Arbitration CAS 2020/A/7221 CD Feirense v. Aly Ahmed Aly Mohamed & Larissa FC, award of 21 January 2022

Panel: Prof. Jacopo Tognon (Italy), President; Mr João Nogueira Da Rocha (Portugal); Prof. Petros Mavroidis (Greece)

Football
Termination of the employment contract without just cause by the club
Applicable law
Just cause
Joint and several liability of the new club

1. **Article R58 of the CAS Code has the purpose to restrict the autonomy of the parties. In fact, even if an explicit choice of law was made, the "applicable regulations" are primarily applied and take precedence over any law chosen by the parties. These are the relevant rules of the association that made the first instance decision that is being contested in the appeals arbitration procedure. Swiss law, being the law to which the governing FIFA Statutes refer, should apply to all matters covered by the FIFA regulations – to the extent the latter require interpretation or supplementation, or present a lacuna – whereas the (rules of) law chosen by the parties should apply to all matters that do not come within the purview of FIFA regulations. Hence, whether a contract has been terminated with just cause, as well as the consequences of a termination without just cause, both issues covered by the Regulations on the Status and Transfer of Players (RSTP) (in Arts. 14 and 17 respectively) should be determined in accordance with those regulations and ("additionally", to the extent necessary) Swiss law. On the other hand, whether a contract has been validly concluded, or invalidated (for instance on grounds of error, fraud, duress, etc.), whether a given contractual requirement can be deemed satisfied, or the interest rate that should apply to any damages awarded pursuant to Art. 17 RSTP, all issues that are not regulated in the RSTP, should be determined in accordance with the law (if any) chosen by the parties to govern the underlying contract.**

2. **The definition of "just cause", as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances. Only material breaches of an employment contract constitute just cause for its termination. The breach must be material in the sense that, in the circumstances of the breach at stake, the other party cannot be expected to continue the contract while the first party is in breach. Furthermore, a party will only be able to establish a just cause to terminate the employment contract if it had previously warned the other party of its unacceptable conduct or attitude.**

3. It is common knowledge that the principle of joint and several liability of the new club shall not apply in those cases where the employment is not terminated by the player but by the former club instead.

I. PARTIES

1. CD Feirense (the "Appellant" or the "Portuguese Club") is a Portuguese professional football club affiliated with the Portuguese Football Federation (the "FPF"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Aly Ahmed Aly Mohamed (the "Player" or the "First Respondent") is a professional football player of Egyptian nationality.

3. Larissa FC (the "Second Respondent" or the "Greek Club") is a Greek professional football club affiliated to the Hellenic Football Federation (the "HFF"), which in turn is affiliated with FIFA.

4. The Appellant and the Respondents shall hereinafter be jointly referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations[1]. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

6. On 5 January 2019, CD Feirense executed an employment contract (the "Employment Contract") valid as of 2 January 2019 until 30 June 2021 with Mr Aly Ahmed Aly Mohamed.

7. According to Clause 2 of the Employment Contract, the Portuguese Club shall pay the Player:

   a. "A signing-on fee of EUR 130.000,00 net, payable as follows:

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

- *EUR 40.000,00 (forty thousand euros) within forty-eight hours of signature of this contract by both parties; and*

- *EUR 90.000,00 on or before 1 September 2019.*

b. As consideration for the activity exercised by the Player during the sports season of 2018/2019 (from the date of signature of this contract to 30 June 2019), as well as for the transfer of rights referred to in clause 8, the total net remuneration of EUR 72.000,00 (seventy two thousand euros), paid in 6 (six) monthly and equal net instalments of EUR 12.000,00 (twelve thousand euros) each, which includes the proportional amounts corresponding to holidays and Christmas allowances and meal allowance.

c. As consideration for the activity exercised by the Player during the sports season of 2019/2020 (from 1 July 2019 to 30 June 2020), as well as for the transfer of rights referred to in clause 8, the total net remuneration of EUR 144.000,00 (one hundred and forty four thousand euros), paid in 12 (twelve) monthly and equal net instalments of EUR 12.000,00 (twelve thousand euros) each, which includes the proportional amounts corresponding to holidays and Christmas allowances and meal allowance.

d. As consideration for the activity exercised by the Player during the sports season of 2020/2021 (from 1 July 2020 to 30 June 2021), as well as for the transfer of rights referred to in clause 8, the total net remuneration of EUR 144.000,00 (one hundred and forty four thousand euros), paid in 12 (twelve) monthly and equal net instalments of EUR 12.000,00 (twelve thousand euros) each, which includes the proportional amounts corresponding to holiday and Christmas allowances and meal allowance.

e. Feirense SAD shall support all costs with housing for the Player and pay for a house approved by the Player, fully furnished and equipped and Feirense SAD shall pay the maximum allowance of EUR 400,00 (four hundred Euros) per month either directly to the landlord or to the Player under terms to be agreed. The Player shall pay for all utility bills related to such house to be used exclusively by the Player and his family.

f. Feirense SAD shall issue and pay to the Player the cost of 4 (four) airline economic tickets between Porto and Belgium or Cairo (at the Player's discretion) for each year of this contract".

8. Additionally, pursuant to Clause 9 of the Employment Contract:

a. "if one of the parties rescinds this contract with just cause whose existence is not recognized, it will be constituted in the obligation to compensate the counterparty for the damages caused by the unlawful conduct and it is already determined the indemnifying amount to as follows:

- *In the event that Feirense SAD terminates this contract unlawfully or unilaterally and without just cause, it is obliged to and shall pay the Player a net indemnity sum corresponding to the full amount of the remunerations that the Player would be owed until the end of the contract, without prejudice to compensation of a higher value on proof of damages of a higher amount incurred by the Player not being due to this other compensation, for whatever reason;*

- *The Parties agree to establish the Player's right to unilaterally and without just cause terminate this Contract at any time at the Player's election provided that he makes to or procures for the First Contractor, by himself or through any Club or SAD, the payment of the amount of EUR 2.000.000,00 (two million euros), VAT not included, to be settled in two equal instalments (the first instalment within seven (7) days of said unilateral termination by the Player, and the second instalment one (1) year later), which sum corresponds to the valuation of the player's federative and economic rights made by the parties in this contract. In case Feirense SAD is relegated in the end of the 2018/2019 season the above referred amount shall be automatically reduced to EUR 120.000,00 (one hundred and twenty thousand euros) and in case Feirense SAD is relegated in the end of the 2019/2020 season the above referred amount shall be automatically reduced to EUR 210.000,00 (two hundred and ten thousand euros). The Parties expressly agree and declare that the amounts indicated above were established after a discussion and negotiation process and that it was freely agreed and accepted as fair in the interest and safeguard of both, taking into account, inter alia, the stability of the contractual bond assumed between the Parties, and that no further sums shall be due to Feirense SAD upon the unilateral termination of this contract without just cause by the Player".*

9. After the last game of the 2018/2019 season, the Appellant was relegated to a lower division, namely the Second Division, i.e. Liga Pro. The Player and the Appellant allegedly agreed that in light of the fact that the level of the Player was too high to compete in such division *"the best solution would be to transfer the Player and therefore he, in principle, would not make part of the squad of the Club for the season 2019/2020"*.

10. The players could start their holidays on 20 May 2019.

11. From 6 June 2019 until 6 July 2019, the Player joined his national team to participate in the African Cup of Nations. The Portuguese Club was allegedly informed in this regard by the Egyptian Football Association.

12. In July 2019, the Appellant's representative allegedly informed the Player that he was not expected to return to play to the Portuguese Club for the 2019/2020 season and that he could take a month off.

13. On 14 August 2019, the Player allegedly contacted the Portuguese Club to request *"the plan of training* […] *and the flight ticket as stated in the contract, so he* [could] *present himself at the club"*. The request was also reiterated on the following day.

14. On 15 August 2019, the Portuguese Club informed the Player that his case was *"being analysed by the administration and the* [legal] *department"*. However, there was *"no indication"* that he was actually coming back to the Portuguese Club.

15. By letter dated 16 August 2019, the Portuguese Club terminated the Employment Contract with the Player on the grounds of *"abandonment of employment"*. The Appellant affirmed that all the players were informed that the training would have resumed on 27 June 2019. It also stated that while it was aware that the Player participated in the African Cup of Nations, he then

took unauthorised vacation. Hence, his unjustified absence for more than 15 consecutive days constituted grounds for a breach of contract.

16. By email dated 4 September 2019, the Portuguese Club told the Player that he never picked up the above-mentioned termination letter: *"the postal notice was never picked up at* [the Respondent's] *offices neither by* [the Player] *or someone on (his) behalf"*. Therefore, it sent a copy of the termination letter to the Player attached to the email.

17. On the same date, the Player replied stating that *"it is the first time that I hear about this from Feirense and I just think this is a joke. Feirense knew all the time where I was and never replied to my requests to send the tickets for me to come back or even answer to my and my agent request of information for the new season. I will send this to my lawyer. He sent you an email this morning. Please reply to him"*.

18. The Player subsequently entered into an employment contract with the Greek professional football club, Larissa FC, with a duration from 17 January 2020 until 30 June 2021.

B. Proceedings before FIFA Dispute Resolutions Chamber

19. On 27 September 2019 (successively amended on 9 October 2019), the Player lodged a complaint before the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") against the Portuguese Club, for breach of contract without just cause. He requested that the Portuguese Club pay the overall amount of EUR 450,000, broken down as follows:

    a. *"EUR 90,000 as the second instalment of the signing-on fee that was due on or before 1st September 2019, plus 5% interest p.a. as from 16 August 2019 until the date of effective payment;*

    b. *EUR 12,000, plus 5% interest p.a. as from 31 July 2019 until the date of effective payment, corresponding to the outstanding monthly salary for July 2019;*

    c. *EUR 6,194, plus 5% interest p.a. as from 16 August 2019 until the date of effective payment, as outstanding salary from 1st August until 16th August 2019;*

    d. *EUR 269,806, plus 5% interest p.a. as from 16 August 2019 until the date of effective payment, as compensation for breach of contract;*

    e. *EUR 72,000, plus 5% interest p.a. as from 16 August 2019 until the date of effective payment, as compensation for additional damages"*.

20. The FIFA DRC established that in light of the evidence presented by the Player and the Portuguese Club *"it cannot be considered that the termination letter was duly notified, since it remained at the club's headquarters; and the club could have notified the termination letter by other means, since it was aware of the player's contact details, namely phone number or email address"*. Therefore, the FIFA DRC determined that the Portuguese Club failed to duly notify the Player of the termination of the Employment Contract.

21. Furthermore, the Chamber was of the opinion that the Portuguese Club did not present sufficient documentation to justify the alleged termination of contract with just cause. Indeed, this is a measure one should resort only as *ultima ratio*, which the Portuguese Club did not prove. As a result, also the counterclaim lodged by the Portuguese Club was rejected.

22. The FIFA DRC noticed that the Player's salary for July 2019 amounting to EUR 12,000 was outstanding at the time the Portuguese Club unilaterally terminated the Employment Contract on 16 August 2019.

23. Therefore, pursuant to the general principle of *pacta sunt servanda*, FIFA DRC stated that the Portuguese Club was liable to pay the Player's outstanding salary, further to an interest of 5% *p.a.* from 1 August 2019 until the date of effective payment.

24. Additionally, the Chamber held that compensation shall also be paid for breach of contract according to Article 17 para. 1 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"). To calculate this amount, the FIFA DRC was of the opinion that the criteria set forth in the Employment Contract were non-exhaustive, hence the Chamber could take into account further objective criteria.

25. The FIFA DRC held that the benchmark for calculating the overall amount of compensation should be EUR 366,000 (i.e. the remuneration the Player was entitled to from 16 August 2019 until 20 June 2021, which was the original date of termination of the Employment Contract).

26. The FIFA DRC took account of the fact that the Player had entered into a new employment contract with Larissa FC (from 17 January 2020 until 30 June 2021), according to which the Player was entitled to receive a monthly salary of EUR 626.68, and that his total remuneration would be EUR 114,800, plus Christmas, Easter and Holiday bonuses amounting to half of the Player's monthly salary.

27. In light of the above, the FIFA DRC established that the Player was entitled to a compensation for breach of contract amounting to EUR 238,666.40 (i.e. EUR 366,000 – 127,333.60) further to a 5% *p.a.* interest from 27 September 2019 – the date on which the claim was lodged – until the date of payment.

28. In accordance with Article 24*bis* paragraphs 2 and 4 of the FIFA RSTP, since the Portuguese Club failed to pay the Player within 45 days since the communication of the Player's bank details to the Portuguese Club, the Chamber decided that the Portuguese Club would be banned from registering any new players (either nationally or internationally) until the payment was executed and for the maximum duration of three entire consecutive registration periods.

29. Pursuant to Article 24*bis* para. 3 of the FIFA RSTP, said ban would be lifted immediately and prior to its complete serving upon payment of the outstanding amounts.

30. The FIFA DRC Decision establishing the above was rendered on 9 April 2020 and notified to the Parties on 29 May 2020 (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The Written Proceedings

31. On 19 June 2020, the Portuguese Club filed a Statement of Appeal at the Court of Arbitration for Sport (the "CAS") against Mr Aly Ahmed Aly Mohamed and FIFA against the Appealed Decision pursuant to Article 58 para. 1 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). In its Statement of Appeal, the Appellant, inter alia, appointed as arbitrator Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal, and made a request for the stay of the Appealed Decision.

32. On 29 June 2020, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief.

33. On 8 July 2020, after a request from FIFA in this respect, the Appellant withdrew its claim against FIFA.

34. On 13 July 2020, the Appellant named Larissa FC as a Respondent in this proceeding.

35. On 16 July 2020, the Appellant withdrew its request for a stay of the Appealed Decision.

36. On 21 July 2020, the First Respondent filed his Answer pursuant to Article R55 of the CAS Code, and the Second Respondent agreed with the First Respondent's proposal that the Respondents jointly appoint as arbitrator Mr Petros C. Mavroidis, Professor of Law in Commugny, Switzerland.

37. On 14 August 2020, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

> President: Mr Jacopo Tognon, Professor and Attorney-at-law in Padova, Italy
>
> Arbitrators:
>
> - Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal
> - Mr Petros C. Mavroidis, Professor of Law in Commugny, Switzerland

38. On 21 September 2020, after being granted two extensions, the Second Respondent filed its Answer pursuant to Article R55 of the CAS Code, and the Appellant was accordingly invited to file a Response to the Second Respondent's Objections to be Sued further to Article R55 of the CAS Code by 8 October 2020.

39. On 12 October 2020, the CAS Court Office noted that the Appellant's Response to the Second Respondent's Objections of lack of standing to be sued had been transmitted to the CAS only by email on 2 October 2020, and had not been uploaded to the CAS E-filing Platform or received by courier, and therefore the Appellant was requested to provide proof

of having filed it on time in accordance with Articles R31 and R32 of the CAS Code.

40. On 14 October 2020, the Appellant stated that it *"filed its Response to the Second Respondent's Objections to be Sued within the prescribed deadline,"* and that *"the said Response was filed by email on 2 October 2020, and uploaded to the CAS E-filing Platform"*.

41. On 16 October 2020, the CAS Court Office noted that the Appellant's Response to the Second Respondent's Objections of lack of standing to be sued - the filing deadline for which was 8 October 2020 - had been transmitted to the CAS only by email on 2 October 2020 and subsequently uploaded to the CAS E-filing Platform on 12 October 2020, i.e. the day that the CAS Court Office had requested the Appellant to furnish proof of timely filing of its Response. Therefore, the Respondents were invited to indicate by 22 October 2020 whether they agreed to the admissibility of the Appellant's Response to the Second Respondent's Objections of lack of standing to be sued, notwithstanding the fact that the Response was filed on the CAS E-filing Platform after the 8 October 2020 deadline, noting the provisions of Article R31 of the CAS Code.

42. Since the First Respondent did not reply within the time limit of 22 October 2020, the matter was for the Panel to decide.

43. On 30 October 2020, the Parties were informed by the CAS Court Office on behalf of the Panel that the Appellant's Response to the Second Respondent's Objections of lack of standing to be sued was regarded as inadmissible due to the failure to comply with the filing requirements under Article R31 of the CAS Code.

44. On the same date, the Parties were invited to inform the CAS Court Office by 6 November 2020 whether they preferred a hearing to be held in this matter either via videoconference or in person, or for the Panel to issue an award based solely on the Parties' written submissions.

45. On 6 November 2020, the CAS Court Office informed the Parties that since the Appellant's preference was for an in-person hearing, the First Respondent's preference was for a hearing by videoconference and the Second Respondent's preference was for the Panel to render an Award on the basis of the Parties' written submissions, the Panel shall decide whether to hold a hearing pursuant to Article R57 of the CAS Code.

46. On 9 November 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter by videoconference (via Cisco Webex), pursuant to Articles R44.2 and R57 of the CAS Code.

47. On 26 November 2020, and after consulting the Parties, the CAS Court Office informed the Parties and their witnesses that they were called to appear at the hearing, held by video-conference on 8 January 2021 at 9:30 am Swiss time.

48. On 3 December, 7 December and 9 December 2020 respectively, the Appellant, the Second Respondent and the First Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office.

B. The Hearing

49. The hearing was held on 8 January 2021 via videoconference. Attending – in addition to the Panel and Ms Kendra Magraw, CAS Counsel – were the following:

- On behalf of the Appellant:
    i. Mr Miguel Fernandes, Member of the Board of the Portuguese Club
    ii. Mr Pedro Bessa, Sports Director of the Club and Witness
    iii. Mr Tiago Calisto, Consultant, Football Player intermediary and Witness
    iv. Mr Bruno Cristiano Carvalho Santos, Professional Football Player and Witness
    v. Mr Sérgio Barges, Witness
    vi. Mr Pedro Macieirinha, Counsel
    vii. Ms Daniela Sousa, Interpreter
- On behalf of the First Respondent:
    i. Mr Nuno Barbosa, Counsel
    ii. Mr Aly Ahmed Aly Mohamed, First Respondent
    iii. Mr Christian Emile, Witness
- On behalf of the Second Respondent:
    i. Mr Konstantinos Zemberis, Counsel
    ii. Ms Chryssa Sevastopoulou, Counsel

50. At the opening of the hearing, the Parties confirmed that they had no objections to the selected Panel. During the hearing, the Parties made submissions in support of their respective cases.

51. Mr Miguel Fernandes, Member of the Board of the Portuguese Club, stated that the Player, following the Portuguese Club's relegation to a lower division, no longer wanted to play for it. Mr Fernandes also indicated that he informed the Sports Director of the Club about that. He highlighted that the Player left the WhatsApp group shared by the team and that he abandoned the employment. Mr Fernandes also reiterated that the only conversions had with the Player regarded his salary and that the Player did not have any intentions to go back to Portugal. Therefore, when the Player got in touch with the Portuguese Club, Mr Fernandes told him his case was being handled by the legal department since he was out of touch until

that moment. The termination letter was sent – 15 days past the 11 days of holidays to which the Player was entitled – to the last address the Portuguese Club had of the Player. Mr Fernandes also testified that the Sports Director recommended the players to remain in the WhatsApp group since the information regarding the sporting season would be shared there. Since the Player actually left the WhatsApp group, Mr Fernandes confirmed not having talked to the Player from mid-July 2019 until the end of August 2019.

52. The Player stated that after the Portuguese Club was relegated to a lower division, it was no longer interested in the Player due to cost-related issues. The Player affirmed having looked for another club, but he could not find any for more than 6 months and he did not want to do anything that would jeopardise his sporting career. The Player stated that he never told the Portuguese Club that he had no longer wished to play for it. The Player affirms that his Agent – in agreement with Mr Tiago Calisto – informed him that he could stay in his country (Egypt) as long as he had found a new club. The Player highlighted that he realised that things were going bad when he was not paid on the grounds that he did not show up at the training sessions while he was fully authorised to stay at home instead.

53. Mr Pedro Bessa, Sports Director of the Club, stated that he had been the Sporting Director over the 2018-2019 and 2019-2020 seasons. Mr Calisto was – according to Mr Bessa's testimony – a consultant to the Portuguese Club's owner, he would not act on behalf of CD Feirense on a daily base. Mr Bessa confirmed that the Player expressed his discomfort in continuing to play for CD Feirense, after its relegation to a lower division (i.e. the Second Division) and also that Mr Bessa warned all the players that he would have provided all the information via the WhatsApp group, recommending them not to leave it. Mr Bessa reported that the Player left the WhatsApp group instead. He affirmed that in said group chat he asked all players to return to take medical exams. Mr Bessa also stated that until 14 August 2019, he never heard back from the Player and that once he received the message requesting for him to return, he passed the request to the Board of Directors. Mr Bessa clarified that when – on 31 July 2019 – he asked the Player how things were, he was referring to the professional situation, not merely the personal one.

54. Mr Tiago Calisto, consultant to the sports society, affirmed to have frequently talked to the Player via his Agent. He confirmed that he was informed by the Player's Agent that the Player, after the Egyptian team was eliminated from the African Cup of Nations, he would take some holidays. Nevertheless, Mr Calisto expressed that he was not in the position to authorise such holidays. Mr Calisto stated to have had a conversation with the Player's Agent where it was reported the non-willingness of the Player to continue playing for CD Feirense and that he was asked information about the Player's salary. Mr Calisto highlighted that since he deemed not fair that the Player would be paid without playing, he passed the matter to the administrative / legal department. Mr Calisto stated that he never discussed with either the Player or his Agent whether the Player should return or not.

55. Mr Bruno Cristiano Carvalho Santos played for CD Feirense and has also been the captain of the Club for many years. He stated that, generally, players would have one-month holiday. However, back then he was not aware yet when the exact date of return would have been. Mr Santos stated that all the information would be posted in the WhatsApp group. He noticed

that the Player left the group. However, Mr Santos only discussed that with other players. None of them was aware – according to Mr Santos' testimony – that the Player had moved to another country. Mr Santos reported that for the new football season a new *ad hoc* WhatsApp group was created under a new name, in order for the players to receive information from the Sports Director. Former players would not be added to the group chat. Mr Santos reported that he was added to the new group by someone.

56. Mr Sérgio Barges was a former CD Feirense player who terminated his sporting career due to a serious injury. He now is the Sports Director of the first team. Mr Barges stated that Mr Bessa and Mr Fernandes deal with matters related to the players' contracts. Mr Barges confirmed that all the information transits via the WhatsApp group, in which players with an employment contract for the following season would remain. At the end of the football season, players that would no longer play for the team left the group, while the others would remain, and the team staff would add the new ones to the group. Mr Barges stated that all staff members are in the WhatsApp group. Mr Bessa is the group chat administrator.

57. Mr Cristian Emile, the Player's Agent, stated that it was Mr Calisto who suggested to find a solution for the Player as soon as possible. Mr Emile, stated that when he asked Mr Calisto about the Player's return to the team, Mr Calisto told him he had passed the Player's file to the legal department. Mr Emile reported his shock in knowing that the Player was supposed to attend the trainings since he would risk an injury that could jeopardise his transfer to another club. Mr Emile brought forward that Mr Calisto was the boss, that he was actually the only decision-maker for the team, and that all the stakeholders in the football market recognised his power position. Mr Emile affirmed that he had 100% confirmation by the Portuguese Club that it would not rely on the Player for the following football season. Therefore, once the Player terminated his engagement with the Egyptian national team it was only natural for him to remain in his country to look for a new club.

58. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

59. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every argument advanced by the Parties. The Panel, however, has carefully considered all the submissions and claims made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's submissions

60. The Appellant's submissions, in essence, may be summarised as follows:

61. The Portuguese Club submits that in May 2019 *"after the end of the season, the Respondent player said goodbye to his team mates and picked up his personal belonging at the premises of the Club"*. Additionally, he *"[…] left the WhatsApp group for all the Appellant Club's squad and players"*.

62. The Appellant claims that the Player was never authorised to be absent from work until the transfer to a new club would have taken place. Hence, in the Appellant's opinion, the Player should have resumed his work commitment with the Portuguese Club once his participation in the African Cup of Nations with the Egyptian National Football Team ended.

63. Therefore, the Appellant submits that the Player *"should be present and available to work on 6 August 2019 the latest"*. Whereas instead he went on holidays *"not authorized by the Appellant, nor reported"*.

64. According to the Appellant, only on 14 August 2019 did the Player's Agent send a WhatsApp message to Mr Tiago Calisto. The Appellant also submits that *"although the Respondent player's Agent had contacts with Mr. Tiago Calisto both the Agent and the Player know that Tiago Calisto is not an official representative of the Club – a fact recognised by the Claimant at paragraph 16 of its Claim – and, if they had any doubts, should have seek written confirmation from a Club's legal representative regarding the returning date being that the Player had the direct contact of such representative of the Club"*.

65. The Appellant submits that the Player *"did not comply with the duties provided for in article 13, b) of the Collective Bargaining Agreement (CBA), namely the duties to attend the training, games and other activities of the Appellant"*. Hence, the Player, in the Appellant's view, abandoned the employment for more than 15 business days (i.e. as of 6 July 2019 until 16 August 2019), without providing any justification for said absence.

66. The Appellant submits that *"abandonment of employment is a valid reason for termination with just cause, thus producing the same effects of unlawful termination of the contract, namely the Respondent's player obligation to indemnify the Appellant, pursuant to article 50 of the CBA"*. Thus, the Appellant underlines that on 16 August 2019, it sent a termination of employment letter to the Player for which – according to the Appellant – there is proof of delivery.

67. The Appellant also submits that on 28 August 2019, it informed the PFF of having unilaterally terminated the Employment Contract with the Player.

68. The Appellant underlines that on 4 September 2019 it sent an email to the Player attaching a copy of the termination letter since the Player *"never picked up at* [the Respondent's] *office"*, said termination letter dated 16 August 2019.

69. The Appellant submits – from paragraph 129 to paragraph 158 of its Appeal Brief – that a number of claims brought forward by the Player in the claim lodged before FIFA DRC are false.

70. The Appellant affirms that *"under Portuguese law, abandonment of employment is one of the legal alternatives for termination of employment contract in general, including sports employment contracts, and corresponds, considering its effects, and by operation of law, to a unilateral termination of the contract by the*

employee without just cause with all legal consequences, as expressly stipulated in article 403 of the Portuguese Labour Code".

71. Furthermore, it submits that *"as stipulated by article 403, nr.1 to 3, of the Portuguese Labor Code (approved by Law 7/2009, 12 February, and subsequently amended), subsidiary applicable to Sports employment contracts further to article 3, nr. 1, of Law 54/2017, 14 July, abandonment of employment shall be presumed in the event of absence from service during 10 working days in a row without the employer being informed of the reason for the absence being that the abandonment of the work is deemed as a unilateral termination of the contract by the employee without just cause and may only be invoked by the employer after informing the employee of the fact constituting the abandonment of presumption by registered letter with acknowledgement of receipt to the last known address of the employee".*

72. The Appellant's requests for relief are as follows:

a. "The present appeal has to be considered admissible and accepted, and consequently the Appellant requests to the Court of Arbitration for Sport to declare the nullity of the Decision of the Dispute Resolution Chamber (DRC judge, passed in Zurich, Switzerland, passed on 9 April 2020, […], regarding an employment-related dispute between the parties, CASE REF. nr. 19-01922/svi (Exhibit1).

b. CAS shall issue a new decision which replaces the decision challenged and declares;

i. The Claim of Aly Ahmed Aly Mohamed is rejected;

ii. CD Feirense Futebol SAD has not to pay to Aly Ahmed Aly Mohamed outstanding remuneration in the amount of EUR 12,000 plus 5% interest p.a. as of 1 August 2019 until the date of the effective payment;

iii. CD Feirense Futebol SAD has not to pay to the Claimant/Counter-Respondent the amount of EUR 238,666.4 plus 5% interest p.a. as of 27 September 2019 until the date of effective payment as compensation for breach of contract;

iv. CD Feirense Futbol SAD shall not be banned from registering any new players, either nationally or internationally, nor for the maximum duration of the three entire and consecutive registration periods;

v. The counterclaim lodged by the CD Feirense Futebol SAD against Aly Ahmed Aly Mohamed shall be accepted;

vi. TO determine that CD Feirense Futebol SAD has lawfully terminated the Contract with just cause which in the case of abandonment of employment means, by operation of law, that it shall be understood that the Player Aly Mohamed has unlawfully terminated the Contract with the Club and, as a consequence, determine that Aly Ahmed Aly Mohamed has to pay to CD Feirense Futebol SAD the amount of EUR120.000 (one hundred and twenty thousand euros), plus interests at 5% p.a. until the date of effective payment, and in addition Aly Ahmed Aly Mohamed had to pay to CD Feirense Futebol SAD the compensation pursuant to Article 17 of the Regulation of the Status and

Transfer of Players of FIFA in the amount of €366,000 for breach of contract in the case at hand, plus interest at 5% p.a. until the date of effective payment are due;

vii. To determine that CD Feirense Futebol SAD has lawfully terminated the Contract with just cause which in the case of abandonment of employment means, by operation of law, that it shall be understood that the Player Aly Ahmed Aly Mohamed has unlawfully terminated the Contract with the Club and, as a consequence, determine that Larissa FC, jointly with Aly Ahmed Aly Mohamed, has also to pay to CD Feirense Futebol SAD the amount of €120.000 (one hundred and twenty thousand euros), plus interest at 5% p.a. until the date of effective payment, and in addition Larissa FC, jointly with Aly Ahmed Aly Mohamed, has also to pay to CD Feirense Futebol SAD the compensation pursuant to article 17 Regulation on the Status and Transfer of Players of FIFA in the amount of €366,000 for breach of contract in the case at hand, plus interest at 5% p.a. until the date of effective payment are due;

viii. Finally, sporting sanctions shall be imposed to both Respondents, pursuant to article 17, nrs.3 and 4 of Regulations on the Status and Transfer of Players of FIFA".

B. The First Respondent's submissions

73. The First Respondent's submissions, in essence, may be summarised as follows:

74. The Player claims that after having signed the Employment Contract and until the end of the 2018/2019 season he duly performed his duties. In fact, he submits to have played *"12 official matches during that period and was the player with more appearances and minutes played among the six players signed by the Club in the January 2019 transfer window".*

75. Since, after the last match on 19 May 2019, the team was relegated to the Second Division of Portugal, the Player did not join the team after the African Cup of Nations, as he claimed he was waiting to be updated by the Portuguese Club or his Agent regarding a possible transfer.

76. The Player claims that he *"has and had at that time a Portuguese mobile and WhatsApp number* […] *and the Club was aware of this number and using it to dialogue with the Player".* Furthermore, he *"*[…] *has and had at that time an email address* […] *that was also used by the Club to interact with him".*

77. The Player highlights that on 29 June 2019 he exchanged a few friendly messages on WhatsApp with Mr Tiago Calisto who told him that *"he would speak with Mr. Christian, the Player's agent, and asking the Player if he would consider Saudi Arabi as a possible destination, and the Player replied: 'Yes, no problem'".*

78. The Player submits that on 8 July 2019, his Agent (Mr Christian Emile) asked Mr Calisto via a WhatsApp voice message when the Player should go back to the team.

79. On a subsequent phone conversation between Mr Calisto and the Player's Agent, it is submitted that Mr Calisto said to Mr Emile that *"the Player could stay on holidays one month, as it was not expected to be part of the Club squad for the season 2019/2020".*

80. The Player claims that he therefore gathered that there was no need for him to join the pre-season training.

81. On 31 July 2019, Mr Emile sent a WhatsApp voice message to Mr Calisto with the following content: *"Tiago, how are you going? Are you alright? I tried to call you but the phone went to voice mail. Look, I am not finding any offer to buy Ghazal. For me, I think, the better solution is to do a free transfer and a percentage sell on for Feirense. Let me know what you think".*

82. The Player submits that the following conversation was held over the phone (either via WhatsApp messages or voice messages), between the Player's Agent ("Mr E") and Mr Calisto ("Mr C"):

Mr E: *"Hi Tiago, I tried to call you. Maybe you were busy. Listen, two things. First thing, I've called you the other day about Pedro Emanuel, because they are considering Aly in Almeria. Almeria just got bought by a Saudi owner. I know his righthand man and the coach was considering him. So that's why I wanna you to if you know him well to try to speak him and push it because they have money as well. But I don't know what they are going to do now, because they have another target. Will see. The other thing is the salary of Aly has not been paid. Please can you check with the secretary? Thank you".*

Mr C: *"The what? Salary?"*

Mr E: *"Yes"*

Mr C: *"Christian … if it is to pay salary Aly should have been training… like all other players that wanna leave".*

Mr E: *"Tiago, you told him not to come back! You told him not to come back! You said he can stay! So what are you talking about man!?"*

Mr C: *"?"*

Mr E: *"No problem Tiago, ok. You want to be like this. We spoke afterwards about the African Cup you said, no he can stay, in anyway he is not part of our plans. No problem ok. He come back. He come back for the training and he stays with you".*

Mr C: *"Christian, Feirense always placed things easy understanding that the player did not wanted to stay there… Feirense is at this moment still looking for a Mid Def. Is not correct the way you are putting things… not at all. So your idea is to Feirense pay everything until there is no solution … and the player stays at home till that time?".*

Mr E: *"There is zero benefit for the player to stay home, it is better he is training with the squad until a solution is found otherwise he loses fitness. You are the one who never told him to come back, in fact after the African cup you told he can stay in Egypt and not part of the plans.*

> *You are not being correct Tiago but no worries, Aly will come back immediately and train with Feirense and be ready for the games – if we don't find suitable financial offer for him. I.e. 90K sign on fee and good salary he can continue with Feirense for the season".*

83. On 14 August 2019, the Player claims to have sent another WhatsApp message to the Sports Director of the Club, asserting *"Hello Bessa, can you send me the plan of training for this week? I will send now to Jorge to book a flight for me after tomorrow to be there on Saturday training".*

84. On the same date, the Player submits to have requested Mr Jorge – a member of the Board of Directors of the Portuguese Club – to provide him with a flight ticket so he could present himself at the Club.

85. On 16 August 2019, the Portuguese Club unilaterally terminated the Employment Contract with the Player on the grounds that he had abandoned the employment since 6 July 2019 and that since then he never contacted the Portuguese Club again.

86. The Player has claimed that he never received the termination letter since it was sent *"by the board of the members to the head office of the Club* […]*"*. The Portuguese Club sustained that the address in the Employment Contract *"was the head office of the Club because in the moment he signed [the contract] (5th January 2019) he had not yet rented a house in Portugal".*

87. The Player stated that he actually rented a house on 22 January 2019 and that *"as this was taken care by the Club, it is unequivocal that the Club had the Player's address in Portugal".* Nevertheless, the Player claims that *"there is no proof of delivery of the letter to the Player".*

88. The Player summarises that what occurred is as follows:

    a. *"The Player is contacting the Club asking information about the trainings and the flight ticket to come back;*

    b. *The Club replies to the Player but doesn't provide him the information nor the ticket;*

    c. *The Club drafts a letter for the termination of the Contract on the 16th August saying that the Club doesn't know anything about him, but at the same time, the same people, are speaking with the Player by WhatsApp;*

    d. *The Club sends this letter to the Club's head office, so we can imagine on the 17th August 2019, Mr. Miguel Ferreira, a board member of the Club, opening the Club's mailbox and finding there the letter he has just send the day before to the Player (!!!!);*

    e. *The Club did not send copy of the letter to the Player by WhatsApp, neither by email, despite being using these channels to communicate with him;*

    f. *The Club has hidden from the Player the existence of that letter and the existence of the unilateral termination of the Contract".*

89. The Player eventually received a copy of the termination letter by email on 4 September 2019.

90. With reference to being asked to go back to the Portuguese Club, the Player submits that *"the truth is that the Club never asked the Player to resume work and talked with him normally about his professional situation"*.

91. The Player claims to have *"made several requests to the Club's representatives and officials to book the flight ticket to return to Portugal and resume training. However, this request was completely ignored by the Club's officials and representatives"*.

92. The Player highlights that according to the FIFA DRC jurisprudence, the termination of an employment contract is the ultimate action that a club shall take, should all other routes have failed.

93. Hence, the Player claims that the Portuguese Club terminated the Employment Contract without just cause also in light of well-established CAS jurisprudence.

94. According to the Player, he should be entitled to receive the following:

    a. *"an amount of €90.000 net as second instalment of signing-on fee, with interest accruing as from 16th August 2019 until the date of effective payment;*

    b. *an amount of €12.000 net as outstanding salary of July 2019, with interest accruing as from 31th July 2019 until the date of effective payment; and*

    c. *an amount of €6.194 net as outstanding salary of August 2019, with interest accruing as from 16th August 2019 until the date of effective payment"*.

95. Finally, with reference to the compensation for breach of contract, the Player is of the opinion that *"considering that there is no imperative law that can prevail to what was agreed between the Parties in the Contract, the compensation that the Club has to pay to the Player due to its unlawful termination of the Contract is the full amount of the remunerations that the Player would be owed until the end of the Contract"*. Said amount should be as follows:

    a. *"17th August 2019 until 31st August 2019: €5.806 net €12.000 x 15/31) (clause 2, iii); 1st September 2019 until 30th June 2020: €120.000 net (clause 2, iii);*

    b. *1st July 2020 until 30th June 2020: €144.000 net (clause 2, iv);*

    c. *Total: €269.806,00 net (two hundred sixty-nine thousand eight hundred and six euros)"*.

96. To this – according to the Player – shall be added a 5% *p.a.* interest as of the date of termination of contract until the date of effective payment.

97. The First Respondent's prayers for relief are as follows:

    i. *"To determine that the Club has unlawfully terminated the Contract with the Player on the 16th August 2019, as ruled by FIFA DRC, and as consequence:*

ii. The Appellant, Feirense SAD, has to pay to the First Respondent the amount of ,€90.000 (ninety thousand euros) net, as the second instalment of the signing-on fee that was due on or before 1st September 2019, plus 5% interest p.a. as from 16th August 2019 until the date of effective payment;

iii. The Appellant, Feirense SAD, has to pay to the First Respondent the amount of ,€12.000 (twelve thousand euros) net, as outstanding salary from 1st July until 31th July 2019, plus 5% interest p.a. as from 31th July 2019 until the date of effective payment;

iv. The Appellant, Feirense SAD, has to pay to the First Respondent the amount of ,€6.194 (six thousand one hundred ninety-four euros) net, as outstanding salary from 1st August until 16th August 2019, plus 5% interest p.a. as from 16th August 2019 until the date of effective payment;

v. The Appellant has to pay to the First Respondent the amount of Euros 269.806,00 (two hundred sixty-nine thousand eight hundred and six euros) net, as compensation for breach of Contract, plus 5% interest p.a. as from 16th August 2019 until the date of effective payment;

vi. In case the Appellant fails to pay the amount due on time according to the decision of CAS, apply to the Appellant a ban from registering any new players, either nationally or internationally, up until the due amount is fully paid, interest included, as decided by FIFA DRC;

vii. The Appellant shall bear any and all taxes and other charges, namely social security allowances related to the payments above, so the sums received by the Player are net and free of charge of any taxes or other charges.

viii. In addition, to order the Appellant to pay to the First Respondent the amount of CHF 10.000 (ten thousand Swiss Francs) as contribution towards the legal fees and other expenses incurred in connection with the arbitration proceedings".

C. The Second Respondent's submissions

98. The Second Respondent submits that on 28 February 2020, it was notified by FIFA that a claim had been lodged by the First Respondent against the Appellant and a counterclaim by the Appellant against the First Respondent before the FIFA DRC and had been invited to provide its position on the matter on the basis of Article 17 paragraphs 2 and 4 of the FIFA RSTP regarding joint liability of the next club of a player who is required to pay compensation to his former club.

99. The Second Respondent submits that it had addressed FIFA's request arguing that it could not be a party and that it was not a party to the aforementioned proceedings before the FIFA DRC, since neither the Portuguese Club or the Player had designated it as a party. Furthermore, *"no claim had been filed against the Second Respondent"*.

100. Larissa FC submits that on 19 June 2020, the Appellant filed an appeal before the CAS challenging the Appealed Decision and originally named as respondents the First Respondent

and FIFA. Whereas on 8 July 2020, the Appellant named Larissa FC as respondent in lieu of FIFA.

101. The Second Respondent claims that it should not be party to the present arbitration before CAS since it previously was not a party to the proceedings before the FIFA DRC.

102. The Second Respondent submits that *"*[…] *the mere fact that FIFA decided to invite the Second Respondent to provide its comments on the matter, did not automatically turn the Second Respondent to a party to that procedure, since without being named as a party by the parties of the dispute in question and especially by the Appellant, the Second Respondent could not become a party in this dispute and in the pertinent proceedings, all the more taking into consideration that the Second Respondent expressly denied being a party in the first instance proceedings".*

103. The Second Respondent highlights that in light of CAS jurisprudence, it *"was never a party to the first instance proceedings and could not be considered as such by FIFA and thus, it was mistakenly named as an alleged party in the reference of the present case or referred to as "intervening party" in the FIFA DRC decision of 9 April 2020".* Hence, it lacks standing to be sued.

104. Hence, according to the Second Respondent's reasoning: *"in no case could the Second Respondent be jointly and severally liable to pay any compensation that might have been payable (quod non) by the First Respondent to the Appellant".*

105. The Second Respondent also underlines that it did not induce the First Respondent to terminate his Employment Contract and it was not involved in the employment situation and relationship of the First Respondent with the Appellant at that time.

106. In Larissa FC's view, provisions set forth in Article 17 para. 4 of the FIFA RSTP with reference to sporting sanctions do not apply to the case at hand in relation to the Second Respondent, since the Employment Contract between the First Respondent and the Appellant *"had not been terminated by the First Respondent, but from the Appellant and thus, there could be no inducement of any termination by the Second Respondent".*

107. Moreover, the Second Respondent submits that it *"acted always with the necessary and expected level of diligence and only signed an employment contract with the First Respondent after having received the confirmation that the First Respondent was free to sign an employment contract with the Second Respondent and actually the latter followed all applicable procedures and received from the Portuguese Football Federation the confirmation that the First Respondent had duly fulfilled his obligations both towards the Appellant and towards the Portuguese Football Federation and was thus free to sign a contract with any new club".*

108. Should CAS decide that the Second Respondent actually has standing to be sued in the present proceedings, the Second Respondent submits that it agrees with the Appealed Decision with regard to the conclusion that the termination of the Employment Contract was without just cause.

109. Therefore – since there was no breach of contract on the part of the First Respondent – Larissa FC argues that *"it is also clear that the Second Respondent could never be held liable to pay any compensation or any amount whatsoever to the Appellant"*.

110. Based on the aforementioned, the Second Respondent submits the following requests for relief:

i. "to dismiss the Appellant's appeal in its entirety;

ii. to rule that the Second Respondent was not a party before the FIFA DRC proceedings and thus, has no standing to be sued in the present procedure and that its designation as a respondent is problematic and unacceptable;

iii. to establish that the costs of the present arbitration procedure shall be borne by the Appellant;

iv. to rule that the Appellant has to pay the Second Respondent a contribution towards its legal fees and expenses.

Subsidiarily, only in the event that the above is rejected:

i. to reject the Appellant's appeal in its entirety;

ii. to confirm the considerations of the FIFA DRC that the unilateral termination by the Appellant of the employment contract of 5 January 2019 was made without just cause and that, as a result, the Appellant has to pay the First Respondent outstanding remuneration, as well as compensation for breach of contract, as calculated by the FIFA DRC;

iii. to rule that since no liability of the First Respondent exists, there can be no liability of the Second Respondent either and that no amount whatsoever is payable by the Second Respondent to the Appellant;

iv. to establish that the costs of the present arbitration procedure shall be borne by the Appellant;

v. to rule that the Appellant has to pay the First Respondent a contribution towards its legal fees and expenses.

Subsidiarily, only in the event that the above is rejected:

i. to dismiss the Appellant's appeal as far as the Second Respondent is concerned;

ii. to rule that the Second Respondent has not induced any breach of contract by the First Respondent and that it is not jointly and severally liable with the First Respondent to pay the Appellant any amount that might be payable by the First Respondent for breach of contract without just cause;

iii. to establish that the costs of the present arbitration procedure shall be borne by the Appellant;

iv. to rule that the Appellant has to pay the First Respondent a contribution towards its legal fees and expenses".

V. JURISDICTION

111. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

112. Article 58 para. 1 of the FIFA Statutes provides as follows:

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

113. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by the Respondents, and is confirmed by the signature of the Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

114. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

115. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

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

116. The motivated part of the Appealed Decision was notified to the Appellant on 29 May 2020, and it filed its Statement of Appeal on 19 June 2020. Hence, the 21-day deadline to file the appeal was met.

117. The Panel finds, therefore, the present appeal admissible.

VII. APPLICABLE LAW

118. The Appellant argued that the law applicable to the Employment Contract is the Collective Bargaining Agreement ("CBA") between the National Union of Professional Football Players and the Portuguese Professional Football League as well as the Portuguese Labour Code.

119. However, Article R58 of the CAS Code contains a conflict-of-law rule for determining the applicable law in appeal arbitration proceedings. Such provision states as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

120. The purpose of such provision is to promote the uniform interpretation and application of the relevant regulations in order to ensure equal treatment of all the parties involved in sports disputes. *"This is what Art. R58 of the CAS Code is endeavoring to ensure, by stating that the rules and regulations of the sports organisation that has issued the decision (that is the subject of the dispute) are primarily applicable"* (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS/CAS Bulletin 2/2015, p. 7 ff.).

121. By submitting the relevant dispute to the CAS, the Parties *"have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of FIFA (…) In accordance with the Haas-doctrine, Article R58 of the CAS Code serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties. Hence, any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (CAS 2018/A/5771).

122. Indeed, the relevant doctrine and CAS case law point out that Article R58 of the CAS Code has the purpose to restrict the autonomy of the parties. In fact, even if an explicit choice of law was made, the *"applicable regulations"* are primarily applied and take precedence over any law chosen by the parties. These are the relevant rules of the association that made the first instance decision that is being contested in the appeals arbitration procedure (CAS 2014/A/3626).

123. Article 57 para. 2 of the FIFA Statutes provides as follows:

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

124. Prof. Haas's study discusses the criteria to determine which law should apply in these cases. Specifically, *"the study suggests that Swiss law, being the law to which the governing FIFA Statutes refer, should apply to all matters covered by the FIFA regulations – to the extent the latter require interpretation or supplementation, or present a lacuna – whereas the (rules of) law chosen by the parties should apply to all*

matters that do not come within the purview of FIFA regulations" (ARROYO M. (ed.), Arbitration in Switzerland, The Practitioner's Guide, 2nd edition, Volume II, 2018).

125. *"Hence, whether a contract has been terminated with just cause, as well as the consequences of a termination without just cause, both issues covered by the RSTP (in Arts. 14 and 17 respectively) should be determined in accordance with those regulations and ("additionally", to the extent necessary) Swiss law. On the other hand, whether a contract has been validly concluded, or invalidated (for instance on grounds of error, fraud, duress, etc.), whether a given contractual requirement can be deemed satisfied, or the interest rate that should apply to any damages awarded pursuant to Art. 17 RSTP, all issues that are not regulated in the RSTP, should be determined in accordance with the law (if any) chosen by the parties to govern the underlying contract"* (ARROYO M. (ed.), Arbitration in Switzerland, The Practitioner's Guide, 2nd edition, Volume II, 2018).

126. As a consequence of the above, the Panel shall decide the present matter according to the relevant FIFA regulations, and more specifically the FIFA RSTP, and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), as in force at the relevant time of the dispute, namely the 2019 edition with respect to the RSTP and the 2019 edition with respect to the FIFA Procedural Rules. Swiss law shall be applied subsidiarily.

VIII. MERITS

127. The main issues to be addressed by the Panel in deciding this dispute are the following:

(a) Did the Portuguese Club have just cause to terminate the employment relationship unilaterally and prematurely?

(b) What is the compensation due?

(c) Does the Second Respondent have standing to be sued in the present proceedings?

(a) Did the Portuguese Club have a just cause to terminate the employment relationship unilaterally and prematurely?

128. The first issue to be determined is whether the Appellant terminated the Employment Contract with or without just cause.

129. In its Appeal Brief filed before CAS the Appellant submits that: *"In May 2019, after the end of the season, the Respondent player said goodbye to his team mates and picked up his personal belongings at the premises of the Club. On the same date, the Respondent player left the WhatsApp group for all the Appellant Club's squad and players. The Appellant Club has never authorized the Respondent Player to be absent from work until he found a new club and a possible transfer would be executed (…) The Respondent player should be present and available to work on 6 August 2019 at the latest. On 6 August 2019, the Respondent player was not even in Portugal, to where he never came back since he left on the end of May 2019, to be present to*

the African Cap of Nations, being that the Respondent player did not contact the Appellant Club requesting for a leave or authorization to be absent".

130. The Appellant alleges that it had just cause to terminate the Employment Contract on the basis that the Player had abandoned his work at the Portuguese Club.

131. Particularly, the Appellant reported in its termination letter of 16 August 2019 as follows: *"having analysed your* [the Player's] *behaviour, which unequivocally revealed the unwillingness not to return to work, we hereby* […] *terminate, with immediate effect, the Sports Employment Contract between us signed on 5 January 2019, based on abandonment of the job".*

132. The above reconstruction has been confirmed during the hearing in the statement rendered by Mr Miguel Fernandes, legal representative of the Appellant.

133. Furthermore, Mr Adriano Pedro Bessa, Sports Director of the Portuguese Club for the seasons 2018/2019 and 2019/2020, affirmed that at the end of the 2018/2019 season the Player left the WhatsApp group of the team. He also confirmed in his statement *"I gave information only through the WhatsApp group". "I said to all the players that they had to come back on June 26 to do medicals. Aly, however, in such period was in Egypt. I don't know when he would have to return at the end of the African Cap* […]. *The Player did not ask me to return until August 14".*

134. Another witness, Mr Tiago Calisto, in his testimony stated *"the agent contacted me when they were eliminated by the African Cap and informed me that the Player would have been on holiday and then he would have returned to the Club".*

135. Mr Bruno Santos, a player of the Portuguese Club, during the hearing affirmed that *"usually we have one month of holiday* […] *Usually the WhatsApp group created for the new season receive the information by the director who changes the name of the group and adds the new players* […] *I did not left the group but, for sure, someone added me to the new one".*

136. Additionally, Mr Sergio Barges, actual sports director of the first team, confirmed that *"we add the new member to the Whatsapp group* […] *Mr Pedro Bessa was the manager of the group".*

137. During the hearing the Player stated that he was authorised to be absent, since there was an agreement between the Portuguese Club – in the person of Mr Tiago Calisto – and his Agent.

138. The above fact has been confirmed by the witness Mr Christian Emile, the Player's Agent, who stated *"I spoke with Mr Callisto who confirmed me that the Player could stay at home until he found a new club".* He continued affirming that *"in such circumstances the club does not want that the player trains and/or plays due to the risks of injuries which would impair the transfer to a new club"* and that *"I was absolutely sure about the fact that the Club did not want the Player for the new season". "The Player remained for 6 months without any salary, losing his physical condition".*

139. All the above considered, the Panel notes that Article 13 of the FIFA RSTP defends the principle of contractual stability and it expressly states *"a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement".*

140. In any event, the above-mentioned principle may be subject to derogation. Indeed, according to Article 14 of the FIFA RSTP *"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"*.

141. At this respect the FIFA commentary on the RSTP reads as follows:

> *"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.*
>
> *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"*.

142. In addition, the Panel takes note of the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations.

143. At this respect, Article 337 of the Swiss Code of Obligations ("SCO") reads as follows:

> *"1. Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give his reasons in writing at the other party's request.*
>
> *2. In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.*
>
> *3. The court determines at its discretion whether there is good cause. However, under no circumstances may the court hold that good cause is constituted by an employee being prevented from working through no fault of his own"*.

144. It emerges that the definition of "just cause", as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (ATF 127 III 153 1.a). Indeed, merely a particularly severe breach of the employment contract may result in its immediate termination (CAS 2017/A/5182).

145. Furthermore, pursuant to a well-established CAS jurisprudence, only material breaches of an employment contract constitute just cause for its termination. The breach must be material in the sense that, in the circumstances of the breach at stake, the other party cannot be expected to continue the contract while the first party is in breach (CAS 2004/A/587; CAS 2006/A/1180; CAS 2006/A/1100; CAS 2011/A/256).

146. Moreover, in accordance with the principle guiding the allocation of burden of proof -which is a basic principle in every legal system, also established in Article 8 of the SCO - each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (see IBARROLA J., *La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond*, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sport, CAS & FSA/SAV Conference Lausanne 2006, Bern 2007, p. 241 ff.; CAS 2009/A/1810 & 1811; CAS 2017/A/5182).

147. Therefore, the Panel shall decide whether the Appellant has discharged its burden of proof in establishing the facts it alleged in its Appeal Brief and determine whether the alleged Player's breach of the terms of the Employment Contract was such as to allow the Portuguese Club to terminate unilaterally and prematurely the employment relationship for just cause.

148. All the above considered, and also taking into consideration the relevant statements rendered by the witnesses during the hearing, the Panel is of the opinion that the Appellant did not discharge its burden of proof since it did not submit satisfactory documentary evidence to substantiate the alleged termination of the Employment Contract with just cause.

149. Besides, according to documentary evidence produced by the Parties, it emerges that the absence of the Player was justified and allowable by the Portuguese Club.

150. It shall also be highlighted that pursuant to well-established jurisprudence of the CAS, a party will only be able to establish a just cause to terminate the employment contract if it had previously warned the other party of its unacceptable conduct or attitude (CAS 2012/A/2698).

151. The Panel finds that there is no evidence that the First Respondent has been warned of a possible termination of the Employment Contract because of his alleged incorrect behaviour, prior to the termination of the employment relationship on 16 August 2019.

152. Moreover, the Player contacted several times the Portuguese Club and asked on 14 August 2019 to issue a flight ticket so that he would be able to go back and train.

153. The fact that the Player asked the Portuguese Club to return and resume his duties was alleged during the hearing by the statement rendered by the Appellant's witnesses Mr Miguel Fernandes and Mr Adriano Pedro Bessa.

154. The Panel observes that the witnesses heard during the hearing actually confirmed that the Portuguese Club had been in contact with the Player in July and August 2019.

155. However, the Panel notes that the Portuguese Club never formally asked the Player to go back and resume his duties. By contrast, on 16 August 2019, the Appellant terminated the Employment Contract executed on 5 January 2019 between the Portuguese Club and the Player.

156. The Panel further acknowledges that the termination letter was not duly notified to the Player and the Club could have sent it by other means and informed the Player by email and/or by phone, which details the Club did not contest that it had.

157. In light of the foregoing, the Panel finds that the Player cannot be accused of an unjustified non-appearance at, leaving or abandonment of the working place.

158. Therefore, the Panel finds that the Portuguese Club terminated unilaterally and prematurely the Employment Contract with the Player without just cause.

159. In view of the foregoing, the Panel notes that the Player's salary for the month of July 2019, amounting to EUR 12,000, was outstanding at the time of the unilateral termination made by the Appellant and, therefore, the latter is responsible to pay such outstanding amount in favour of the First Respondent, as correctly determined by the FIFA DRC.

(b) What is the compensation due?

160. After having ascertained that the Portuguese Club terminated the Employment Contract without just cause, it shall now be determined the amount of compensation payable by the Appellant to the First Respondent.

161. Indeed, Article 17 of the FIFA RSTP reads as follows:

> *"1. In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

162. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

163. Indeed, both parties of the contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth by Article 17 of the FIFA RSTP.

164. All the above considered, two basic principles have been recognised in the jurisprudence of CAS and the FIFA DRC:

(i) If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made according to the various criteria contained in Article 17 of the FIFA RSTP;

(ii) The objective calculation shall be made by the tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (eds), Sport Governance, Football Disputes, Doping and CAS arbitration, 2nd CAS & SAV/FSA Conference Lausanne 2008, Berne 2009, p. 249).

165. Moreover, it shall be underlined that other criteria could be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

166. CAS jurisprudence affirms that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

167. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, paras. 233-240)

168. To sum up, the Panel might negatively consider when a party engages in a conduct, which is in blatant bad faith, or terminates a contract for its own mere interests. On the contrary, it would positively consider the case of a party that has displayed exemplary behaviour throughout the duration of a contract and possibly even when it came the time to end it.

169. As a result, it shall firstly be clarified whether the Employment Contract contained a provision according to which the parties agreed a certain amount of compensation to be paid in case of breach of contract.

170. The Panel finds that Clause 9 of the Employment Contract includes a compensation clause according to which *"in the event that Feirense SAD terminates this contract unlawfully or unilaterally and*

without just cause, it is obliged to and shall pay the Player a net indemnity sum corresponding to the full amount of the remunerations that the Player would be owed until the end of the contract, without prejudice to compensation of a higher value on proof of damages of a higher amount incurred by the Player not being due to this other compensation, for whatsoever reason".

171. The Panel further notes that the compensation clause included in the Employment Contract is consistent and in compliance with the parameters set forth under Article 17 of the FIFA RSTP.

172. The Panel deems essential to take under consideration both the existing and the new contract. In fact, the remuneration under a new employment contract shall be taken into account in the calculation of the amount due as compensation in accordance with the general obligation of the Player to mitigate his damages.

173. The ending date of the Employment Contract between the Appellant and the First Respondent was 30 June 2021 and, thus, all the amounts received by the Player deriving from the new contract with the Second Respondent until 30 June 2021 shall be considered for the purpose of the calculation hereof.

174. The FIFA DRC, in order to establish the basis of the amount of compensation to be granted in favour of the First Respondent, correctly referred to the remaining value of the Employment Contract up to the original date of termination (*i.e.* 30 June 2021) with respect to the money that the Player failed to receive due to the early termination of his relationship with the Portuguese Club.

175. The remaining salaries of the First Respondent amounted, therefore, to EUR 366,000.

176. The Player, then, received from the new club for the period from 17 January 2020 until 30 June 2021, EUR127,333.60. Such amount shall, therefore, be deducted from the residual value of the contract that was terminated due to the inapplicability of the so-called positive interest.

177. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Panel considers that the appeal is rejected and the Appellant must pay the total amount of EUR 238,666.40, as compensation for breach of contract.

(c) Does the Second Respondent have standing to be sued in the present proceedings?

178. It is fundamental to establish whether the Second Respondent has standing to be sued in the proceedings hereof.

179. Indeed, the Second Respondent in its Answer affirmed that it was not a party to the proceedings before the FIFA DRC and, thus, it cannot be considered as respondent in the present arbitration proceedings.

180. As a matter of fact, according to the Second Respondent, it was invited by the FIFA DRC to provide its observations on the dispute between the Appellant and the First Respondent, but none of the parties named it as a party to the proceedings before the FIFA DRC.

181. The Panel did not find the arguments in favour of rejecting the status of respondent as far as Larissa FC was concerned. Indeed, Larissa FC had participated during the FIFA proceedings, and had through its pleadings affected the outcome before the FIFA competent body. Furthermore, there is a nexus between Larissa FC and the subject-matter of the present dispute, since the Player eventually signed with Larissa FC and the circumstances under which their contractual relationship was born were at best unclear when the present dispute was submitted for consideration.

182. The above notwithstanding, the Second Respondent in any event shall not be considered in any way jointly and severally liable to pay any compensation in favour of the Appellant since the Employment Contract was terminated by the latter without just cause.

183. Indeed, the Appellant unilaterally decided to terminate the Employment Contract with the First Respondent and not the latter.

184. It is common knowledge that the principle of joint and several liability of the new club shall not apply in those cases where the employment is not terminated by the player but by the former club instead.

185. Furthermore, the Panel notes that there was no inducement by the Second Respondent, which did not commit any fault and was not involved in the termination of the employment relationship between the Appellant and the First Respondent.

186. Indeed, it is undisputed that the Appellant decided to terminate the Employment Contract signed with the First Respondent and the Second Respondent was not aware of any dispute between the Parties until the moment in which FIFA informed the Second Respondent of such dispute, inviting it to provide its comments.

187. Therefore, for all the reasons set forth above, the Second Respondent shall not be considered in any way jointly and severally liable. Thus, no sporting sanctions shall be imposed against it.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by CD Feirense on 19 June 2020 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber dated 12 February 2020 is confirmed.

3. (…).

4. (…).

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