Arbitrations CAS 2019/A/6533 Club Al Arabi S.C. v. Sérgio Dutra Junior & CAS 2019/A/6539 Sérgio Dutra Junior v. Al Arabi S.C. & Fédération Internationale de Football Association (FIFA), award of 14 December 2020

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract by the player
Evidentiary request
Just cause
Entitlement to compensation under Article 14 RSTP
Validity of a liquidated damages clause
Duty to mitigate
Signature on a legal document
Starting date of default interest
Standing to require that a sanction be imposed

1. **According to Article R44.3 of the CAS Code applicable in appeal arbitration proceedings on the basis of Article R57 para. 3 of the CAS Code, a party seeking the production of documents in the custody or under the control of the other party has the duty to demonstrate, with specificity in terms of requesting specific documents, whether these documents are likely to exist and to be relevant. A request that is too generic, explorative in nature and not directly relevant for the specific case is going too far in the meaning of being "fishing expeditions" for evidence and must be dismissed.**

2. **Just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship. The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case. In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause. Only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter. Non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee. However, the outstanding amount may not be "insubstantial". In addition, for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder or warning is necessary, for instance where it is clear that the other side does not intend to comply**

with its contractual obligations or in case of a severe breach of a contract.

3. **Although Article 14 of the FIFA Regulations on the Status and Transfer of Players (RSTP) does not specifically determine that a party terminating the employment contract with just cause is entitled to any compensation for breach of contract by the other party, it clearly follows from Article 14 (5) and (6) of the FIFA Commentary to the RSTP, that the party responsible for and at the origin of the termination of the contract is liable to pay the compensation for damages suffered as a consequence of the early termination of the contract. Therefore, if a club was at the origin of the termination of an employment contract by breaching its contractual obligations towards a player, it is thus liable to pay compensation for the damages incurred by the player as a consequence of the early termination, event if it was the player who terminated the employment contract.**

4. **Article 17(1) RSTP gives precedence to liquidated damages clauses provided for in the employment contract for the assessment of the amount of compensation for damages. To be valid, contractually agreed liquidated damages clauses do not necessarily have to be reciprocal. The validity rather depends on whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause. There is no excessive commitment when a player contractually agrees to a liquidated damages clause entitling him to receive the remaining salaries of the employment contract in case of termination.**

5. **Players, in principle, are required to mitigate their damages as follows from the application of Article 17 (1) RSTP. However, the latter also provides that parties are free to contractually deviate from its default application by means of liquidated damages clauses. This is in line with Swiss law, whose Article 361 of the Code of Obligations (SCO) provides that the obligation to mitigate the loss in case of unilateral termination of an employment relationship without cause according to Article 337c SCO is not a mandatory rule and parties are entitled to derogate. Therefore, parties are entitled to agree that no deduction shall be applicable, which is the case if they expressly decided in advance, by means of a liquidated damages clause, that the player would be entitled to the remaining salaries of his contract.**

6. **A party signing a document of legal significance, as a general rule, does so on its own responsibility and is so liable to bear the legal consequences arising from the execution of such document.**

7. **According to Article 339 paragraph 1 SCO, all claims arising from the employment relationship shall become due upon its termination. Even an unlawful, premature termination does terminate the contractual relationship *ex nunc*. Normally, under Swiss law, interest for late payment can be claimed if an obligation is due and the debtor has been reminded by the creditor (Article 102 paragraph 1 SCO). However, in case of a**

claim for compensation for a premature, unjustified termination of an employment agreement, interests shall start to accrue immediately, i.e. as per the day of the termination of the agreement, without any reminder being necessary.

8. **Third parties have no legally protected interest in order to request that a sporting sanction be pronounced by FIFA. It is solely within FIFA's prerogative, also from the perspective that sports governing bodies shall be given a certain reasonable degree of deference, to determine if and what sanctions are warranted in a concrete case upon a party.**

I. INTRODUCTION

1. Club Al Arabi S.C. (the "Club"), a professional football club from Qatar, is the Appellant in CAS 2019/A/6533 and the First Respondent in CAS 2019/A/6539. Mr Sérgio Dutra Junior (the "Player"), a professional football player of Brazilian nationality, is the Appellant in CAS 2019/A/6539 and the Respondent in CAS 2019/A/6533. The Fédération Internationale de Football Association ("FIFA") is the Second Respondent in CAS 2019/A/6539. The appeals are against the decision rendered by the Dispute Resolution Chamber (the "DRC") of FIFA on 9 May 2019 (the "Appealed Decision"), regarding an employment-related dispute between the Club and the Player.

II. THE PARTIES

2. Club Al Arabi S.C. is a professional football club based in Doha, Qatar. The Club is affiliated to the Qatar Football Association (the "QFA") which in turn is affiliated with FIFA.

3. Sérgio Dutra Junior is a professional football player of Brazilian nationality, born on 25 April 1988.

4. The Féderation Internationale de Football Association is the international governing body of football. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code (the "SCC") with its headquarters in Zürich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

5. The Club, the Player and FIFA are jointly referred to as the "Parties".

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the Parties' written and oral submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings and at the hearing, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

7. On 14 February 2015, the Player and the Club concluded an employment contract valid from the date of signature until 30 June 2019 (the "Employment Contract").

8. The Employment Contract contains, *inter alia,* the following relevant terms (emphasis in original):

> *"Article (10) Termination by the Club or the Player:*
>
> 1. *The FCC and the Player may terminate this Contract, before its expiring term, by mutual agreement.*
> 2. *The FCC and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
>
> *3-When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the FCC or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount:*
>
> *-To The AL-ARABI SPORTS CLUB .Co, Euro 20.000.000/-(Twenty Million Euro).*
>
> *-<u>To the player: Sergio Dutra Junior</u>, (The remaining salaries of the contract)".*
>
> *[…]*
>
> *Football Player's Contract Schedule*
>
> *<u>Total amount of the contract :</u>*
> *Euro 8,000.000/- NET (Euro Eight Million Only) per the period from 14/02/2015 <u>until 30/06/2019,to be paid as follows</u>:*

Euro 500.000/- (Five Hundred Thousand Euro)
for season 2014/2015 as follows:

(a) *Euro 100.000/- (One Hundred Thousand Euro) advanced payment due in February 2015.*
(b) *Euro 100.000/- (One Hundred Thousand Euro) as Monthly Salary, per month to be paid from 01/03/2015 to 30/06/2016. (Four months).*

Euro 1,500.000/- NET (Euro One and a half million)
per the period for season 2015/2016 as follows:

(a) *Euro 300.000/- (Three Hundred Thousand Euro) advanced payment due in September 2015.*
(b) *Euro 100.000/- (One Hundred Thousand Euro) as Monthly Salary, per month to be paid from 01/07/2015 to 30/06/2016. (Twelve months).*

Euro 2,000.000/- NET (Euro Two Million Euro Only)
per the period for season 2016/2017 as follows:

(a) *Euro 400.000/- (Four Hundred Thousand Euro) advanced payment due in September 2016.*
(b) *Euro 160.000/- (One Hundred and Sixty Thousand Euro) as Monthly Salary, per month to be paid from 01/09/2016 to 30/06/2017. (Ten months).*

Euro 2,000.000/- NET (Euro Two Million Euro Only)
per the period for season 2017/2018 as follows:

(a) *Euro 400.000/- (Four Hundred Thousand Euro) advanced payment due in September 2017.*
(b) *Euro 160.000/- (One Hundred and Sixty Thousand Euro) as Monthly Salary, per month to be paid from 01/09/2017 to 30/06/2018. (Ten months).*

Euro 2,000.000/- NET (Euro Two Million Euro Only)
per the period for season 2018/2019 as follows:

(a) *Euro 400.000/- (Four Hundred Thousand Euro) advanced payment due in September 2018.*
(b) *Euro 160.000/- (One Hundred Thousand and Sixty Thousand Euro) as Monthly Salary, per month to be paid from 01/09/2016 to 30/06/2019. (Ten months)".*

9. On 17 March 2016, the Player sent a letter to the Club putting it in default in writing, stating, *inter alia,* that the salaries of the months of January, February and March 2016 had not been paid (the "Warning Letter"). In this letter, the Player further indicated that if the payment of the salaries was not done within 15 days, he would instruct his legal counsels to start a legal procedure against the Club in front of FIFA.

10. By absence of any reply, on 3 April 2016, the Player sent another letter to the Club indicating that he did not receive any reply or payment of the Club. In the letter, the Player informed the Club about his *"irrevocable decision to terminate unilaterally and with just cause, the employment contract signed on 14 February 2014"* (the "Termination Letter").

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 6 September 2017, the Player lodged a claim in front of FIFA against the Club maintaining that the Club had breached the Employment Contract and that he terminated it with just cause. In particular, the Player requested:

a) EUR 300'000 as outstanding remuneration for the months January, February and March 2016, plus 5% interest *p.a.* as from the last day of each respective month until the date of effective payment;

b) EUR 6'300'000 as compensation for breach of contract;

c) Sporting sanctions on the Club.

12. On 11 November 2017, the Club submitted its reply to the claim and lodged a counterclaim against the Player, maintaining that the latter did not have a just cause to terminate the Employment Contract. In particular, the Club requested:

a) EUR 20'000'000 as compensation for breach of contract;

b) Sporting sanctions to be imposed on the Player.

13. On 9 May 2019, the DRC rendered the Appealed Decision, with, *inter alia*, the following operative part:

"1. The claim of the Claimant / Counter-Respondent, [the Player]*, is partially accepted*

2. The Respondent / Counter-Claimant, [the Club]*, has to pay to the Claimant / Counter-Respondent, withing 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 300,000, plus interest at the rate of 5% p.a. until the date of effective payment, as follows:*

a. as from 1 February 2016, on the amount of EUR 100,000;
b. as from 1 March 2016, on the amount of EUR 100,000;
c. as from 1 April 2016 on the amount of EUR 100,000.

3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter- Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 4,725,000.

[…]

6. Any further claim of the [the Player] *is rejected.*

[…]

8. The counterclaim of the Respondent / Counter-Claimant is rejected".

14. On 2 October 2019, the grounds of the Appealed Decision were communicated to the Player and the Club, determining, *inter alia,* the following:

- According to the Player's passport issued by the QFA and available on the Transfer Matching System (TMS), the Player was indeed deregistered from the Club on 31 January 2016. In addition, the DRC observed that *"the player provided abstracts from 'Transfermarkt' from which, inter alia, it emerges that he played in 13 games between 12 September 2015 and 28 January 2016, whereas he was not included in the complete line-ups of players for three games played between 5 February 2016 and 28 February 2016"*. Therefore, the DRC could concur in the conclusion that the Player had been deregistered from the Club on 31 January 2016.

- The DRC considered it important to point out that *"among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches"*.

- Moreover, and referring to the Club's position, the DRC deemed it worth recalling that, *"by de-registering a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player"*. Therefore, the DRC established that *"the de-registration of a player could in principle constitute a breach of contract, in and by itself, since it de facto prevents a player from being eligible to play for his club"*.

- The DRC observed that the Club did not provide any documentary evidence in relation to a payment performed towards the Player concerning his salary of March 2016. Consequently, referring to art. 12 par. 3 of the FIFA Procedural Rules, the DRC underlined that *"by the time the player terminated the employment contract on 3 April 2016, his salaries of January, February and March 2016 were outstanding, for a total amount of EUR 300,000"*.

- The DRC decided that the Player had just cause to terminate the Employment Contract and held the Club liable for the early termination of the Employment Contract with just cause by the Player.

- Consequently, the DRC decided to fully reject the Club's argumentation and counterclaim.

- The DRC decided that the Club must pay outstanding remuneration in the amount of EUR 300,000 to the Player.

- Furthermore, taking into consideration Article 17 par. 1 of the Regulations on the Status and Transfer of Players (the "FIFA RSTP"), the Player is entitled to receive from the Club compensation for breach of contract in addition to the outstanding salaries.

- The DRC recalled that the Employment Contract contained a clause by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. The compensation clause contained in the Employment Contract granted EUR 20'000'000 to the Club and the residual value of the Employment Contract to the Player, depending on which party was found to be responsible.

- The DRC considered that said clause determines a disproportionate benefit in favour of the Club, although being reciprocal, it does not grant the same financial rights to the Player, envisaging an amount of compensation which is, at least, more than two times higher for the Club. Therefore, the DRC held that said clause cannot be taken into consideration in the determination of the amount of compensation.

- The DRC concluded that the remuneration that the Player would have received under the Employment Contract if it had been executed until its regular expiry date, 30 June 2019, was EUR 6'300'000. Such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

- The DRC observed that the player entered into five (5) subsequent employment relationships with five (5) different clubs after the termination of the Employment Contract. The remuneration under the new employment contracts was taken into account in the calculation of the amounts of compensation for breach of contract in connection with a player's general obligation to mitigate his damages.

- The DRC concluded that, for the relevant period, the Player was able to mitigate his damages for a total amount of EUR 1'575'000.

- Consequently, the DRC decided that the Club must pay the amount of EUR 4'725'000 to the Player as compensation for breach of contract.

- The DRC concluded its deliberations by establishing that any further claim lodged by the Player was rejected.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 23 October 2019, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles 57 and 58 of

the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code").

16. On the same day, 23 October 2019, the Player filed a Statement of Appeal with the CAS against the Appealed Decision, in accordance with Articles 57 and 58 of the FIFA Statutes and Articles R47 and R48 of the CAS Code.

17. On 29 and 30 October 2019, the CAS Court Office initiated the present arbitration procedures and requested the Parties to inform the CAS Court Office whether they would agree to consolidate the procedures in accordance with Article R52 of the CAS Code.

18. On 1 November 2019, FIFA informed the CAS Court Office that it did not bear standing to be sued and therefore could not be considered as a respondent in the proceedings as the dispute concerns a purely contractual dispute between the Parties. Consequently, FIFA requested to be excluded from the procedure.

19. On 4 November 2019, the Club and the Player confirmed that they agreed to the consolidation of the proceedings.

20. On 5 November 2019, the Player stated that it would require FIFA remain as a party to the proceedings because *"based on our understanding only* [FIFA] *can impose disciplinary sanctions on* [the Club] *by implementing the decision of the Court of Arbitration".*

21. On 5 November 2019, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, and pursuant to Article R52 par. 5 of the CAS Code, that the procedures were consolidated.

22. On 9 December 2019, after several granted extensions, the Club and the Player filed their Appeal Brief pursuant to Article R51 of the CAS Code.

23. On 17 January 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Sole Arbitrator appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Frans de Weger, Attorney-at-law in Haarlem, the Netherlands

24. On 31 January 2020, FIFA filed its Answer in accordance with Article R55 of the CAS Code.

25. On 3 February 2020, the CAS Court Office informed the Parties that it noted that the Player and the Club entered into settlement negotiations and requested that the time limit to file the answers be suspended for 30 days. Accordingly, the CAS Court Office informed the Parties that the time limit to file the answers was suspended until 3 March 2020.

26. On 3 March 2020, the Club and the Player filed their respective Answers in accordance with Article R55 of the CAS Code.

27. On 10 March 2020, the Parties were invited to inform the CAS Court Office by 17 March 2020 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions. The CAS Court Office further informed the Parties that the Sole Arbitrator would provide further instructions regarding the Club's procedural requests, namely:

> *"1) that FIFA be ordered to produce a copy of the full FIFA file;*
> *2) that Mr Dutra Junior be ordered to produce "a copy of every and each contract signed between the Respondent and his subsequently clubs, including any image rights contracts and/or separate contracts of same or similar nature that might be bound under the nature of the Respondent's salaries;*
> *3) that Mr Dutra Junior be ordered "to confirm that he signed an image rights agreement with Avai Futebol Club and present it to CAS and whether he (or someone of his behalf (signed any other image rights or side agreement(s) with any of his subsequent employer clubs and, if positive, to present them to CAS";*
> *4) that MR Dutra Junior be ordered to confirm "whether he holds participation or benefited from the company Sueli Aparecida Grave Dutra – Promoção e Eventos Esportivos Eireli or any IRC's; if so, please provide the name and details of the other IRCs"".*

28. On 13 March 2020, the Club informed the CAS Court Office that it preferred a hearing to be held in this matter. On the same day, FIFA informed the CAS Court Office that a hearing was not necessary. On 17 March 2020, the Player informed the CAS Court Office that he preferred to have a hearing.

29. On 26 March 2020, the CAS Court Office, on behalf of the Sole Arbitrator, who had considered the Parties' positions with respect to a hearing, and pursuant to Article R57 of the CAS Code, advised the Parties that the Sole Arbitrator has decided to hold a hearing in this matter. FIFA also was invited to provide CAS with a copy of the complete case file related to this appeal.

30. In the same letter of 26 March, the CAS Court Office informed the Parties that the Player's request for production of a copy of all decisions rendered by the FIFA Players' Status Committee or the FIFA Dispute Resolution Chamber as well as the Club's request for production of any and all contracts signed after the termination of the Employment Contract with the Club were dismissed as these requests were too generic, explorative in nature and not directly relevant for the present case. In addition, the Player was invited to comment on the Club's evidentiary requests in relation to the Image Rights Agreements signed between the subsequent clubs of the Player and the company that operates his image rights.

31. On 26 March 2020, FIFA provided the CAS Court Office via a link with a copy of the first instance file. In this letter, the CAS Court Office was informed that *"due to confidentiality reasons, the complete correspondence filed on 22 April 2019 by Mr. Sergio Dutra junior during the first instance proceedings, will be sent in a separate letter to the CAS Court Office for the sole consideration of the Sole Arbitrator".*

32. On 2 April 2020, the Player provided the CAS Court Office with image rights contracts signed between Sueli Aparecida Grave Dutra – Promoção e Eventos Esportivos Eireli ("the Company") and the following clubs: *"(i) Avaí; (ii) Sport Club Corinthians Paulista; (iii) Fluminense FC"*. In addition, the Player informed the CAS Court Office that the Company *"had not reached any image rights contract with CR Vasco da Gama"*. Further to this, the Player informed the CAS Court Office that it *"does not hold any kind of corporate participation in the Company, either administratively or financially. In fact, Ms. Sueli Aparecida Grave Dutra is the only (or exclusive) partner of the Company"*.

33. On 7 April 2020, the Club was invited to comment on the image rights agreements filed by the Player and on the Player's declaration in relation to the Company.

34. On 8 April 2020, FIFA was requested to provide the Sole Arbitrator with redacted versions of the documents filed on 26 March 2020, without the information deemed confidential. Per letter of the same day, FIFA informed the CAS Court Office that *"the document has been treated with confidentiality by FIFA as it (i) was entered into between Mr Dutra and a third club (which is not a party to these proceedings), (ii) it was provided to FIFA by Mr Dutra on 23 April 2019 in the context of the first instance proceedings and (iii) it was not transmitted to Club Al Arabi SC as it was not a signatory of said contract. However, has no objection that said document be transmitted to Club Al Arabi SC if Mr Dutra agrees to it"*.

35. On 9 April 2020, the Player was invited to inform the CAS Court Office whether he agrees that the correspondence he sent to FIFA on 22 April 2019 during the first instance proceedings be provided to the Club.

36. On 13 April 2020, the Club informed the CAS Court Office that *"it is fundamental that the Club has access to the Player's employment contracts signed after his employment contract with the Club"*. Per the same letter, the Club requests *"the Arbitrator to provide the Club with a copy of the subsequent employment contract signed by* [the Player] *as requested by FIFA on its letters dated 25 October 2018 and 15 April 2019 during the FIFA Dispute Resolution Chamber's proceedings"*.

37. On 14 April 2020, the Player confirmed that he had no objection that the correspondence sent to FIFA on 22 April 2019 during the first instance proceedings be provided to the Club.

38. On 16 April 2020, the Club communicated to the CAS Court Office that *"the Player has no objection for the Club to have access to the copies of his employments with CR Vasco da Gama, Avai Futebol Clube, Sport Club Corinthians Paulista, Fluminense Football Club and with the Emirati club Al-Nasr submitted to FIFA on 22 April 2019"* and that also *"FIFA has not objected about such disclosure"*. For this reason, the Club *"requests again to the Arbitrator to provide the Club with a copy of the employment contract with CR Vasco da Gama, Avai Futebol Clube, Sport Club Corinthians Paulista, Fluminense Football Club and with the Emirati club Al-Nasr"*.

39. On 17 April 2020, FIFA provided the CAS Court Office with the correspondence sent to FIFA on 22 April 2019 and *"its annex (i.e. copy of the employment contract entered into between* [the Club] *and* [the Player]*)"*.

40. On 20 April 2020, the Club commented on the image right agreements as provided by the Player and reiterated that *"the request to the Arbitrator to have access to such documents was rejected, even after the Player himself and FIFA having agree with such access"*. Per the same letter, the Club informs the CAS Court Office that it understands that the final beneficiary of the image rights agreements is the Player and that the sole shareholder of the Company is *"clearly a relative of him"*. Therefore, in the same letter, the Club *"respectfully requests the Arbitration to further explore if such company has only the Player as a "client" or is or is a typical company who explores and negotiates the image rights of sport persons"*. In this regard, the Club states that the image rights agreement signed with Avai Futebol Club *"has elements not related with image rights"* and that *"44% of the remuneration of his employment contract with Avai"* which, in the view of the Club, indicates another element that the image rights agreement signed with Avai Futebol Club was not a typical image rights agreement but *"an addendum or supplementary to the employment contract"*. Further to this, the Club asks that if the Sole Arbitrator considers that the Player was not the final beneficiary of the image right agreement, *"we need to know for which sum has he assigned such image rights to [the Company]"*. As such, the Club informed that CAS Court Office that is had four questions:

> *"*
> - *What is the relationship between [the Company] and the Player?*
> - *Does the Company actually have another client to work on image rights or only for the Player?*
> - *If the Player is not the final beneficiary of the revenue arisen from the IRAs, for how much has he assigned such rights to [the Company]?*
> - *In the IRA signed with Avai Futebol club, what was the "manufacturing and Commercializing products, and advertisements" by Avai to justify a remuneration correspondent to 44% of the salary in the employment contracts with the same club?"*

41. On 20 April 2020, the CAS Court Office reminded the Club that its request for production of all employments contracts had already been denied by the Sole Arbitrator. In a separate letter per the same date, the CAS Court Office informed the Parties about the requests made by the Club to the Sole Arbitrator to *"further explore if such company has only the Player as a "client" or is a typical company who explores and negotiates the image rights of sports persons"* and that further instructions will follow in due course.

42. On 22 April 2020, the CAS Court Office informed the Parties that the Club's position *"that FIFA agreed with the disclosure of the employment contract with the clubs CR Vasco da Gama, Avai Futeblo Clube, Sport Club Corinthians and Fluminense Football Club"* was not correct. On behalf of the Sole Arbitrator, it was clarified that:

> *"FIFA informed the CAS Court Office in its letter of 8 April last that is was willing to transmit the document which was sent to FIFA on 22 April 2019 by* [the Player] *during the first instance FIFA DRC proceedings if* [the Player] *agreed to this. On 14 April,* [the Player] *informed the CAS Court Office that he had no objection that the correspondence sent to FIFA on 22 April 2019 be provided to* [the Club]. *Consequently,*

[the Club]*has been provided by the CAS Court Office with said correspondence. However, neither FIFA nor* [the Player] *agreed that all employment contracts, as requested, could be disclosed. As clearly indicated before, the request for production of all employment contracts entered into by* [the Player] *has already been denied by the Sole Arbitrator. Accordingly,* [the Club]*'s renewed request is moot".*

43. Further to this, per the same letter, the Player was invited by the CAS Court Office to answer the questions in relation to the image rights agreements as requested by the Club in its letter of 20 April.

44. On 4 May 2020, the Player submitted his answers to the questions:

"1) What is the relationship between [the Company] and the Player?

Answer: Mrs. Sueli Aparecida Grave is the mother of the Player and as from the moment in which he returns from Qatar, she started informally helping the latter with issues regarding his career.

In essence, the clubs that obtained the services of the Player paid to [the Company] the intermediation services provided by Mrs. Sueli Aparecida Grave to them in the references deals.

The Player has no connection whatsoever with the references services, as well as does not receive any amount whatsoever regarding the referenced commercial deal. Among other reasons, because any amount received by the [the Company] and, subsequently, transferred to the Player would be accrue double taxation. In contrast, if the purpose was to receive part of the amount received by [the Company], it would be much easier and without any taxation whatsoever, whether the Player became one of its partner. It though never occurred.

2) Does [the Company] actually have another client to work on image rights or only the Player?

Answer: No, only the Player

3) If the Player is not the final beneficiary of the revenue arisen from the IRAs, for how much has he assigned such rights to [the Company]?

Answer: The Player assigned the references rights on free basis

4) In the IRA signed with Avai Futebol Clube, what was the "manufacturing and commercialisation products and advertisements" by Avai to justify a remuneration correspondent to 44% of the salary in the employment with the same club?

Answer: In accordance to our best knowledge, the references products are related to institutional projects of marketing usually published in the radio, internet or TV".

45. On 25 June 2020, the CAS Court Office informed the Parties that the hearing would be held on 18 September 2020.

46. On 28 July, 3 and 4 August 2020, FIFA, the Club and the Player respectively provided the CAS Court Office with the signed Orders of Procedure.

47. On 26 August 2020, the CAS Court Office informed the Parties that, in light of the ongoing COVID-19 situation and related travel restrictions, the Sole Arbitrator has decided that the hearing scheduled on 18 September 2020 would be held by video-conference.

48. A hearing was held on 18 September 2020 by video link on the basis of the notice given to the Parties in the letters of the CAS Court Office dated 25 June and 26 August 2020 respectively. The Sole Arbitrator was assisted at the hearing by Mr Fabien Cagneux, Counsel to the CAS.

49. The Sole Arbitrator was joined at the hearing by the following:

i. for the Club: by Mr Nilo Effori, counsel;

ii. for the Player: by Mr Breno Costa Ramos Tannuri, Mr Vitor Neves Restivo, Mr Mandepanda Somaiah Jaya, counsels, Mr Sergio Dutra Junior, the Player;

iii. for FIFA: by Mr Roberto Nájera Reyes, Senior Legal Counsel.

50. At the hearing, the Sole Arbitrator initially heard the submissions of the Parties in support of their respective cases. The Sole Arbitrator heard evidence from Ms Lientje Van Nederkassel, the financial advisor of the Player during the period that the Player stayed in Qatar, as a witness called by the Player.

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

52. The Sole Arbitrator confirms that it carefully heard and took into account in its 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.

V. SUBMISSIONS OF THE PARTIES

53. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. CAS 2020/A/6533

54. The submissions of the Club in CAS 2020/A/6533, in essence, may be summarised as follows:

1. The Player did not have just cause to terminate the Contract

- The Club submits that the Player did not have just cause to terminate the Employment Contract due to the fact that the Club had only two months salaries delayed towards the Player when it received the Warning Letter. The Player not only requested the payment of the two salaries but also a third salary that was not even due yet.

- Furthermore, at the moment that the Termination Letter was sent by the Player to the Club, the salary of March 2016 was only three (3) days late. The Player received all his payments from the past season.

- The Club also maintains that the amount overdue to a player in order to justify the early termination of an employment contract must be significant. The salaries due, i.e. the salaries of January and February 2016, constituted only 13% of the Player's annual remuneration. On this basis, the Player terminated a contract of five years, which translates into complete disproportionality on the part of the Player and definitely did not constitute a just cause for termination.

2. The Player never warned the Appellant about his intention to terminate the Employment Contract

- As to the termination of the Employment Contract, the Club further stated that the Player failed to give the Club a chance to avoid termination as the Player at no time warned the Club about his intention to terminate the Employment Contract. In this regard, the Club notes that the Player only warned the Club about the outstanding salaries.

- The termination of the Employment Contract without prior warning was an attitude of disproportional severity and a blatant lack of clear prior warning of the Player's intentions, which constitutes a clear prerequisite for a valid termination with just cause due to late payment. Therefore, the Club argues that the Player did not have just cause to terminate the Employment Contract.

3. The deregistration of the Player

- Following the Club, a temporary deregistration of the Player did not terminate or invalidate the Employment Contract in any way, especially since the Player has never contacted or requested the Club to re-register him for the relevant season nor has he warned the Club that, in case of deregistration, he would terminate the Employment Contract.

- The Club stressed that it is important to note that the Employment Contract does not unfold on the Club the particular obligation to register the Player with the QFA and

the Player has never complained about his deregistration. On the contrary, the terms of the Warning Letter and the Termination Letter construed as a acceptance of the Player's deregistration.

- The Respondent has never complained about his deregistration.

- Thus, the Player consented to his deregistration and did not have just cause for termination arising out of the such event as it did not constitute a violation of the Player's personal rights or a valid reason to terminate the Employment Contract.

4. The Player terminated the Employment Contract without just cause and must compensate the Club accordingly

- The Club is of the opinion that the Player did not have just cause to terminate the Employment Contract, and the Club had reasonably expectation that it would not be the case given the long relationship between the Parties, especially because only 13% of the annual amount was overdue at the time of termination. Consequently, the termination without just cause triggered the Club's right to receive compensation from the Player.

- The Player must be ordered to pay the Club compensation under the terms of article 17 (1) of the FIFA RSTP.

5. The duty of mitigation

- Under the Player's duty of mitigation, the amount of compensation as awarded by the DRC shall in any event be revised and eventually decreased in accordance with the actual amounts received by the Player.

- In this regard, the Club submits that after leaving the Club, the Player played for several Brazilian clubs where it is very common and of vast public knowledge in the world of football that, for tax purposes, players are almost in every case paid a part of their salaries under a second contract, i.e. an image rights contract or side contracts.

- Depending on the true nature of its terms and genuine intention of the parties, an image rights or side contract can actually constitute part of a player's salary, which can be relevant for remuneration.

- The Club did not receive a copy of each one of the Player's subsequent contracts and therefore was not able to analyse whether they contained the relevant provisions for the use of the Player's licencing his image rights or not, or even if the Player submitted to the DRC such side contracts.

- In the event that the requested image rights agreements and/or side agreements are presented by the Player, the Club requests CAS to examine their content in order to determine whether they are of a salary nature, pursuant to well-established jurisprudence of FIFA and CAS, and *"to access the accurate amount for mitigation"*.

- In this regard, the Club requests the CAS to *"(i) order for* [the Player] *to confirm whether he (or someone on his behalf) signed image rights or side agreement(s) with any of his subsequent employer clubs; (ii) an order for the* [the Player] *to confirm whether he holds participation in IRCs; If so, please provide the name and details of the IRCs"*.

- The actual amount received by the Player from his subsequently clubs is in fact higher than the amount determined in the Appealed Decision.

- The Club refers to Article 337c, paragraph 2 of the Swiss Code of Obligations (SCO): *"…. Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work of would have earned had he not intentionally foregone such work"*.

- In such context, the Club respectfully requests the CAS to *"thoroughly investigate these aspects, i.e. (i) if any amounts were not considered by the DRC in the event of mutual or early termination between the* [the Player] *and any of his subsequent clubs towards an accurate amount for mitigation and (ii) the possibility of image rights and/or side contract with a true salary nature in order to establish the correct amount of mitigation to be deducted from the DRC ordered amount"*.

6. The time lapse between the Termination Letter and the lodging of the Claim

- The Player's Termination Letter was sent to the Appellant on 3 April 2016 whilst the Claim was filed on 6 September 2017, i.e. almost one and a half year later.

- The Player filed his claim just before the expiration of the 2-year term pursuant to Article 25 paragraph 5 of the FIFA RSTP *"probably in the hope that* [the Club] *would be unable to retrieve and collect sufficient evidence, which indeed was a difficult factor for* [the Club] *given the periodical changes in football club's staff"*.

- Following Article 2 of the SCC each party has the obligation to display a behaviour towards the other party which cannot harm the latter and which takes into account the reasonable expectations of the other side. The Player failed to abide such standards towards the Club, since the Player has never contested his deregistration nor communicated with the Club for almost one and a half years.

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

"i) the Appeal filed by [the Club] *is admissible;*

(ii) the Appeal filed by [the Club] *is upheld;*

(iii) the Challenged Decision is set aside so that the following shall replace its terms:

a) the claim of [the Player] *before the DRC is rejected;*

b) [the Player] *terminated the Contract without just cause;*

c) therefore, [the Player] *must compensate* [the Club] *accordingly under Articles 17.1 of the FIFA Regulations, the amount of EUR 6,300,000, .i.e., the remaining amount of the Contract.*

In the event that the CAS rejects the above and decides that [the Player] *terminated the Contract with just cause:*

(iv) an order for [the Player] *to confirm whether he (or someone of his behalf) signed image rights or side agreements with any of his employer club;*

(v) an order for [the Player] *to confirm whether he holds participation in a company that operates his image rights; if so, to please provide the name and details of the company;*

(vi) an order for [the Player] *to provide CAS with any and all contracts signed after the termination of the Contract with* [the Club], *including any image rights or side contracts, for the purposes of determining the right amount of mitigation to be deducted from the compensation amount ordered by the DRC;*

(vii) In the event that, after analysing such requested documents, the actual total amount received by [the Player] *from his subsequently clubs is, in fact, higher than the amount determined by the DRC for the purpose of mitigation,* [the Club] *respectfully requests CAS to apply and replace the original mitigated amount used by the DRC by the correct mitigation amount and duly deduct it from the compensation ordered by the DRC, either within the present Appeal, or under a procedural order to hear the case de novo or, subsidiarily, in the vent the CAS understands that such image right and/or side contracts should fall under the scope of the FIFA DRC as a first instance,* [the Club] *kindly requests that the Challenge Decision is modified accordingly and the case is sent back for a new decision of the FIFA DRC in view of the new evidence;*

In any event:

(viii) kindly request FIFA for a full copy of the relevant case file to be admitted into these appeal proceedings;

(ix) an order for [the Player] *to bear the entire costs of these arbitration proceedings;*

(x) an order for [the Player] *to bear the entire costs of* [the Club]*'s legal costs and expenses with these arbitration proceedings"*

56. The submissions of the Player in CAS 2020/A/6533 may, in essence, be summarised as follows:

1. Just cause to terminate the Employment Contract

- In relation to the question whether the Player had just cause to unilaterally terminate the Employment Contract, the Player emphasised that an employee is entitled to terminate an employment contract unilaterally and with just cause, if there is repeated or successive non-payment by the employer of the remuneration expressly agreed. This is because the main obligation of an employer towards its employees is the payment of the remuneration agreed. As such, if the employer fails to comply with such obligation, the employee is in general no longer be expected to continue under the contract in the future.

- When the Player decided to terminate the Employment Contract unilaterally, the Club had failed to pay the (monthly) salaries regarding January, February and March 2016. Pursuant to the long-standing jurisprudence of the CAS, the failure by a club to pay the monthly salary due to a player for three consecutive months is more than enough to provide the latter with the necessary legal basis to terminate such relationship unilaterally and with just cause. In this regard, the Player stressed that the maintenance of confidence plays a fundamental role.

- Together with the failure to pay the monthly salaries, the Club also committed several other breaches within the very same period, which made clear that its intention was to put an end to the employment relationship with the Player. There was never any answer (or reaction) in relation to the Warning Letter, as well as the Termination Letter. The Player was prohibited to attend training sessions with the professional (first) team, the Player was deregistered without any reason, explanation or communication, and the Club failed to provide any medical assistance whatsoever during the period the Player was diagnosed with mumps.

- In addition, the Player emphasised that it is undisputed that the aforementioned outstanding amount represented 20% of the total remuneration that the Club agreed (in writing) to pay the Player said season. If a club fails to pay consecutive monthly salaries up to a total amount, which represents 20% of the total remuneration due during an entire season, this becomes substantial enough in order to provide a player with the necessary grounds to terminate a contract unilaterally with a valid reason.

- Moreover, the Player indicates that according to the Employment Contract the Club also had the obligation to make, among others, sport-oriented medical and therapeutic care available. Hence, the Player did not receive any assistance whatsoever from the Club neither medical nor financial after he was diagnosed with mumps. The negligent

manner of the Club was not only a breach of the Employment Contract but resulted also in the loss of confidence of the Player in the Club.

- Furthermore, it is incontestable that the Club decided to exclude the Player from training with his teammates, which is one more clear violation of his personality rights.

- The Player concludes that when these important factors are taken into consideration, the Club left the Player with no other alternative except to terminate the Employment Contract unilaterally and with just cause.

2. Prior warning

- In relation to the arguments of the Club regarding the prior warning, the Player stressed that the Player did address a formal warning to the Club on 17 March 2016. In this letter the Player communicated that the Club had failed, without any plausible reason to pay the monthly salaries of January and February 2016. In addition, the Player provided the Club with a period of 15 days to pay the outstanding remuneration. The Club, however, never answered the referenced warning or paid to the Player the indicated outstanding remuneration. In addition, the Player indicated that the Club did not pay the monthly salary regarding March 2016 either.

- If the submission of a warning before the termination of a contract is necessary in order to fulfil with the principle of good faith, than it is obvious that the failure to answer it or remedy the contractual breach appointed is also a violation of the fundamental principle of good faith.

3. Deregistration

- As to the deregistration, the Player submits that the professional freedom, in particular for professional athletes, includes a legitimate interest in being actually employed by their employer. It is incontestable that in general whenever there is deregistration of a professional football player by a club, there is a violation of his personality rights. Within such scenario, such player is theoretically entitled to terminate the referenced relationship unilaterally and with just cause.

- The Club deregistered the Player on the very last day of the second period of registration established by QFA for the 2015-2016 season with the purpose to register a new (foreign) professional football player. It is undisputed that the new player was indeed singed by the Club to replace the Player and consequently, after signing the new player, the Club expressly prohibited the Player of attending training sessions with his other teammates from the first (professional) team and as from the moment the new player landed in Doha (Qatar) the Club stopped paying the monthly salaries due

to the Player. In addition, the Club never communicated that they had deregistered the Player neither the reasons why it had taken such decision.

- Therefore, any allegation that the Player agreed with the deregistration is completely baseless. The Club has not provided any evidence whatsoever in relation to this assumption and, as such, clearly failed to meet its burden of proof.

- The fact that the Player did not raise the deregistration as one of the reasons for the unilateral termination of the Employment Contract, does not mean that it cannot occur in a later stage.

- As to the exclusion from the training, the Player submits that the decision of the Club to exclude the Player from training sessions with his teammates of its first (professional) football team was one more clear violation of the referenced personality right, which simply confirms that the unilateral termination of the Employment Contract occurred with just cause.

4. The duty of mitigation

- The Player is of the opinion that Article 10 of the Employment Contract should be taken into account when the amount compensation is calculated. It follows from said provision that there is a great disproportionality whenever considering the amount due as compensation in the event that the Player or the Club becomes entitled to receive it.

- In this regard, the Player pointed out that it is necessary to consider whether such disparity between the compensation amounts may result into cancelation of said clause.

- There is not any explicit (or even implicit) determination deriving from the FIFA RSTP that prohibited players and club to establish different compensation amounts, whenever occurs the breach of an employment contract. The simple reason that the compensation amounts established in said Article 10 of the Employment Contract are different is not enough, according to Swiss law, to disregard or revert it into a completely unenforceable provision.

- The Player finds that it is not acceptable that the he becomes damaged twice. First, because the Player was the party who had to terminate the Employment Contract unilaterally and with just cause after the Club having refused to comply with its obligations. Second, because the Player is receiving a compensation much lower than the one expressly established in the Employment Contract because the amount due to the Club was supposed too high.

- Considering that the FIFA RSTP does not provide any comment whatsoever regarding such specific matter, it becomes necessary to apply Swiss law. Following the Player, it is undisputed that Article 10 of the Employment Contract fulfils with all the elements of a *"liquidated damage"* clause established by Swiss law and as such, there is no reason to be considered invalid as legally groundless decided by the Appealed Decision.

- In the event there was a unilateral termination of the Employment Contract as result of a breach committed by the Club, the compensation due to the Player had to occur without any mitigation whatsoever. Art. 361 of the SCO establishes that the obligation to mitigate the loss in case of unilateral termination of an employment relationship is not a mandatory rule and such, players and clubs are thus entitled to agree that no such deduction shall be applicable.

- The compensation agreed in advance between the parties of a contract cannot suffer any amendment or adjust, except said contract allows it or the amount is excessive. The compensation which the Player is entitled to in case of a breach may not be considered excessive. The request of the Club to mitigate the compensation has no factual or legal basis.

57. On this basis, the Player filed the following prayers for relief:

> *"FIRST – To set aside in full the appeal lodged by the Club before the CAS;*
>
> *SECOND – To order the Club to pay to the Player any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount of CHF 20,000 (twenty thousand Swiss Francs)".*

B. CAS 2020/A/6539

58. The submissions of the Player in CAS 2020/A/6539, in essence, may be summarised as follows:

1. Termination of the Employment Contract

- The Player holds that he terminated the Employment Contract with just cause.

- The Player stressed that the unilateral termination of the Employment Contract with just cause rested on four imperative elements:

  i. The Club deregistered the Player during the second registration period of the 2015-2016 (Qatari) season in order to register a new (foreign) player who was

hired to replace him. As such, the Club – *prima facie* – incontestably breached the obligation to respect the personality rights of the Player;

ii. The Club prohibited the Player to attend training sessions with the first team (professional) and his teammates just after his deregistration. This was all done with the purpose of forcing him to accept the offers for the earlier termination to the Employment Contract.

iii. The Club failed to provide the Player with the necessary medical assistance (or any sort of support) during the period in which the latter was diagnosed with mumps; and

iv. The Club failed to pay to the Player salary for 3 months, notably, regarding January, February and March 2016, which amounted to EUR 300'000. In fact, the Club decided to not comply with such obligation even after the Club received the Warning Letter forwarded by the Player.

- These circumstances led to an irremediable breach of confidence, which left the Player with no other alternative except to terminate the Employment Contract unilaterally and with just cause.

2. Compensation amount

- As a consequence of the unilateral termination of the Employment Contract with just cause, the Player holds that he is entitled to compensation. In this regard, the Player submits that it is undisputed that the Player and the Club were entitled to establish the contents of a *"liquidated damages"* clause. Such clause determines in advance the compensation amount, which was due in case there was a breach of the Employment Contract. It also follows from the FIFA RSTP that the parties to an employment contract are granted the right to negotiate the terms and conditions of a *"liquidated damages"* clause.

- The Player further holds that following the contents of Article 10 of the Employment Contract, it is undisputed that there is a great disproportionality considering the amount due as compensation in the event the Player or the Club becomes entitled to receive compensation. There is not any explicit (or even implicit) determination deriving from the FIFA RSTP that prohibited players and clubs to establish different compensation amounts, whenever occurs the breach of an employment contract. Considering that the FIFA RSTP does not provide any comment whatsoever regarding such specific matter, it becomes necessary to apply Swiss law.

- The simple reason that the compensation amounts established in Article 10 of the Employment Contract are different, is not enough, according to Swiss law, to disregard or revert it into a completely unenforceable provision. The compensation

amount that the Club would have received when the Player breached the Employment Contract is irrelevant in the case at hand, because the Club does not have the right to receive any compensation.

- The Player stressed that it is not acceptable that he suffers damages twice. In first instance the Player was the party who had to terminate the Employment Contract unilaterally and with just cause after the Club having refused to comply with its obligations and in the following when the Player will receive a compensation much lower than the one expressly established in the Employment Contract because the amount due to the Club was supposed too high. In this regard, the Player is of the opinion that the amount due as compensation shall not be fixed according to the extent of the damage, but exclusively based upon the agreement concluded between the Parties.

- The Player submits that it is undisputed that Article 10 of the Employment Contract fulfils all the elements of a *"liquidated damage"* clause established by Swiss law and, as such, there is no reason to be considered invalid as legally groundless decided by the Appealed Decision. In the event there was an unilateral termination of the Employment Contract as result of breach committed by the Club, the intention of the Player, with express consent of the Club, was to avoid any sort of mitigation when the Player became entitled to receive a compensation from the Club.

- The Player stressed that it is important to take into consideration that Art. 361 SCO establishes that the obligation to mitigate the loss in case of unilateral termination of an employment relationship is not a mandatory rule and such, players and clubs are thus entitled to agree that no such deduction shall be applicable. The compensation agreed in advance between the parties of a contract cannot suffer any amendment or adjust, except said contract allows it or the amount is excessive.

- Whenever considering the possibility (or not) of reducing the amount due as compensation there are few elements, which are of imperative importance. In this regard the Player emphasised that he always made his intention to receive the compensation amount as established in the Employment Contract very clear, that all the actors of the football scene are aware that the respect to the principle of *pacta sunt servanda* is backbone of the employment relationship between players and clubs, professional football club should respect the personality rights of a player, as well as to pay the remuneration on the relevant dates and the Club had the necessary experience and knowledge about the contractual breaches and the consequences of the decision to violate some of the most important obligations assumed towards the Player.

- The Player is of the opinion that there is no reason that the compensation amount established in the Employment Contract suffer any deduction (or mitigation) whatsoever.

3. Imposition of Sanctions

- A literal interpretation of the first section of Article 17 par. 4 FIFA RSTP, leads to the conclusion that the club in breach of an employment contract during the so-called *"protected period"* will be sporting sanctioned.

- Following the Player it is undisputed that the breach by the Club occurred within the termed *"protected period"* and as such, the Club should not only pay to the Player the compensation, but the Club should also be banned from register new players (nationally or internationally) for 2 (two) entire and consecutive registration periods.

- The Player is of the opinion that the Club is to be considered a *"repeated offender"* since in the last years it breached several other contracts. This additional aggravating factor corroborates in order to the CAS Panel to reform the Appealed Decision and as such to impose sporting sanctions on the Club.

4. Default Interest

- The Appealed Decision correctly ruled that the Club has to pay the outstanding three monthly salaries to the Player, plus default at a rate of 5% per annum as from the due date until the date of effective payment. Hence, the members of the FIFA DRC failed to impose default interest over the compensation amount which is in line with CAS 2008/A/1519-1520.

- As the Employment Contract was unilaterally and with just cause terminated on 3 April 2016, it is undisputed that the default interest over any compensation amount due to the Club shall start to accrue as from 4 April 2016.

59. On this basis, the Player submitted the following prayers for relief:

"FIRST – To accept in full the present Appeal and as such, partially amend the Appealed Decision;

SECOND – To confirm, in accordance the Appealed Decision, the Club has to pay to the Player outstanding remuneration in the amount of EUR 300,000, plus interest at the rate of 5% p.a. until the date of effective payment, as follows:

a. as from 1 February 2016, on the amount of EUR 100,000;

b. as from 1 March 2016, on the amount of EUR 100,000; and

c. as from 1 April 2016 on the amount of EUR 100,000.;

THIRD – To order the Club to pay to the Player EUR 6,300,000 (six million and three hundred thousand Euros) as compensation for breach of Employment Contract, plus default interest at rate of 5% p.a. as from 4 April 2016 until the effective date of payment;

FOURTH – To ban the Club from registering new players, either nationally or internationally, for two entire and consecutive registration periods (cf. Art. 17, par. 4 of the FIFA RSTP).

FIFTH – To order FIFA to comply with the evidentiary request submitted above (see paragraph – 217 et seq. above);

SIXTH – 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 (one thousand Swiss Francs) and any other advance of costs paid to the CAS;

AND

SEVENTH- To order the Club to pay to the Player any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 20,000 (twenty thousand Swiss Francs)".

60. The submissions of the Club in CAS 2020/A/6539, in essence, may be summarised as follows:

1. Termination of the Employment Contract

- In relation to the termination of the Employment Contract, the Club asserts that the Player did not have just cause for the unilateral termination of the Employment Contract. The Club is of the opinion that only an insubstantial amount of his annual salary was delayed at the time of termination and that this could not be considered as a just cause for the unilateral termination.

- Following the Club it was clear that the Player did not terminate the Employment Contract based on the four reasons, i.e. the deregistration of the Player, the prevention of the Player to attend training, the lack of medical assistance and the lack of salary payment for more than three months.

- Taking into account the Warning Letter and the Termination Letter, it follows that the Employment Contract was not terminated based on the four reasons as affirmed by the Player. The Player only terminated the Employment contract based on the outstanding payments for more than three months.

- In this regard, the Club stressed that the Player actually claimed a salary that was not due to him by the time of the Warning Letter. The Club had only two months salaries delayed towards the Player when it received the Warning Letter, requesting the payment not only of the two salaries but a third salary that was not even due yet.

- The Club emphasised that only 13% of the Players annual payments were delayed and the Player terminated a contract of five year, which translates into complete disproportionality on the part of the Player. The Player did not have just cause because the amount overdue to a player in order to justify an early termination of an employment contract must be significant.

- The Club further stressed that it consistently complied with its obligations throughout the years the Employment Contract was in place, creating a solid foundation for the Player to be confident that the Club would pay him the outstanding salaries.

- Moreover, the Player never warned the Club about his intention to terminate the Employment Contract but only about the payment of outstanding salaries. As a result, the Player failed to give the Club a chance to avoid such termination.

- In relation to the deregistration the Club emphasised that the Player has accepted his deregistration. This is easily evidenced by the contents of the Warning Letter following which it can be concluded that the Player based his termination on the outstanding salaries, rather than in the deregistration prior to the Termination Letter. By not complaining about his deregistration, the Player tacitly accepted such event.

- In addition, by terminating the Employment Contract without just cause, the Player illegally prevented the Club from compensation amounts, in case of a transfer, and also by preventing the Club to benefit from the contracted work of the Player for the regular term.

- In fact, by prematurely terminating the Employment Contract, the Player caused the Club to lose an asset and the opportunity either to re-register the Player or to transfer him in the July and August 2016 registration window.

- Regarding the arguments raised by the Player in relation to the medical assistance, the Club points out that at any point the Player communicated about such situation to the Club and the Player failed to provide any evidence that he has done so. Even after the Player went to medical appointments and had expenses with it, he never communicated with the Club in order to request the reimbursement for such costs as the Club obviously would have done it.

- As the disease of the Player was not something that would be obvious for the Club to notice and the Player did not inform the Club about his medical situation, the Club could not provide the medical assistance in a situation it was not aware of.

- The Player failed to show any evidence that the Player was prohibited to train with the first team (which he was not) and obviously, he neither based such prevention on training for the termination of the Employment Contract nor ever raised any complaints about it.

2. Compensation amount

- Regarding to the compensation amount, the Club stressed that, in principle, the injured party is entitled to a whole reparation of the damages suffered, pursuant to the principle of the "positive interest". Nevertheless, it follows from Article 337c paragraph 2 SCO, that the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned form other work. Therefore, in accordance with the general principle of fairness, the Player must act in good faith after the breach of the Employment Contract and seek for other employment, showing diligence and seriousness.

- The obligation to mitigate is aimed at limiting the damages deriving from breach and at avoiding that a possible breach committed by a party could turn into an unjust enrichment for the injured party. It indeed follows from Article 361 SCO that the obligation to mitigate the loss is not a mandatory rule, but only when the parties agreed that no mitigation shall be applied in any compensation to be paid. In that case the principle of mitigation would not be applied.

- Therefore, even if Article 10 of the Employment Contract is valid and in favour of the Player it would have the same result as when the calculation of the compensation is based on Article 17 FIFA RSTP as the principle of mitigation must be applied as per Article 337c SCO.

- Under the Player's duty of mitigation, the amount of compensation shall be decreased with the actual amounts that the Player received. In this regard the Club stressed that the Player played for several Brazilian clubs where it is very common and of vast public knowledge in the world of football that, for tax purposes, players are almost in every case paid part of their salaries under a second contract, i.e. an image rights contract or side contracts.

- Depending on the true nature of its terms and genuine intention of the parties, an image rights or side contract can actually constitute part of player's salary. That is, depending on the circumstances of the case (i.e. if in reality the likeness of the player is not exploited by the club) such amounts shall be deemed as salaries in nature under the FIFA Rules and Regulations, and therefore, relevant for remuneration and, later, mitigation purposes.

- The actual total amount received by the Player from his subsequent clubs should be applied and deducted from the compensation ordered by the DRC.

61. On this basis, the Club submitted the following prayers for relief:

"a) the Appeal filed by [the Player] *is rejected;*

b) the Answer filed by [the Club] *is upheld;*

c) the Challenged Decision is set aside so that the following shall replace its terms:

i. the claim of the Player before the DRC is rejected;

ii. the Player terminated the Contract without just cause;

iii. therefore, the Player must compensate the Club *accordingly under Articles 17.1 of the FIFA Regulations, the amount of EUR 6,300,000, .i.e., the remaining amount of the Contract.*

In the event that the CAS rejects the above and decides that [the Player] *terminated the Contract with just cause:*

a) to confirm the application of the principle of mitigation;

b) An order for [the Player] *to produce the image rights contracts signed between Sueli Aparecida Grave Dutra – Promoção e Eventos Esportivos Eireli with the football club Avai Futebol Club;*

c) an order to [the Player] *to confirm whether he and the company Sueli Aparecida Grave Dutra – Promoção e Eventos Esportivos Eireli (or someone of his behalf) signed image rights or side agreement with the football clubs CR Vasco da Gama, Sport Club Corinthians Paulista and Fluminense Football Club*

d) If positive the answer above, on order to [the Player] *to produce such contracts.*

e) an order to [the Player] *to confirm whether he holds participation in a company that operates his image rights; if so, to please provide the name and details of the company;*

f) an order to [the Player] *to provide CAS with any and all contracts signed after the termination of the Contract with* [the Club], *including any image rights or side contracts, for the purpose of determining the right amount of mitigation to be deducted from the compensation amount ordered by the DRC;*

g) In the event that, after analysing such requested documents, the actual total amount received by [the Club] *from his subsequently clubs is, in fact, higher than the amount determined by the DRC for the purpose of mitigation,* [the Player] *respectfully requests CAS to apply and replace the original mitigated amount used by the DRC by the correct mitigation amount and duly deduct it from the compensation ordered by the DRC, either within the present Appeal, or under a procedural order to hear the case de novo or, subsidiarily, in the vent the CAS understands that such image right and/or side contracts should fall under the scope of the FIFA DRC as a first instance,* [the Club] *kindly requests that the Challenge Decision is modified accordingly and the case is sent back for a new decision of the FIFA DRC in view of the new evidence;*

In any event:

a) kindly request FIFA for a full copy of the relevant case file to be admitted into these appeal proceedings;

b) an order for [the Player] *to bear the entire costs of these arbitration proceedings;*

c) an order for [the Player] *to bear the entire costs of* [the Player]*'s legal costs and expenses with these arbitration proceedings"*

62. The submissions of FIFA in CAS 2020/A/6539, in essence, may be summarised as follows:

- FIFA bears no standing to be sued regarding the requests of the Player in relation to the review of the compensation amount that was initially granted to him by the DRC and the request to be awarded with default interest on the demanded compensation amount. These requests find their cause of action purely on the contractual relationship between the Player and the Club.

- Having established that FIFA's standing to be sued in the matter at hand is mainly limited to the request of the Player for the imposition of sporting sanctions on the Club, it is FIFA's position that the Player does not have any legitimate interest in the Club being sanctioned. It transpires from the CAS jurisprudence that the Player would gain absolutely nothing if the Club would be sanctioned. The Player does not have standing to request the imposition of sporting sanctions on the Club and should be dismissed.

- Although FIFA is of the opinion that it lacks standing to be sued in relation to the requests regarding the calculation of the compensation amount, FIFA argues that the clause in the Employment Contract is evidently disproportional and one-sided. Consequently, the monies payable to the Player under the Employment Contract as from its termination the remuneration that the Player would have received until its regular expiry date shall form the basis for the final determination of the amount of compensation for breach of contract.

- As to the validity of Article 10 of the Employment Contract, FIFA submits that, in light of the disproportional and one-sided clause agreed by the Parties, the DRC correctly applied the parameters of Article 17 FIFA RSTP.

- In accordance with the constant practice of the DRC, the remunerations that the Player received with other clubs during the relevant period of time, by means of which he would have been able to reduce his loss of income, should be taken into account. The DRC rightfully considered that the Player was entitled to receive EUR 4'725'000.

- Regarding the interests on the compensation amount FIFA submitted that, in accordance with the legal principle of *ne ultra petita*, the DRC was prevented from granting interests on the compensation amount as they were not requested by the Player during the first instance proceedings.

- In relation to the imposition of sporting sanctions on the Club FIFA submits that the Player lacks the necessary standing to make such a request. The Player will gain absolutely nothing if the Club would be sanctioned. Such a decision would clearly lack any practical usefulness for the Player. In the same line, there is no utility on rendering a decision whether the Club is a "repeated offender".

63. On this basis, FIFA submitted the following prayers for relief:

> *"(a) rejecting the reliefs sought by* [the Player]*;*
>
> *(b) confirming the Appealed Decision;*
>
> *(c) ordering* [the Player] *to bear the full costs of these arbitration proceedings; and*
>
> *(d) ordering* [the Player] *to make a contribution to FIFA's legal costs".*

VI. JURISDICTION

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

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

65. The jurisdiction of CAS derives from Article 58 (1) of the FIFA Statutes (2019 edition) which reads:

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

66. The jurisdiction of CAS is not disputed by the Parties.

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

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

VII. ADMISSIBILITY

69. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

70. The Sole Arbitrator notes that pursuant to Article 58 (1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

71. In accordance with Articles R47 and R48 of the CAS Code, the Player and the Club both filed their Statements of Appeal on 23 October 2019, which is within the 21 days deadline. Both Statements of Appeal complied with the other conditions set out at Article R48 of the CAS Code.

72. Therefore, the appeals were timely submitted and are admissible.

VIII. APPLICABLE LAW

73. Article R58 of the CAS Code provides more specifically the following:

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

74. Article 57 (2) of the FIFA Statutes reads as follows:

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".*

75. The Sole Arbitrator notes that Article 13 of the Employment Agreement provides for a choice-of-law clause, referring to the *"FIFA Regulations"*.

76. The Sole Arbitrator is satisfied that the FIFA Regulations are applicable, with Swiss law applying to fill in gaps or *lacuna* within those regulations.

IX. MERITS

A. Introduction

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

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

b. If so or not, what are the consequences thereof?

c. Is default interest due on the amount of compensation?

d. Should sporting sanctions be imposed on the Club?

B. Preliminary points

78. Before turning to the examination of those issues, the Sole Arbitrator has to address preliminary points, which were raised by the Parties in the course of the arbitration.

79. These points concern the evidentiary requests from the side of the Player and the Club.

80. As a preliminary remark, the Sole Arbitrator wishes to underline that on the basis of Article R57 para. 3 of the CAS Code, Article R44.3 of the CAS Code is also applicable to the current appeal arbitration proceedings, from which latter provision it follows that:

"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".

81. From the side of the Player, the following request was made in the Appeal Brief:

"In order to ratify 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 7 years, which leads to the impositions of sanctions (cf. CAS 2015/A/3999-4000)".

82. As communicated by the CAS Court Office on 26 March 2020, the Sole Arbitrator decided to dismiss this request. As set out in this letter, the Sole Arbitrator finds that such request is too generic, explorative in nature and not directly relevant for the present case. In fact, the Sole Arbitrator finds that this request is going too far in the meaning of being "fishing expeditions" for evidence. It is the duty of the party wishing to rely on such evidence doing such a request, to demonstrate, with specificity in terms of requesting specific documents, whether these documents are likely to exist and to be relevant. The Sole Arbitrator put emphasis on the fact that the Player did not show that the requested decisions are likely to exist and to be relevant. Therefore, this first request must be dismissed as the requirements of Article R44.3 of the CAS Code are not fulfilled.

83. Turning to the evidentiary requests from the side of the Club, it follows from its submissions that the Club made the following requests to the Sole Arbitrator:

"1) that FIFA be ordered to produce a copy of the full FIFA file;

2) that Mr Dutra Junior be ordered to produce "a copy of every and each contract signed between the Respondent and his subsequently clubs, including any image rights contracts and/or separate contracts of same or similar nature that might be bound under the nature of the Respondent's salaries";

3) that Mr Dutra Junior be ordered "to confirm that he signed an image rights agreement with Avai Futebol Club and present it to CAS and whether he (or someone of his behalf (signed any other image rights or side agreement(s) with any of his subsequent employer clubs and, if positive, to present them to CAS";

4) that MR Dutra Junior be ordered to confirm "whether he holds participation or benefited from the company Sueli Aparecida Grave Dutra – Promoção e Eventos Esportivos Eireli or any IRC's; if so, please provide the name and details of the other IRCs"".

84. As to these requests, the Sole Arbitrator notes that the first request to order FIFA to produce the FIFA file was accepted, as follows from the letter of 26 March 2020.

85. With regard to the second request in relation to the contracts, and as also communicated to the Parties per the same letter of 26 March 2020, the Parties were also informed that the Club's request for production of any and all contracts signed after the termination of the Employment Contract with the Club was dismissed, as, also, such request is too generic and explorative in nature. In the view of the Sole Arbitrator, also this request has too much of a "fishing expeditions" character and is far too broad. Therefore, this request must also be dismissed as the conditions of Article R44.3 CAS Code are not met either.

86. As to the third and fourth request of the Club, the Sole Arbitrator invited the Player to comment on the Club's evidentiary requests in relation to the image rights agreements signed between the subsequent clubs of the Player and the Company. As such, and as set out in detail under section IV above, the Player submitted image right contracts that were concluded between the Company and several Brazilian clubs. Further to this, the Sole Arbitrator accepted several additional requests and questions from the side of the Club, as also set out above, which were all answered by the Player. At that stage of the proceedings the Sole Arbitrator found it relevant to be provided with answers to the questions from the Club.

87. The Sole Arbitrator can now turn to the disputed points, to be examined in sequence.

C. Did the Player have just cause to terminate the Employment Contract?

1. In general

88. Article 13 of the FIFA RSTP defends the principle of contractual stability by expressly stating that:

> *"[a] contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement".*

89. At the same time, the principle of contractual stability is not absolute as Article 14 of the FIFA RSTP provides that:

> *"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".*

90. In this respect, the Sole Arbitrator considers that the FIFA Commentary on the Regulations of the Status and Transfer of Players (the "FIFA Commentary") provides further guidance as to when an employment contract is terminated with just cause:

> *"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2 The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.*
>
> *(…)*
> *5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions. Given that the Respondent terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Respondent.*
>
> *6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".*

91. The Sole Arbitrator also refers to relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2014/A/3643, para. 78; CAS 2008/A/1518, para. 59, page 22). As such, Article 337 (1) SCO *ab initio* which applies complementarily,

provides that *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause".*

92. Under Swiss law, such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 (2) SCO). The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).

93. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter (CAS 2013/A/3091, 3092 & 3093, para. 191; CAS 2006/A/1062).

94. Consistent with CAS jurisprudence, non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee:

> *"If, therefore, he fails to meet his obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost"* (CAS 2018/A/6050 para. 91, CAS 2016/A/4693 para. 101, CAS 2013/A/3398; CAS 2013/A/3091, 3092 & 3093).

95. As decided by the Panel in CAS 2006/A/1180:

> *"According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (AFT 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligations. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (AFT 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (AFT 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 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)".

96. The same award also focuses on the circumstances under which just cause exists in the event of non-payment or late payment of salaries by the employer:

"The non-payment or late payment of remuneration nby an employer does in principle – and particularely if repeated as in the present case – constitute just cause for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in the future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in the future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial"or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5. et seq.)".

97. In addition, and according to CAS jurisprudence (CAS 2016/A/4693 para. 104), and consistent with Swiss law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446), for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations (CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; decision of the Swiss Federal Court of 12 November 2013, 4A.337/2013, consid. 3: ATF 121 III 467, consid. 4d).

98. In view thereof, the Sole Arbitrator wishes to emphasise that for a party to be allowed to validly terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations, if it consents to the just cause. In another CAS case, a Panel stated that:

"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where,

given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship" (CAS 2006/A/1180 and referred to in CAS 2018/A/6050).

99. The Sole Arbitrator wishes to recall that the duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder or warning is necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations (CAS 2018/A/5955 & 5981, CAS 2017/A/5465, CAS 2006/A/1180 and CAS 2006/A/1100). This also derives from the jurisprudence of the Swiss Federal Tribunal which clarifies that in case of a severe breach of a contract, the termination without prior warning is justified (e.g. ATF 127 III 153). Moreover, this also clearly follows from the jurisprudence of the DRC itself. In fact, DRC jurisprudence shows that it is not always a prerequisite to place the club in default before terminating the contract due to outstanding salary (DRC 23 January 2013, no. 0113797 and DRC 10 December 2009 no. 129795).

100. The Sole Arbitrator fully adheres to the legal framework, as set out above, and will therefore examine whether the Club's conduct was of such a nature that it could no longer be reasonably expected from the Player to continue the employment relationship with the Club. The Sole Arbitrator has to examine whether the Club was somehow in breach of the terms of the Employment Contract in such a manner that the Player had a just cause to put a premature end to the employment relationship, as he did.

2. In particular

101. The Sole Arbitrator observes that the Player basically invokes four separate sets of arguments in justifying the unilateral termination of the Employment Contract: i) the outstanding salaries; ii) the deregistration by the Club; iii) the prohibition to attend the training sessions; and iv) the Club's failure to provide medical assistance.

The Sole Arbitrator will first focus on the Player's claim regarding outstanding salaries.

102. The Sole Arbitrator observes that it remained undisputed between the Parties that the Appellant did not pay the salaries for January and February 2016. As to the month Match 2016, the Club submits that this month was not due to the Player at the moment of the Warning Letter. The Sole Arbitrator, however, notes that the payment of the salary of the month March 2016 was due at the moment that the Player terminated the Employment Contract. As to the March salary, it was even admitted by the Club that at the moment of the Termination Letter that this salary was late for three days.

103. Consequently, it is the Sole Arbitrator's conclusion that at the moment of the termination of the Employment Contract, three monthly salaries were outstanding to the Player.

104. From the above-cited jurisprudence, it follows that two conditions must be met in order to validly terminate an employment contract. In the first place, the outstanding amount may not

be "insubstantial". In the second place, the employee must have given a warning and must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.

105. In light of the first requirement, *i.e.* the "substantiality" condition, the Sole Arbitrator holds that the non-payment of salaries in the present case in the amount of in total EUR 300'000 is not insubstantial and thus the Sole Arbitrator finds that this condition for terminating the Employment Contract by the Player with just cause is clearly met.

106. This leads the Sole Arbitrator to the second criterion, *i.e.* whether the Player warned the Club, and the defence as such advanced by the Club claiming that no warning was given.

107. In fact, the Club claims that the Player did not fulfil the requirement to give proper warning of his intention to terminate the Employment Contract. In this regard, the Club submits that the Player has never warned the Club that by requesting his outstanding payment this would lead to the termination of the Employment Contract. As a result, the Player failed to give the Club a chance to avoid the termination. Further to this, the Club notes that the Player referred to the "*good relationship that has always existed"* with the Club in the Warning Letter, following which the Club was not expecting a termination.

108. The Sole Arbitrator does not agree with the Club. From the Warning Letter from the side of the Player, addressed to the Club, it clearly follows that the Club was warned.

109. In this regard, the Sole Arbitrator wishes to underline, as opposed to what the Club claims, that it is not necessary that the Player should have expressed his intention to terminate the Employment Contract. With the Warning Letter, the Club was officially put in default. The jurisprudence, as set out above, clearly shows that the aim of the warning is that the party in breach has the chance to comply with its obligations, noting that a reminder or a warning is not even absolute as circumstances can justify that no reminder or warning is necessary, as also follows from the same jurisprudence. The Sole Arbitrator finds that the Club was given the chance to cure its default, which it failed to do.

110. In view of the above, taking into account the specific circumstances of the present case, the Sole Arbitrator is convinced that at the moment when the notice of termination was notified to the Club on 3 April 2016 by means of the Termination Letter, the breach from the side of the Club was such that it rightfully caused the confidence, which the Player had in the future performance in accordance with the Employment Contract, to be lost. Put differently, the essential conditions under which the Employment Agreement was concluded between the Parties were no longer present and, in this respect, due to the Club's behaviour, the Player could not in good faith be expected to rely on the performance by the Club of its contractual obligations and therefore, to continue the employment relationship.

111. Consequently, the Sole Arbitrator finds that the Player had just cause to terminate the Employment Contract on 3 April 2016 and is satisfied with the behaviour of the Player, in terminating the Employment Contract.

112. Taking into account that the outstanding amounts to the Player in itself are already sufficient reason for him to validly terminate the Employment Contract in the present case, it is not necessary for the Sole Arbitrator to address the issues and arguments from the side of the Player in relation to the deregistration, the prohibition to attend the training sessions and any failure from the side of the Club to provide medical assistance.

D. Consequences of the Termination

113. Having established that the Player had just cause to terminate the Employment Contract on 3 April 2016, the Sole Arbitrator will now deal with the issue of compensation derived from such termination. However, before the Sole Arbitrator will address the issue of compensation under Article 17 FIFA RSTP, it will first address the issue of the outstanding salaries, more specifically what amount was due to the Player by the Club.

1. Outstanding salaries

114. With respect to the outstanding salaries, the DRC decided in the Appealed Decision that the Club, in accordance with the principle of *pacta sunt servanda*, was liable to pay the Player EUR 300'000. This amount corresponded to the remuneration due to him of in total three months, of each EUR 100'000 which reflected the months January, February and March 2016.

115. Accordingly, the Sole Arbitrator decides that the amount of salaries that were outstanding to the Player at the moment the latter terminated the Employment Contract on 3 April 2016 corresponded to an amount of EUR 300'000.

116. In addition, the Sole Arbitrator decides, and confirms the decision of the DRC on this issue, that interest will apply at the rate of 5% *per annum* on the amount of EUR 300'000 as from the due dates until the date of effective payment.

2. Compensation under Article 17 FIFA RSTP

117. Although the Sole Arbitrator observes that Article 14 FIFA RSTP does not specifically determine that a player is entitled to any compensation for breach of contract by a club, the Sole Arbitrator holds that the Player, in addition to the outstanding salaries, is entitled to receive compensation from the Club under Article 17 (1) of the FIFA RSTP.

118. In this respect, also considering the well-established CAS jurisprudence (see, *inter alia*, CAS 2016/A/4605 and CAS 2017/A/5180), it clearly follows from Article 14 (5) and (6) of FIFA Commentary, that a party *"responsible for and at the origin of the termination of the contract is liable to*

pay the compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

119. Although it was the Player who terminated the Employment Contract, the Club was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2015/A/3891). Following the CAS jurisprudence on this issue, this practice is also constantly applied by the DRC.

120. The Sole Arbitrator notes that Article 17 (1) of the FIFA RSTP provides as follows:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for 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 maximum of five years, the fees and expenses paid or incurred by the former (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

121. The Sole Arbitrator observes that the Employment Contract, by means of Article 10, provides for compensation in case there is a breach of contract, which provision reads as follows:

> *"1.* [The Club] *and the Player may terminate this Contract, before its expiring term, by mutual agreement.*
> *2.* [The Club] *and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
> *3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned,* [the Club] *or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount:*
> - *To* [the Club] *Euro 20.000.000/-(Twenty Million Euro)*
> - *To the player:* [the Player]*, (The remaining salaries of the contract)".*

122. The Sole Arbitrator finds that Article 10 Employment Contract is indeed the kind of deviation provided for in Article 17 (1) FIFA RSTP. By means of the above-cited Article 10, the Player and the Club contractually deviated from the default application of Article 17 (1) FIFA RSTP.

123. As to the validity of Article 10 Employment Contract, the Sole Arbitrator observes that the DRC in the Appealed Decision reasoned that Article 10 Employment Contract was:

> *"*[…] *in direct opposition with the general principle of proportionality and the principle of balance of rights of the parties since it provides benefits only towards the* [Club] *with no equivalent right in favour of the* [Player].
>
> *Therefore, the Chamber concluded that said clause could not be taken into consideration in the determination of the amount of compensation".*

124. The Player maintains that the DRC wrongly concluded that it could not apply the compensation clauses under the Employment Contract in view of the fact that these clauses established disproportionate benefit in favour of the Club and determined that the amount of compensation payable by the Club to the Player had to be assessed in application of the parameters set out in article 17(1) of the FIFA RSTP.

125. The Sole Arbitrator agrees with the Player that the DRC wrongfully concluded that it could not apply Article 10 of the Employment Contract. The DRC is of the opinion that the validity of Article 10 is subject to an equivalent right for both parties, and, as such, attaches decisive value to the principle of reciprocity. Although the DRC considered the clause as being reciprocal, it decided that it does not grant the same financial rights to the Player. However, as also determined in established CAS jurisprudence (CAS 2015/A/3999-4000), the Sole Arbitrator finds that a liquidated damages clause like Article 10 of the Employment Contract does not necessarily have to be reciprocal to be valid. The validity depends on other criteria:

> *"The Panel notes that article 17(1) of the FIFA Regulations does not require contractually agreed liquidated damages clauses to be reciprocal, nor is there any other source or legal doctrine, or at least no such source has been cited by any of the parties, based on which such test would have to be applied.*
>
> *As a consequence, the Panel is not convinced that both liquidated damages clauses must be set aside for mere fact that they are not reciprocal.* […]
>
> *Rather, the Panel finds that the appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause, i.e. in this case article 5(1) of the Employment Contract"* (CAS 2015/A/3999-4000, para. 158-160 of the abstract published on the CAS website).

126. The Sole Arbitrator fully concurs with the above approach as followed by the respective panel (CAS 2015/A/3999-4000). The proportionality of Article 10 of the Employment Contract should be assessed individually and within the context of the specific circumstances of the case. The Sole Arbitrator recalls that Article 10 of the Employment Contract provides that the Player would be entitled to the remaining salaries of the Employment Contract. As opposed to the approach by the Panel in CAS 2018/A/5771-5772, in which the respective player was only entitled to receive two months salaries in case of breach of contract, the Sole Arbitrator finds that the liquidated damages clause in the matter at hand, by means of Article 10 of the Employment Contract, is not an excessive commitment from the Player. Whereas the Panel rightfully found the respective clause in CAS 2018/A/5771-5722 to be excessive,

because the player would only be entitled to receive two months salaries, the Player, as set out above, would be entitled to the remaining salaries of the Employment Contract. This seems fair to the Sole Arbitrator as this is an important difference. At the least, the Sole Arbitrator does not find Article 10 Employment Contract to be an excessive commitment from the Player.

127. In view of the above, the Sole Arbitrator, therefore, finds that the Player is, as a starting point, entitled to receive the remaining salaries from the Club under the Employment Contract pursuant to Article 10, which corresponds to EUR 6,000,000. This is the amount the Player would have earned as from the termination date on 3 April 2016 until the original expiration date of the Employment Contract, i.e. 30 June 2019.

3. Duty to mitigate

128. In general, the Sole Arbitrator firstly notes that players, in principle, are required to mitigate their damages as follows from the application of Article 17 (1) FIFA RSTP, as also rightfully considered by the Panel in CAS 2015/A/3999-4000. However, as set out above, Article 10 Employment Contract is the kind of deviation as is provided for in Article 17 (1) FIFA RSTP. Therefore, by means of Article 10, the Player and the Club contractually deviated from the default application of Article 17 (1) FIFA RSTP.

129. The Sole Arbitrator observes that the Parties are in dispute about whether or not the Player is (still) required to mitigate his damages. In this regard, the Parties refer to the duty to mitigate as is laid down in Article 337c of the SCO, which reads as follows:

> *"1 Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice or on expiry of its agreed duration.*
>
> *2 Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work".*

130. The Sole Arbitrator wishes to note that, in view of Article 361 SCO, parties are free to derogate from the above-cited second paragraph of Article 337c SCO. As such, the Sole Arbitrator brings in mind that the obligation to mitigate the loss in case of unilateral termination of an employment relationship without cause is, therefore, not a mandatory rule and parties are entitled to derogate.

131. The Sole Arbitrator observes that the Club does, however, not contest that the duty to mitigate is not mandatory and that parties are entitled to agree that no deduction shall be applicable. What is contested by the Club, and this is what the Club claims, is that the Player and the Club did not agree that no mitigation would be applied.

132. The Sole Arbitrator does, however, not agree with the Club. Having analysed Article 10 of the Employment Contract, the Sole Arbitrator finds that the Player and the Club expressly decided in advance, by means of this provision, that the Player would be entitled to the remaining salaries of his contract. Consequently, as rightfully concluded in CAS 2014/A/3640, from this provision it clearly follows that the Player is entitled to receive the remaining value of his salaries until the expiry of the Employment Contract.

133. Against the above background, and considering that the Player and the Club agreed that the Player was entitled to receive the remaining value of his salaries under his contract, the Sole Arbitrator will not deal with this issue further by reviewing the amounts received under the new employment contracts and the image rights agreements after the date of termination on 3 April 2016, as the Player, due to the applicability of Article 10 of the Employment Contract, was not required to mitigate his damages, as explained above.

134. In any event, the Sole Arbitrator does not want to leave unmentioned that he does not find it fair that the Player would be deprived from the application of Article 10 of the Employment Contract, i.e. his right to receive the remaining salaries of the respective contract, for the mere fact that the Player would be put in a position of clear disadvantage if said provision would not be applied.

135. Rather, the Sole Arbitrator holds that it must also be assumed that the Club was well aware of the content of Article 10 of the Employment Contract when it concluded such agreement with the Player. The Club should have realised the potential consequences of a failure to comply with its financial obligations towards the Player. In this regard, a party signing a document of legal significance, as a general rule, does so on its own responsibility and is so liable to bear the legal consequences arising from the execution of such document. Therefore, the Sole Arbitrator deems it fair to say that it is the Club's responsibility to bear legal consequences arising from the application of Article 10.

136. In light of the above, the Sole Arbitrator, therefore, finds that the DRC, when calculating the amount of compensation, should not have applied any deduction. Consequently, the Sole Arbitrator concludes that the Player is entitled to receive the remaining salaries from the Club under the Employment Contract pursuant to Article 10, which corresponds to EUR 6'000'000.

E. Default interest

137. The Sole Arbitrator notes that the Player also claims that the DRC failed to award interest on the amount of compensation. In this regard, the Player submits that default interest should start to accrue over the compensation as from 4 April 2016, considering that the Player terminated the Employment Contract with just cause on 3 April 2016.

138. The Sole Arbitrator observes that the DRC, indeed, did not award interest in the Appealed Decision on the amount of compensation as from the date of 3 April 2016. In fact, the DRC

only awarded interest on the amount of compensation as of expiry of the 30 days deadline as from the date of notification of the Appealed Decision.

139. It is correct, as FIFA further clarified during the hearing, that the percentage of 5% is mentioned under point 5 of the operative part of the Appealed Decision. As such, and as set out above, DRC only awarded interest on the amount of compensation as of expiry of the 30 days deadline as from the date of notification of the Appealed Decision. However, this is not what the Player requested in its submissions. In fact, the Player claims that interest over any such compensation shall start to run as from 4 April 2016.

140. For the sake of clarity, and considering that Swiss law, subsidiarily to FIFA rules, is applicable in this present case, the Sole Arbitrator refers to Article 339 paragraph 1 SCO, according to which all claims arising from the employment relationship shall become due upon its termination (see *inter alia* CAS 2008/A/1519-1520). Even an unlawful, premature termination does terminate the contractual relationship *ex nunc*. Therefore, as of the termination of the Employment Contract by the Player per date of 3 April 2016, his claim on compensation for premature termination without just cause became due.

141. As referred to by the Panel in CAS 2008/A/1519-1520, normally, under Swiss law, interest for late payment can be claimed if an obligation is due and the debtor has been reminded by the creditor (Article 102 paragraph 1 SCO). However, according to Swiss jurisprudence and doctrine, in case of a claim for compensation for a premature, unjustified termination of an employment agreement, interests shall start to accrue immediately, i.e. as per the day of the termination of the agreement, without any reminder being necessary (Decision of the Swiss Federal Tribunal of 4 May 2005 4C.67/2005, publ. in: ARV 2005, p. 251, consid. 2; Decision of the Swiss Federal Tribunal of 29 March 2006 4C.414/2005, consid. 6; decision of the Tribunal Cantonal du Canton de Vaud of 20 February 1980, publ. in: JAR 1981, p. 168 et seq., consid. IV, referring to art. 108 para. 1 of the Swiss Code of Obligations; STAEHELIN A., Zurcher Kommentar, op.cit., art. 339 N 12; STREIFF/VON KAENEL, Arbeitsvertrag, op.cit., art. 339 N 2; PORTMANN W., Basler Kommentar, op.cit., art. 339 N 2, referring to art. 102 para. 2 of the Swiss Code of Obligations; WYLER R., Droit du travail, op.cit., at fn 2197).

142. In the present matter, the Sole Arbitrator notes that the Player terminated the Employment Contract on 3 April 2016. Interest would therefore, following Article 77 SCO, start to accrue as from 4 April 2016. The interest of 5%, as provided for under Article 104 paragraph 1 SCO, on the sum of EUR 6,000,000 shall be due as from 4 April 2016.

F. Imposition of Sanctions

143. The Sole Arbitrator further observes that the Player submits that the DRC by means of the Appealed Decision also failed to impose sporting sanctions on the Club, considering that a unilateral termination of the Employment Contract took place within the *Protected Period*, as referred to in Article 17 (4) of the FIFA RSTP. In this regard, the Player claims that the DRC disregarded that the Club must be considered as a *"repeated offender"*. In this context, the Player

requests that the Club shall be banned from registering new players, either nationally or internationally, for two entire and consecutive registration periods, as provided for under Article 17 (4) FIFA RSTP.

144. As a starting point, the Sole Arbitrator refers to the well-established CAS jurisprudence from which it follows that panels shall give a degree of deference to decisions of sports governing bodies in respect of the proportionality of sanctions and shall only review the decision if considered evidently and grossly disproportionate to the committed offence (see *inter alia* CAS 2018/A/5838, CAS 2016/A/4595, CAS 2009/A/1817 & 1844).

145. The Sole Arbitrator observes that the DRC in the Appealed Decision did not impose any sanction upon the Club. In this regard, the only party to the present arbitration proceedings to disagree with the DRC findings with regard to the absence of disciplinary sanctions on the Club is the Player. Therefore, the question, which arises, is whether the Player has the standing to require that a sanction be imposed upon the Club.

146. FIFA claims that the Player does not have standing to appeal with regard to his request to impose sanctions, as the Player does not have a legitimate and direct interest in the decision being annulled, which would result in a "practical usefulness" for said party, and the interest must be present at the time the appeal is filed and the decision is rendered.

147. In this regard, the Sole Arbitrator is mindful of the established jurisprudence of the CAS with respect to the standing of a party to request sporting sanctions to be imposed on the party that was responsible for the breach of contract (see *inter alia* CAS 2016/A/4826).

148. In this context, the Sole Arbitrator also fully endorses the position articulated by DUBEY J-P, Counsel to the CAS (The jurisprudence of the CAS regarding Article 17 para. 3 of the FIFA Regulations on the Status and Transfer of Players, in CAS Bulletin, 1/2010, page 40) and reiterated in the CAS jurisprudence, such as CAS 2014/A/3707:

> *"(…) the Panel in the Mexès case found that the duration of a suspension regarding a player who is not anymore part of its roster had no effect on this player's former club. Therefore, the latter had no legally protected interest to require that a sanction be imposed on the player or that the sanction be aggravated [TAS 2004/A/708, para. 78].*
>
> *The CAS confirmed this orientation in a later case in which the Panel stated that no rule of law, either in the FIFA Regulations or elsewhere, was allowing the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions laid down rules that applied to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side. A third party had no legally protected interest in this matter [TAS 2006/A/1082 & 1104, para. 103]".*

149. From the above-cited jurisprudence it clearly follows that third parties have no legally protected interest in order to request that a sporting sanction be pronounced by FIFA.

150. Against this background, the Sole Arbitrator concludes that the Player does not have standing to request that sporting sanctions be imposed upon the Club. In this regard, it is solely within FIFA's prerogative, so the Sole Arbitrator finds, also from the perspective that sports governing bodies shall be given a certain reasonable degree of deference, in order to determine if and what sanctions are warranted in a concrete case upon a party.

151. In this respect, the Sole Arbitrator does not see, does not want to leave unmentioned, what there is to gain for the Player if sporting sanctions would be applied on the Club.

152. In light of the foregoing, the Player's request for sanctions, i.e. the transfer ban as requested, to be imposed on the Club, must be dismissed without further considerations.

G. Conclusion

153. Based on the foregoing, and after having taken into due consideration the regulations and evidence produced and the arguments submitted, the Sole Arbitrator finds that:

i) The Player had just cause to terminate the Employment Contract on 3 April 2016;

ii) The Club shall pay an amount of EUR 300'000 to the Player with regard to outstanding salaries, with interest at a rate of 5% *per annum* as from the due dates as mentioned in the Appealed Decision until date of effective payment;

iii) The Club shall pay compensation to the Player for breach of contract in the amount of EUR 6'000'000, with interest at a rate of 5% *per annum* accruing as from 4 April 2016 until the date of effective payment.

154. 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 by Club Al Arabi S.C. against the decision rendered by the FIFA Dispute Resolution Chamber on 9 May 2019 is rejected.

2. The appeal filed by Mr Sérgio Dutra Junior against the decision rendered by the FIFA Dispute Resolution Chamber on 9 May 2019 is partially upheld.

3. Point 3 of the decision rendered by the FIFA Dispute Resolution Chamber on 9 May 2019 is amended as follows:

   Club Al Arabi S.C. shall pay to Mr Sérgio Dutra Junior an amount of EUR 6'000'000 (six million euros), plus 5% interest p.a. as from 4 April 2016 until the date of effective payment.

4. (…).

5. (…).

6. (…).

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