAS have the same effects as the decisions of ordinary courts (SFT 4A_260/2017, par.3.4.1), the Sole Arbitrator finds that the wording of the provision in question is rather self-explanatory and does not see any reason to depart from its literal interpretation, nor did FIFA any attempt to bring evidence that would convince the Sole Arbitrator that its interpretation, based on the preamble of Article 22 FIFA RSTP, is the one to follow.

70. As a result, the Sole Arbitrator does not concur with the purposive and by all means wide interpretation of the provision in question that was suggested by the FIFA DRC, according

to which *"the main objective of the first sentence of art. 22 is to give the parties the liberty to choose a forum other than FIFA to resolve their employment – related disputes, the only limit being, as established above, the respect of fundamental principles of procedural law, which the CAS undoubtedly fulfils"*. The Sole Arbitrator notes that it is not enough for a party to argue what is the "objective" of a rule; There are ways and means to prove what was the intention or the objective of a specific rule when enacted, but such evidence was not provided and the standard to convince the Sole Arbitrator, based solely on the wording of the preamble of Article 22 FIFA RSTP, was not met.

71. Even if one were to assume that the term "civil courts for employment-related disputes" may be still subject to interpretation, guidance in this respect is particularly to be sought in the intentions of the draftsman of Article 22 FIFA RSTP, i.e. FIFA. In attempt to reveal the real intentions of FIFA in adopting a certain provision of the FIFA RSTP, the Sole Arbitrator finds that one of the very important documents that could more accurately serve this purpose is the FIFA Commentary on the Regulations for the Status and Transfer of Players (the "FIFA Commentary"). The Sole Arbitrator acknowledges that the FIFA Commentary, albeit not binding, can provide useful guidelines for the interpretation of the FIFA RSTP and shall be seen *"as an interpretative approach, which is likely to give a certain degree of certainty among sports professionals"* (cf. CAS 2012/A/2698 par. 111, CAS 2007/A/1369 par. 56). In assessing the importance of the FIFA Commentary with respect to the interpretation of Article 22 FIFA RSTP, the Sole Arbitrator also takes into consideration the fact that said commentary was issued by FIFA on 2005, the same year where, by means of FIFA RSTP (Edition 2005), the provision in question was enacted within its statutory framework. The Sole Arbitrator notes that the FIFA Commentary appears to contain a rather narrow definition of the term "civil courts", which is limited to *"those courts in the country in question that are competent to decide on labour disputes"* (FIFA Commentary, p. 64, foot. 97).

72. Therefore, the Sole Arbitrator finds that there was no room to the wide interpretation of the preamble of Article 22 FIFA RSTP as applied by the DRC in reaching the decision that the DRC is not competent to deal with the dispute based on the choice of the parties. The preamble of Art. 22 FIFA RSTP does not establish the grounds for the CAS jurisdiction in such cases.

73. The Sole Arbitrator further notes that with regard to employment-related disputes of an international dimension between clubs and players, lit. b) of said article explicitly refers to the competence of *"an independent arbitration tribunal* […] *established at a national level within the framework of an association and/or a collective bargaining agreement"* (emphasis added), as a substitute to the jurisdiction of the deciding bodies of FIFA or the competent national courts. In this respect, the Sole Arbitrator is fully aware of the fact that CAS is neither established at a national level nor within the framework of an association and/or a collective bargaining agreement and therefore, he finds that CAS does not meet the prerequisites set in the provision in question.

74. In view of the aforementioned observations, the Sole Arbitrator concludes that the wording of both the preamble and lit. b) of Article 22 FIFA RSTP is not sufficient to establish the interpretation suggested by the FIFA DRC. It follows that the validity of the jurisdiction

clause, contained in Article 8.2 of the Settlement Agreement and referring the disputes to the CAS jurisdiction cannot be established on the basis of Article 22 FIFA RSTP.

75. Yet, in the attempt to decide whether CAS has the jurisdiction to decide the dispute (as a first-instance deciding body) as apparently agreed by the parties in Art. 8.2 of the Settlement Agreement, the exploitation of other possible legal sources is needed in this respect.

76. The fact that Article 22 FIFA RSTP is not a stand-alone provision but rather, it forms part of the regulatory framework of FIFA which is characterized by a distinct normative hierarchy, warrants a further analysis and the Sole Arbitrator should proceed in the attempt to ascertain the true intentions of the legislator by examining the entire "legal environment" in which the provision in question is established. Indeed, the legitimacy of CAS to hear employment-related disputes of an international dimension between clubs and players may derive from other legal instruments, enacted within the regulatory framework of FIFA.

77. In examining whether there are other sources that may support the validity of the jurisdiction of CAS as agreed by the Parties, the Sole Arbitrator also takes into consideration and does not ignore the fact that pursuant to Article 46 FIFA Statutes, the jurisdiction of both the FIFA DRC and the FIFA Players' Statutes Committee (the "FIFA PSC") *"is governed by the* [FIFA RSTP]*"*. If the FIFA RSTP as such does not provide for the jurisdiction of CAS based on the choice of the parties in employment-related disputes, and if the statutory power of the DRC or PSC, as provided in the RSTP, derives from Article 46 FIFA Statutes, then any enquiry for other sources that may confirm the validity of such choice should be made within the FIFA Statutes i.e. in any norm at the same hierarchy level as Article 46 FIFA Statutes. Such Article – if to be found – may either establish directly the jurisdiction of CAS or may refer to another lower norm that will clearly establish such CAS competence.

78. The Second Respondent maintains with its submissions that *"from a regulatory and systematic standpoint, art. 22 lit. b)* [FIFA RSTP] *cannot be read alone but, on the contrary, in conjunction with the fundamental law of FIFA, namely the Statutes and, in particular, with the* […] *art. 57 and 59 of the FIFA Statutes"*. The Sole Arbitrator shares only partially this view; Whereas the analysis of the FIFA Statutes is to be considered of essence for the matter at hand, Article 22 lit. b) FIFA RSTP is, as indicated *supra*, rather unequivocal in its wording and shall not be construed widely, even under the light of the FIFA Statutes. Under such circumstances, the Sole Arbitrator turns his attention to the pertinent provisions of the FIFA Statutes that regulate the scope of jurisdiction of CAS within the legal framework of FIFA.

- Article 57 FIFA Statutes provides as follows:

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

- Article 58 FIFA Statutes provides the following:

[…]

"3. CAS does not however deal with appeals arising from: …".

- Article 59 FIFA Statutes stipulates the following:

"1. The confederations, member associations and leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to intermediaries and licensed match agents.

[…]

3. The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in association or disputes affecting leagues, member of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead, of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the association or confederation or to CAS".

79. The Sole Arbitrator observes that by means of Article 57(1) FIFA Statutes, FIFA recognizes CAS as an independent adjudicatory body to resolve disputes between clubs and players, without limitations. The draftsman of the provisions in question goes even further by establishing an obligation for the member associations, on the one hand to recognize CAS as an independent judicial authority and to ensure compliance with its awards, and on the other hand to ensure that disputes between, *inter alia,* clubs and players shall be submitted before *"an independent and duly constituted arbitration tribunal recognized under the rules of the association or confederation or to CAS"* (Article 59(3) FIFA Statutes – emphasis added). The Sole Arbitrator further notes that by virtue of Article 58 FIFA Statutes, the jurisdiction of CAS is being limited, but only in regard with appeals against final decisions passed by the deciding bodies of FIFA. Consequently, the Sole Arbitrator finds that, as opposed to the jurisdiction of the FIFA PSC and the FIFA DRC, which is limited within the borders of the FIFA RSTP (*supra* par. VI, 33), there are not such limits on the jurisdiction of CAS, while acting as a first instance arbitral tribunal, pursuant to Articles 57 and 59 FIFA Statutes.

80. Notwithstanding the above, Articles 57 and 59 FIFA Statutes shall not be perceived as a "backdoor" for the unrestricted submission of claims before CAS, regardless of their nature. Despite the wording of the abovementioned provisions, the scope of jurisdiction of CAS to decide upon disputes between the various football stakeholders is not without any limitations. In this respect, restrictions on the jurisdiction of CAS to hear disputes between, *inter alia*, clubs and players are to be sought to the pertinent provisions of the CAS Code, the application of which is directly provided by means of Article 57(2) FIFA Statutes[1]. According to Article R27 CAS Code, the latter applies: *"whenever the parties have agreed to refer a sports-related dispute to CAS…such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity*

[1] *"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".*

or matter related or connected to sport" (emphasis added). Therefore, Articles 57 and 59 FIFA Statutes do not authorize the various football stakeholders to unrestrictedly take recourse to CAS for any dispute that may arise between them, even if the latter might be of a purely civil or commercial nature; On the contrary and in light of the applicable Article R27 CAS Code, only disputes that are sports-related shall be referred to CAS.

81. Based on the foregoing, the Sole Arbitrator observes that whereas Article 22 FIFA RSTP restricts clubs and players in submitting employment-related disputes of an international dimension exclusively to the adjudicatory bodies referred therein, Articles 57 and 59 FIFA Statutes provide for an additional alternative to the respective dispute resolution scheme of FIFA, by authorizing CAS to decide as an arbitration tribunal upon any dispute between clubs and players, as long as it constitutes a *"sports-related dispute"*. Although this may "go without saying" in this respect, the Sole Arbitrator still considers it important to remind his previous conclusion, that employment-related disputes of an international dimension between clubs and players shall be considered related to sports, given that they are interconnected with the agreed performance of football activities.

82. In analysing the relationship between Article 22 FIFA RSTP on the one hand and Articles 57 and 59 FIFA Statutes on the other hand, the Sole Arbitrator primarily takes into consideration, as set out above, the normative hierarchy followed within the regulatory framework of FIFA. Whereas the FIFA RSTP *"lay down global and binding rules concerning the status of players, their eligibility to participate in organized football, and their transfer between clubs belonging to different associations"*[2], the FIFA Statutes constitute, as also stated by the Second Respondent with its submissions, *"the fundamental law of FIFA"*. Therefore, the Sole Arbitrator finds that in the context of the legal framework of FIFA, the provisions of the FIFA Statutes are of superior regulatory force and hence, supersede the provisions of the FIFA RSTP in case a comparative analysis between them leads to contradictory results, based on the argument that the FIFA RSTP in Article 22 is conclusive with respect to the CAS jurisdiction. In this respect, the Sole Arbitrator does not concur with the argumentation raised during the hearing by the counsel for the Appellant, asserting for the application of Article 22 FIFA RSTP as *lex specialis* over Articles 57 and 59 FIFA Statutes. The Sole Arbitrator finds that the legal doctrine *"lex specialis derogat legi generali"* is not applicable in case the legal provisions under examination are not of the same regulatory force.

83. In view of the above, the Sole Arbitrator concludes that despite the rather restrictive and clear wording of the heading and lit. b) Article 22 FIFA RSTP , the validity of an arbitration clause in favour of CAS to hear employment-related disputes of an international dimension is premised on Articles 57 and 59 FIFA Statutes which, as provisions of superior legislative force, prevail over Article 22 FIFA RSTP.

84. It follows that the parties to the Settlement Agreement have validly nominated CAS to decide upon any dispute arising out of its execution, thereby excluding the competence of the FIFA adjudicatory bodies. Consequently, the Sole Arbitrator confirms the decision of the FIFA

[2] Article 1(1) FIFA RSTP.

DRC, whereby the Player's claim against the Club was dismissed for lack of jurisdiction, albeit with a different legal reasoning.

(ii) If the answer under (i) is of the affirmative and the FIFA DRC was not competent to deal with the claim, is the Sole Arbitrator competent to decide on the merits of the matter at hand within these proceedings?

85. The findings of the Sole Arbitrator on the validity of the CAS jurisdiction clause in the Settlement Agreement, raises the need to examine the scope of the CAS jurisdiction within these proceedings, given that despite the agreement of the Parties to refer all their pertinent disputes to CAS, the Player has opted for submitting his respective claim against the Club before the FIFA DRC. In this respect, the Sole Arbitrator notes that, pursuant to Article R57 CAS Code, the arbitral tribunal *"has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.* […]*"* (emphasis added). Considering the fact that in the prayers for relief the Appellant requested, *inter alia*, that the Sole Arbitrator will issue an award on the merits, and in consideration of the finding of the Sole Arbitrator that the CAS jurisdiction clause was valid, which entails the fact that the DRC indeed had no competence, the question, in simple words is: can the Sole arbitrator decide this case on the merits or considering the finding that the DRC has no jurisdiction, these proceedings cannot go beyond this decision?

86. The Sole Arbitrator will proceed his analysis by examining whether is competent, by virtue of Article 8.2 of the Settlement Agreement, to decide on the merits of the present case, despite the fact that the latter was submitted before CAS as an appeal against a final decision of the FIFA DRC, rather than a claim before the CAS Ordinary Arbitration Division. In his analysis, the Sole Arbitrator should also examine the boundaries of the principle of *"de novo"* examination, established by virtue of Article R57 CAS Code.

87. The Sole Arbitrator observes that pursuant to the principle of *"de novo"* examination, a full power to review the facts and the law of the case under scrutiny is granted to the arbitral tribunal. As repeatedly stated in the pertinent jurisprudence, the appeal arbitration proceedings before CAS entail an independent determination as to the merits of the case, including issues that were brought in from the lower instance but the appealed decision failed to address, and it is not confined in adjudicating merely whether the ruling appealed was correct or not (cf. CAS 2017/A/5394 par. 44, CAS 2017/A/5051 par. 59).

88. In reviewing the facts and the law of the matter at hand, prominence is primarily to be given to the findings of the Appealed Decision in regard with the non-competence of the FIFA DRC to decide on the claim of the Player against the Club. Indeed, it would be incompatible with the appeal nature of the present proceedings if the Sole Arbitrator decided, despite adhering to its conclusions in this respect, to disregard the ruling of the FIFA DRC on the issue of jurisdiction and to artificially handle the present dispute as if the latter constituted a claim submitted before the CAS Ordinary Arbitration Division.

89. Given that, as set out above, the FIFA DRC was right in dismissing the claim of the Player against the Club due to lack of jurisdiction, the Sole Arbitrator finds that the notion of *"de*

novo" examination, established under Article R57 CAS Code, is not wide enough to warrant an assessment on the merits of the matter at hand within an appeal proceeding when the Sole arbitrator has found that the DRC was right in denying its jurisdiction. Whereas it is undisputed that, in the context of the present proceedings, the arbitral tribunal is vested with full power to review the substance of the dispute under scrutiny, such review is conditional upon the determination on behalf of the Sole Arbitrator that the FIFA DRC had erred in dismissing the Player's claim against the Club on grounds of jurisdiction. Consequently, the Sole Arbitrator concludes that an evaluation on the merits of the matter at hand is not to be warranted solely by the fact that the initial intention of the parties to the Settlement Agreement was to submit their pertinent disputes before CAS.

90. When it comes to establishing whether the arbitral tribunal is entitled to examine the merits of the matter at hand within these proceedings, the Sole Arbitrator finds that the relevant question pertains to the admissibility and the subsequent classification of the present case to the appropriate division of CAS, rather than the generic jurisdiction of the latter to decide upon it. Pursuant to Article S20 CAS Code: *"Arbitration proceedings submitted to CAS are assigned by the CAS Court Office to the appropriate Division. Such assignment may not be contested by the parties nor be raised by them as a cause of irregularity. In the event of a change of circumstances during the proceedings, the CAS Court Office, after consultation with the Panel, may assign the arbitration to another Division"*. In this regard, the Sole Arbitrator notes that once a dispute brought before CAS is found admissible, the allocation to either the Ordinary Arbitration Division or the Appeals Arbitration Division of CAS is conducted by the CAS Secretariat. Moreover, the CAS Secretariat is entitled, under specific circumstances, to reallocate the dispute in question to the appropriate division. Nevertheless, the Sole Arbitrator finds that such circumstances do not apply on the matter at hand, which was validly assigned to the CAS Appeals Arbitration Division.

91. In this respect, it is also quite evident from the overall content of the Appellant's submissions that the matter at hand was filed with CAS solely in the form of an appeal against the Appealed Decision and is not to be perceived, alternatively, as a claim submitted before the CAS Ordinary Arbitration Division. Indeed, the Sole Arbitrator finds that the primary request for relief sought by the Appellant pertains to the recognition by the arbitral tribunal that the FIFA DRC was competent to decide upon his claim against the Club, whereas the residual requests for relief are sought as complimentary remedies, deriving exclusively from and being contingent to the aforementioned primary relief. This view is further corroborated by the fact that the Appellant failed to request for an independent evaluation on the merits of the dispute, regardless of the findings of the Sole Arbitrator in respect with the conclusions of the Appealed Decision. Yet, even if such request would have been included as an independent relief not related to the question of the jurisdiction of the DRC still such request would have been denied based on the grounds as explained above.

92. It follows that in consideration of the main finding of the Sole Arbitrator on the question of the jurisdiction, the Sole Arbitrator is not competent to decide on the merits of the matter at hand.

(iii) The prayers for reliefs regarding the legality of the penalty clause and the question of sporting sanctions

93. Considering and following the findings of the Sole Arbitrator on the two previous issues, all the other prayers for relief should be dismissed.

B. Conclusion

94. Based on the foregoing, the Sole Arbitrator finds that:

(i) The parties to the Settlement Agreement have validly nominated CAS to decide upon any dispute arising out of its execution, therefore the DRC had no jurisdiction to deal with the claim and the Appealed Decision must be confirmed.

(ii) Considering the finding and the decision of the Sole Arbitrator on the question of jurisdiction of the DRC, the Sole arbitrator is not competent to decide on the merits of the matter at hand.

(iii) All other and further motions and prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 28 May 2019 by Mr. Ailton José Almeida against the decision issued on 6 December 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 6 December 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

5. (…).