Arbitrations CAS 2020/A/7272 Sociedade Esportiva Palmeiras v. Fédération Internationale de Football Association (FIFA) & CAS 2020/A/7277 Ronielson da Silva Barbosa v. Albirex Niigata Inc & FIFA & CAS 2020/A/7283 Albirex Niigata Inc. v. Ronielson da Silva Barbosa & Clube Atlético Paranaense & CAS 2020/A/7318 Club Atlético Paranaense v. Albirex Niigata Inc., Cruzeiro EC, Ronielson da Silva Barbosa & FIFA, award of 27 April 2022 (operative part of 25 March 2021)

Panel: Mr Mark Hovell (United Kingdom), President; Mr Rui Botica Santos (Portugal); Prof. Luigi Fumagalli (Italy)

Football
Termination of the employment contract without just cause by the player
Powers of a CAS panel vis-à-vis a decision of the (Deputy) President of the CAS Appeals Division
Link between contract of employment and loan or transfer agreement
Validity of contracts violating provisions of the RSTP
Calculation of the compensation for damages

1. **There is no power given to a CAS panel in the CAS Code to review decisions taken by the President or Deputy President of the CAS Appeals Division.**

2. **The FIFA Regulations on the Status and Transfer of Players (RSTP) does not establish the need for a contract of employment to be linked to a transfer or loan agreement. They can stand independently from each other.**

3. **If all parties affected by the relevant contracts explicitly agreed to the structure of a transfer by signing all the relevant documents, whether or not the structure of the transfer violated provisions of the FIFA RSTP is a purely disciplinary matter for FIFA to determine. It does not invalidate the signed contracts.**

4. **There are many ways to calculate compensation in Article 17.1 FIFA RSTP cases and none are binding on any CAS panel.**

I. PARTIES

1. Sociedade Esportiva Palmeiras ("Palmeiras") is a football club with its registered office in São Paulo, Brazil. Palmeiras is currently competing in the Campeonato Brasileiro Série A, which is the highest division in Brazil. It is a member of the Confederação Brasileira de Futebol (the "CBF"), which in turn is affiliated to Fédération Internationale de Football Association ("FIFA").

2. Mr Ronielson da Silva Barbosa (the "Player") is a Brazilian citizen and professional football player born on 11 May 1995 in Magalhães Barata, Brazil. He currently plays for Palmeiras in Brazil.

3. Albirex Niigata Inc. ("Albirex") is a football club with its registered office in Niigata, Japan. Albirex is currently competing in the J2 League, which is the second division of professional football in Japan. It is a member of the Japan Football Association (the "JFA"), which in turn is affiliated to FIFA.

4. Clube Atletico Paranaense ("CAP") is a football club with its registered office in Curitiba, Brazil. CAP is currently competing in the Campeonato Brasileiro Série A. It is a member of the CBF.

5. Cruzeiro Esporte Clube ("Cruzeiro") is a football club with its registered office in Belo Horizonte, Brazil. Cruzeiro is currently competing in the Campeonato Brasileiro Série B, which is the second division in Brazil. It is a member of the CBF.

6. FIFA is the world governing body of football, with its registered office in Zurich, Switzerland.

7. Palmeiras, the Player, Albirex, CAP, Cruzeiro and FIFA are together referred to as the "Parties".

II. FACTUAL BACKGROUND

8. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and evidence submitted with those submissions. 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, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Cruzeiro Employment Contract

9. On 9 April 2015, the Player and Cruzeiro signed an employment contract valid as from 9 April 2015 until 8 April 2018. On 4 January 2017, this contract was ultimately extended until 5 January 2020 (the "Cruzeiro Employment Contract").

10. On 10 December 2016, the Player and Albirex entered into a preliminary contract (the "Pre-Contract"), by means of which Albirex and the Player agreed to sign an employment contract valid from 2 February 2017 to 1 January 2020.

11. On 9 January 2017, Albirex, Cruzeiro and the Player entered into a "Term of Agreement" regarding the transfer of the Player, as well as a loan agreement (the "Loan Agreement") with respect to the period of 2 February 2017 until 1 January 2018.

12. The Term of Agreement contained the following material provisions:

"2. Albirex is deeply interested in retaining the Player's services for three sporting seasons, but due to regulatory issues is unable to immediately offer a three-year contract to the Player.

3. The player is seduced by the opportunity to play in Japan and has expressly requested his transfer to Albirex, in the terms presented by the Japanese club.

[…]

<u>First Clause</u>: Albirex is interested in retaining the Player's services for the seasons 2017, 2018 and 2019. Due to regulatory restraints, the Player shall be initially loaned by Cruzeiro to Albirex for the season 2017, from 02 February 2017 to 01 January 2018.

<u>Second Clause</u>: The parties shall execute a proper document for the temporary transfer of the player to Albirex for the 2017 season, as well as for the ensuing 2018 and 2019 seasons (which shall end on 01 January 2020). For the 2017 season, the parties shall enter on this date into a temporary transfer agreement.

<u>Sole Paragraph</u>: Although the parties shall execute several documents to perform subsequent temporary transfers of the player to Albirex, from a commercial / business stand point, the parties hereby agree and acknowledge that upon the payment of the transfer fee provided in Third Clause below, Albirex shall be treated and considered as the holder of the permanent registration rights of the player; i.e. Albirex shall have the last instance on a future transfer of the player during the three-season period (2017-2019).

<u>Third Clause</u>: For the temporary transfer of the Player (for the three-season period 2017-209), Albirex shall pay to Cruzeiro a net transfer fee in the amount of US$1,200,000.00 (one million and two hundred thousand American dollars) on or before 31 January 2017.

[…]

<u>Fourth Clause:</u> Albirex shall be the sole responsible for the payment of the Player's wages during the three-season period from 2017 to 01 January 2020.

<u>Fifth Clause:</u> The player hereby confirms his interest and personal request to be loaned to Albirex for the three-season period and further declares to waive any salaries or payments that would be due by Cruzeiro between 02 February 2017 and 01 January 2020.

[…]

<u>Eight Clause</u>: Should Cruzeiro or the Player fail to execute the necessary documents to allow the Player to be registered with Albirex for the 2017, 2018 or 2019 season, the Party in breach shall be liable for the payment of a penalty in the amount of US$1,000,000.00 (One million American dollars) to Albirex".

13. The Loan Agreement contained the following material clauses:

"<u>First Clause</u>: The Parties agree for the temporary transfer of the Player ("loan") from Cruzeiro to Albirex from 02 February 2017 until 01 January 2018.

[…]

<u>Sixth Clause</u>: Albirex commits to return the player to Cruzeiro at the term of the loan and the player commits to return to Cruzeiro and fully comply with his employment contract, which is hereby suspended for the term of this temporary agreement.

[…]

Eight Clause: Any party giving cause to the non-fulfilment of the clauses and conditions established herein shall be liable for the payment of a penalty in the amount of USD 500,000 (five hundred thousand American dollars) to the innocent party which has been affected by such non-fulfilment".

B. Albirex Employment Contract

14. On 16 January 2017, the Player and Albirex signed an employment contract (the "Albirex Employment Contract"), effective from 2 January 2017 until 1 January 2020. The Albirex Employment Contract contained the following material clauses:

"5. SALARY

1. The club will pay salary as described bellow [sic]*:*

- *2017 – US$ 300,000.00 – net annual value*
- *2018 – US$ 350,000.00 – net annual value*
- *2019 – US$ 450,000.00 – net annual value*

[…]

7. TERMINATION FINE

1. The termination fine is US$ 10.000.000,00 (ten million American dollars).

2. Should both parties agree to terminate this contract early, there will be no termination fine.

[…]

15. DISPUTES

1. Disputes regarding the content of the contract shall be settled by Japan Football Association (JPA). The parties, expressly renounce any other general or special jurisdiction that may correspond".

15. On 30 November 2017, the Player sent a letter to Albirex in which he stressed in particular the alleged illegalities of the Loan Agreement and of the Term of Agreement. The letter stated as follows:

"First of all, you are hereby NOTIFIED to present within 12 hours, as from the receipt of this notification, the Image Contract whereby my image was assigned or marketed, for video games and/or electronic games for third parties. Furthermore, to present the life insurance executed such as the Japanese players (Tokyo Kaijo Senshu Hoken), under the penalties applicable to the Fédération Internationale de Football Association (FIFA), for breach of contract.

You are also hereby NOTIFIED to state your position about the illegalities of the "Temporary Transfer Agreement" and the "Term of Agreement", especially as regards the regulatory impediments that prevented the Club ALBIREX NIIGATA INC from hiring me for three subsequent seasons, that is, the seasons of 2017, 2018 and 2019. However, I was compelled to sign an employment contract for 3 years, for the period from 02/02/2017 until 01/01/2020.

In addition to the illegality of the Second Clause, Sole Paragraph, of the Term of Agreement, which deals with

the sale of 80% (Eighty percent) of my economic rights from Clube Cruzeiro to ALBIREX NIIGATA INC and still transfers authority to ALBIREX NIIGATA INC to decide on my transfer from Cruzeiro to another Club. Since such practice is prohibited by FIFA, as it is THIRD PARTY OWNERSHIP - TPO, as established by Article 18bis of the FIFA Regulations and Article 18 of the Transfer Regulation. As one can see below:

[…]

Therefore, the contractual clauses that interfere in the transfer of players are null. Thus, the "Term of Agreement" made between Cruzeiro and ALBIREX NIIGATA INC is null.

It should be noted that the penalty that the FIFA's DRC has applied to this type of violation is a fine of CHF 150,000.00 to the club, and the prohibition to hire players for four transfer windows, in addition to the release and termination of the employment contract, without any burden.

Thus, you are hereby notified to state your position about these illegalities and to present the original agreements executed within 12 hours, otherwise the matter will be brought for the FIFA Dispute Resolution Chamber to decide on such illegalities.

Likewise, you are hereby NOTIFIED to state your position within 12 hours, about on a friendly resolution that is already suggested in the terms of Clause 9.2, of the Employment Contract, that is, the contract is terminated without contractual penalty for both parties, in a document to be concluded to formalize the friendly agreement".

16. On 2 December 2017, the Player sent another letter to Albirex, in which he stated that in spite of not having received a reply to his previous letter, he received from the club the *"Schedule of Activities of the start of the Year of 2018, with the dates of return to Japan, presentation in the Club, training, Pre-season and the date of the First Match of the 2nd Division of the Japanese Championship"*. In addition:

    - he warned Albirex that *"pursuant to the 'Temporary Transfer Agreement' that deals with 'Temporary Transfer' executed on 09/01/17, with [Albirex], in the First Clause, it was established that the loan, starting on 02/02/17, ends on 01/01/18. In addition, Clause Six of this agreement establishes that Albirex Niigata must return me to Cruzeiro Esporte Clube to fulfil the remainder of the employment contract"*;
    - he claimed that *"in the 'Term of Agreement', executed on 09/01/17, in item 2, it is clear that due to "regulatory issues", Albirex Niigata could not sign a three-year contract with me. Therefore, in Clause Two, it is made evident that for me to play for Albirex Niigata in the 2018 season, another document should be executed, in order to legalize the loan"*;
    - he claimed that at the end of the Temporary Transfer Agreement he would resume his contract with Cruzeiro and *"only sign the loan instrument for Albirex for the 2018 season, after your statement and correction of the illegalities of the already mentioned contracts"*.

17. On 19 December 2017, the Player sent a similar letter to Cruzeiro.

18. On 3 January 2018, the Player wrote to Albirex again, reinforcing that:

    "… it is clear that by 'regulatory issues', Albirex Niigata could not sign a three-year contract with me. Therefore,

in Clause Two, it is made evident that for me to play for Albirex Niigata in the 2018 season, another document should be executed. […] That fact, if we do not reach an amicable settlement, will be brought to the knowledge of the Federal Revenue of Japan for it to investigate possible tax evasion, a fact that will greatly harm Albirex and its representatives. Therefore, with the end of the loan agreement for Albirex Niigata, I will present myself at Cruzeiro Esporte Clube and I will only sign the loan instrument for Albirex for the 2018 season, after your statement and correction of the illegalities of the already mentioned contracts".

19. At the end of the 2017 football season in Japan, the Player returned to Brazil.

20. On 13 January 2018, Albirex informed Cruzeiro about the fact that the Player, whilst in Brazil, appeared to have been negotiating with other Brazilian clubs.

21. On the same date, Cruzeiro acknowledged receipt of the Player's letter of 19 December 2017 and informed him that *"in opposite to what is mentioned in your notification, we believe, based on the principles of the most crystalline good faith, for the validity and absolute regularity of its transfer to ALBIREX NIIGATA, as you must fully comply with the contract with the club ALBIREX NIIGATA, in the manner in which it was established, under the penalties provided in said agreement"*.

22. On 17 January 2018, Albirex requested the Player to return to Niigata, Japan, immediately with the objective of joining the 2018 pre-season period.

23. On 10 February 2018, Cruzeiro advised the Player to return to Japan.

24. On the same day, the Player returned to Albirex, but left Japan again to return to Brazil twelve days later on 22 February 2018.

25. On 11 February 2018, Albirex and Cruzeiro agreed to switch the loan to a permanent transfer since Albirex *"has no longer any problem whatsoever which would prevent the permanent transfer of the player"*. The *"loan to permanent"* transfer instruction was uploaded in FIFA TMS on 3 March 2018.

26. On 15 February 2018, the Player underwent a pre-season medical examination for Albirex.

27. On 16 February 2018, the Player sent a letter to Albirex complaining about his situation and requesting to meet with the club's board.

28. On 22 February 2018, as noted above the Player left Japan again to return to Brazil.

29. On 23 February 2018, the Player sent a message to three officials at Albirex expressing his commitment to comply with the Albirex Employment Contract.

30. On 13 March 2018, the Player notified Cruzeiro of his intention to resume the Cruzeiro Employment Contract.

31. On 19 March 2018, Cruzeiro reminded the Player about the existence of the Albirex Employment Contract and prompted him to respect it.

32. On 26 March 2018, in view of the Player's insistence, Cruzeiro reminded the Player that only Albirex could authorize him to negotiate with other clubs and, in view of his permanent transfer to Albirex, it apparently proposed the Player to conclude a document that would formally put an end to the Cruzeiro Employment Contract.

33. On 28 March 2018, the Player replied that no new agreement for the extension of his loan or a definitive transfer to Albirex had been concluded, thus he did not have a valid contract with the latter club anymore. Furthermore, he claimed that he never signed any document authorising the conversion of his loan into a permanent transfer.

34. On 30 March 2018, Cruzeiro and the Player signed a termination agreement, by means of which both parties confirmed not to have any pending claims against each other.

35. On 11 April 2018, Albirex replied to the Player's correspondence of 28 March 2018 recalling that the Albirex Employment Contract was in force and valid and that it was still interested in the Player's services.

36. On 16 April 2018, Albirex sent a letter to the CBF informing it that several Brazilian clubs were apparently interested in signing the Player, but that he was still under contract with Albirex and that the club had been seeking to convince the Player to return to Japan. Albirex requested the CBF's assistance to stop such negotiations.

37. On 18 April 2018, the Player sent a letter to Albirex pointing out that he was not aware of the extension of his employment with the club on a permanent basis – nor did he agree to any such extension.

C. First proceedings before the FIFA Dispute Resolution Chamber

38. On 20 April 2018, the Player lodged a claim at the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting the cancellation of the Albirex Employment Contract. However, as the Player only asked for a formal declaration of termination without making any further requests, the case was ultimately closed by FIFA.

D. Subsequent events – Player signs with CAP

39. On 20 July 2018, CAP sent an email to Albirex, in which it stated that it was informed by the Player that he was a free agent. CAP requested Albirex to provide it with a 'TPO-letter'.

40. On 22 July 2018, Albirex replied to CAP that the Player had a valid employment contract with it.

41. On 26 July 2018, CAP signed an employment contract with the Player, valid from 16 July 2018 until 15 July 2021 (the "CAP Employment Contract"). Under the CAP Employment Contract, the Player was to be paid a monthly salary of Brazilian Reais (BRL) 120,000 (approx. USD 31,145 at July 2018).

42. On 9 August 2018, CAP requested the International Transfer Certificate (the "ITC") for the Player, which Albirex refused.

43. On 30 August 2018, a Single Judge of the FIFA Players' Status Committee authorised the provisional registration of the Player with CAP.

E. Second proceedings before the FIFA DRC

44. On 29 March 2019, Albirex filed a claim for breach of contract before the FIFA DRC against the Player and CAP.

45. On 18 June 2020, the FIFA DRC issued a decision, as follows (the "Appealed Decision"):

"1) The claim of [Albirex]*, is admissible.*

2) The claim of [Albirex] *is partially accepted.*

3) The [Player]*, has to pay to* [Albirex] *within 30 days as from the date of notification of this decision compensation for breach of contract in the amount of USD 1,129,499 plus 5% interest p.a. as from 29 March 2019 until the date of effective payment.*

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

5) Any further claim lodged by [Albirex] *is rejected.*

[…]

8) If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

9) A restriction of four months on his eligibility to play in official matches is imposed on [the Player]. *This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of next season, in both cases including national cups and international championships for clubs.*

10) [CAP]*, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision".*

46. On 13 July 2020, the FIFA DRC notified the grounds of the Appealed Decision.

F. Subsequent events – Player signs with Palmeiras

47. On 24 February 2020, the Player signed an employment contract with Palmeiras (the "Palmeiras Employment Contract").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

48. On 15 July 2020, Palmeiras filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 et seq. of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision, naming FIFA as the Respondent. In its Statement of Appeal, Palmeiras requested a stay of execution of the Appealed Decision pending its appeal.

49. On 16 July 2020, as a result, the CAS Court Office initiated an appeal arbitration procedure under the reference *CAS 2020/A/7272 Sociedade Esportiva Palmeiras v. FIFA*.

50. On 20 July 2020, the Player filed a Statement of Appeal with the CAS in accordance with Articles R47 et seq. of the CAS Code against the Appealed Decision, naming Albirex and FIFA as the Respondents. In his Statement of Appeal, the Player requested a stay of execution of the Appealed Decision pending his appeal.

51. On 21 July 2020, as a result, the CAS Court Office initiated a second appeal arbitration procedure with respect to the Appealed Decision under the reference *CAS 2020/A/7277 Ronielson Da Silva Barbosa v. Albirex Niigata Inc & Fédération Internationale de Football Association (FIFA)*.

52. On 22 July 2020, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office issued in the proceedings CAS 2020/A/7277 the Operative Part of the Order on Provisional Measures granting the Player's requested stay of the Appealed Decision, ("Player's Order on Provisional Measures") as follows:

    "The President of the CAS Appeals Arbitration Division rules that:

    1. *The application for provisional measures filed by [the Player] on 20 July 2020 in the matter CAS 2020/A/7277 Ronielson Da Silva Barbosa v. Albirex Niigata Inc & Fédération Internationale de Football Association (FIFA) is granted.*
    2. *The restriction of four months of eligibility to play in official matches imposed on* [the Player] *is stayed.*
    3. *The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration"*.

53. On 23 July 2020, Albirex filed a Statement of Appeal with the CAS in accordance with Articles R47 et seq. of the CAS Code against the Appealed Decision, naming the Player and CAP as the Respondents.

54. On 24 July 2020, as a result, the CAS Court Office initiated a third appeal arbitration procedure with respect to the Appealed Decision under the reference *CAS 2020/A/7283 Albirex Niigata Inc. v. Ronielson da Silva Barbosa & Clube Atletico Paranaense*.

55. On the same date, Palmeiras wrote to the CAS Court Office stating that it *"has no objection to the fact that our request for stay is not assessed at this moment by CAS, as long as the request for stay granted for*

the [Player] in the procedure CAS 2020/A/7277 […] is maintained".

56. On 31 July 2020, CAP filed a Statement of Appeal with the CAS in accordance with Articles R47 et seq. of the CAS Code against the Appealed Decision, naming Albirex, Cruzeiro, the Player and FIFA as the Respondents.

57. On 1 August 2020, as a result, the CAS Court Office initiated a fourth appeal arbitration procedure with respect to the Appealed Decision under the reference *CAS 2020/A/7318 Club Atletico Paranaense v. Albirex Niigata Inc., Cruzeiro EC, Ronielson da Silva Barbosa & FIFA*.

58. On 6 August 2020, the CAS Court Office wrote to the Parties requesting them to confirm whether they agreed to the consolidation of all four procedures.

59. On 7 August 2020, the Player wrote to the CAS Court Office confirming that he had no objection to the consolidation of all four procedures.

60. On 10 August 2020, FIFA wrote to the CAS Court Office stating that it agreed to the consolidation of *CAS 2020/A/7277* and *CAS 2020/A/7283*, but not *CAS 2020/A/7272* on the basis that Palmeiras did not have standing to challenge the Appealed Decision.

61. On 11 August 2020, CAP wrote to the CAS Court Office confirming that it agreed to the consolidation of *CAS 2020/A/7272, CAS 2020/A/7277* and *CAS 2020/A/7283*. On the same date, Albirex wrote to the CAS Court Office confirming that it had no objection to the consolidation of all four procedures.

62. On 14 August 2020, on behalf of the Deputy President of the Appeals Division, the CAS Court Office wrote to the Parties confirming that, *inter alia*, the four appeals (*CAS 2020/A/7272, CAS 2020/A/7277, CAS 2020/A/7283 and CAS 2020/A/7318,* the "Appeals") shall be consolidated.

63. On 24 August 2020, FIFA wrote to the CAS Court Office confirming that it and Albirex were jointly nominating Prof. Luigi Fumagalli, Attorney-at-law, Milan, Italy as arbitrator in these proceedings.

64. On 25 August 2020, in light of requests by the Parties, notwithstanding the notification by FIFA and Albirex of its intention to nominate Prof. Fumagalli as an arbitrator in this matter, the CAS Court Office wrote to the Parties, *inter alia*, inviting them to jointly nominate an arbitrator as follows:

    - the Player, Palmeiras and CAP to jointly nominate an arbitrator; and
    - FIFA, Albirex and Cruzeiro to jointly nominate an arbitrator.

65. On 28 August 2020, Cruzeiro wrote to the CAS Court Office confirming its agreement with FIFA's and Albirex's nomination of Prof. Luigi Fumagalli as arbitrator in these proceedings.

66. On 28 August 2020, CAP wrote to the CAS Court Office confirming that it, the Player and

Palmeiras were jointly nominating Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal as arbitrator in these proceedings.

67. On 15 September 2020, in accordance with Article R51 of the CAS Code, Palmeiras (*CAS 2020/A/7272*), the Player (*CAS 2020/A/7277*) and CAP (*CAS 2020/A/7318*) filed their Appeal Briefs with the CAS Court Office.

68. On 28 September 2020, in accordance with Article R51 of the CAS Code, Albirex (*CAS 2020/A/7283*) filed its Appeal Brief with the CAS Court Office.

69. On 9 October 2020, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom

Arbitrators: Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal
Prof. Luigi Fumagalli, Attorney-at-law, Milan, Italy

70. On 30 October 2020, the CAS Court Office wrote to the Parties on behalf of the Panel stating *inter alia* as follows:

"1. <u>Admissibility of Albirex's Appeal Brief (7283)</u>

[The Player], *CAP and Palmeiras objected to the admissibility of the Appeal Brief filed by Albirex.*

The Panel notes that this issue has been submitted to the Deputy President of the CAS Appeals Division, who decided to grant the Appellant's extension request making the Appeal Brief eventually filed, admissible.

The Panel considers that the Deputy President of the CAS Appeals Division's decision ***<u>is final</u>*** *and that the Panel cannot subsequently review and reconsider the decision taken.*

Accordingly, the Appeal Brief submitted by Albirex is ***<u>admissible</u>****.*

2. <u>Exclusion of Cruzeiro from proceedings (7318)</u>

In its letter of 28 September 2020, Cruzeiro requested to be excluded from the present arbitration proceedings.

The Panel has decided ***<u>to deny</u>*** *Cruzeiro's request to be excluded from the proceedings".*

71. On 4 November 2020, the CAS Court Office wrote to the Parties confirming that all the Respondents were granted a 20 day extension in which to file their Answers.

72. On 5 November 2020, the CAS Court Office wrote to the Parties stating as follows:

"I note that Cruzeiro requests the grounds of the decision to deny its request to be excluded from the arbitral proceedings and that its deadline to file the Answer be suspended until receipt of such grounds.

On behalf of the Panel, Cruzeiro is hereby advised that whether or not the Panel accede to the Appellant's request with respect to Cruzeiro will be determined on the merits. Accordingly, Cruzeiro's request of exclusion is to be denied. Accordingly, Cruzeiro's request of suspension of its deadline to submit the Answer until receipt of the grounds of the decision is moot.

Cruzeiro further requests that "CAS analyses Cruzeiro's previous request for a deadline extension and, consequently, determines that the previously [e]stablished time limit for the submission of the Statement of Defence will be counted as of the Panel's decision not to exclude Cruzeiro from the arbitration".

In the CAS Court Office letter of 30 October 2020, the suspension of the Respondents' deadlines to file the Answers in all four cases was lifted. Furthermore, by letter of the CAS Court Office of 4 November 2020, an extension of 20-day of the time limit to file the Answers was granted to all Respondents in the four above-mentioned cases.

In view of the above, Cruzeiro's request that its time limit to submit its Answer starts as from the Panel's decision not to exclude it from the arbitration proceedings is denied".

73. On 18 November 2020, the CAS Court Office wrote to the Parties stating as follows:

"I note that FIFA requests that its currently ongoing deadline to file the answer to the appeals be set aside and to be granted a 20-day deadline commencing once FIFA is provided with: (i) the abovementioned witness statements and (ii) a copy of the decision of the Swiss Federal Tribunal that is quoted in paragraph 223 of its Appeal Brief.

Alternatively, FIFA requests that its current deadline be suspended immediately and resumed once said documents and information are provided to FIFA.

On behalf of the Panel, the Respondents' deadlines to file the Answer in the case CAS 2020/A/7318 Club Atletico Paranaense v. Albirex Niigata Inc., Cruzeiro EC, Ronielson da Silva Barbosa & FIFA are hereby <u>suspended</u> with immediate effect and until further notice, pending the filing of the witness statements and the SFT decision by the Appellant in that case".

74. On 10 December 2020, the CAS Court Office wrote to the Parties stating as follows:

"I acknowledge receipt of the letter of Mr Ronielson Da Silva Barbosa and CAP of 8 December 2020 as well as a copy of the appeal to the Swiss Tribunal Federal of 30 November 2020, copies of which are enclosed herewith.

Should Mr Ronielson Da Silva Barbosa and CAP request that such appeal be formally introduced in the arbitration, Mr Ronielson Da Silva Barbosa and CAP are requested to provide an English translation of such document.

I note that Mr Ronielson Da Silva Barbosa and CAP state that they "will ask the Panel to reconsider the Decision, and thus declare the Appeal Brief of Albirex as inadmissible, as part of their answers to be lodged in proceedings ref. CAS 2020/A//7283".

Furthermore, by CAS Court Office's letter of 16 November 2020, CAP was granted a deadline until 23 November 2020 to file the witness statements of Mr Scheidt and Mr Pacheco.

The Parties are hereby advised that CAP did not file the witness statements of Mr Scheidt and Mr Pacheco within the granted deadline.

Finally, CAP is invited to provide a copy of the decision of the Swiss Federal Tribunal that is quoted in paragraph 223 of its Appeal Brief by 14 December 2020".

75. On 15 December 2020, the CAS Court Office wrote to the Parties stating, *inter alia*, that the Respondents' deadline to submit their Answers were suspended.

76. On 16 December 2020, the CAS Court Office wrote to the Parties stating, *inter alia*, that the deadline for the submission of the Respondents' Answers were suspended in all four Appeals.

77. On 22 December 2020, the CAS Court Office wrote to the Parties stating, *inter alia*, that the Panel decided that CAP's email of 23 November 2020 and its enclosures were admissible. Furthermore, the Respondents' deadlines to submit the Answers in all four Appeals were extended until 11 January 2021. Accordingly, the suspension of the Respondents' deadline to file the Answers was lifted.

78. On 12 January 2021, in accordance with Article R55 of the CAS Code, the Respondents in the Appeals filed their Answers with the CAS Court Office. On the same day, the CAS Court Office wrote to the parties enclosing the reasoned Order on Request for Provisional Measures in the case *CAS 2020/A/7277*.

79. On 21 January 2021, the CAS Court Office wrote to the Parties stating, *inter alia*, that the Panel maintained its position that it could not consider an appeal against the decision of the Deputy President of the CAS Appeals Division.

80. On 1 February 2021, CAP filed a Request for Provisional Measures with the CAS Court Office, requesting that the registration ban imposed on it by FIFA in the Appealed Decision is stayed pending the final outcome in these appeal proceedings.

81. On 4 February 2021, the CAS Court Office wrote to the Parties on behalf of the Panel inviting FIFA, Albirex, Palmeiras, the Player and Cruzeiro to submit their comments in response to CAP's Request for Provisional Measures.

82. On 11 February 2021, Palmeiras and the Player wrote to the CAS Court Office, confirming that neither party objected to CAP's Request for Provisional Measures.

83. On 15 February 2021, both Albirex and FIFA wrote to the CAS Court Office providing their respective comments in response to CAP's Request for Provisional Measures.

84. On 26 February 2021, the CAS Court Office wrote to the Parties on behalf of the Panel enclosing the Panel's reasoned decision on CAP's Request for Provisional Measures. CAP's

Request for Provisional Measures was dismissed.

85. On 16 March 2021, Albirex, Cruzeiro and the Player submitted signed copies of the Order of Procedure with the CAS Court Office.

86. On 17 March 2021, Palmeiras, FIFA and CAP submitted signed copies of the Order of Procedure with the CAS Court Office.

IV. HEARING

87. A hearing was held on 18 and 19 March 2021 by video-conference. The Parties confirmed that had no objection as to the composition of the Panel. The Panel were all present and was assisted by Ms Sophie Roud, Legal Counsel at the CAS. Furthermore, the following persons attended the hearing:

   i. Palmeiras: Mr Alexandre Miranda and Mr João Pimentel, external counsel;

   ii. FIFA: Messrs. Miguel Liétard Fernández-Palacios (Director of Litigation), Jaime Cambreleng Contreras (Head of Litigation) and Roberto Nájera Reyes (Senior Legal Counsel);

   iii. The Player: the Player himself; Mr André Carvalho Sica and Ms Catherine de Angelis Taffarel, counsel; Mr Carlos André de Freitas Lopes, Mr Sergio Roberto Ribeiro Filho; Ms Larissa de Almeida Benevides, interpreter;

   iv. Albirex: Messrs. Breno Costa Ramos Tannuri, André Oliveira de Meira Ribeiro, Vitor Neves Restivo and Somaiah Jaya, all external counsel; and Messrs. Alaece Aparecido Dias and Marcelo Kiremitdjian, witnesses; Ms Kavita Lamba, translator;

   v. CAP: Messrs. Marcos Motta, Stefano Malvestio, Udo Seckelmann, and Luiz Gustavo Awad, all external counsel; and Mr Rodrigo Gama Monteiro and Mr Marcio Lara (club representatives); Mr Ricardo de Mattos Scheidt; Ms Allana Pereira, translator; and

   vi. Cruzeiro: Mr André Oliveira Teodoro Lopes, external counsel; Mr Flávio Boson Gambogi, Ms Danúbia Patrícia de Paiva, Mr Herbert Levi Inácio Martins Júnior and Mr Marcos Silva Melo Lima, club representatives.

88. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses and the party representatives. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.

89. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and to be treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. SUBMISSIONS OF THE PARTIES

A. CAS 2020/A/7272

1. Palmeiras

90. In its Statement of Appeal, Palmeiras submitted the following prayers for relief:

"80. Preliminarily, the Appellant hereby requests the Deputy President of the CAS Appeals Arbitration Division for the following relief:

(i) To enforce CAS' jurisdiction as competent to rule on the matter;

(ii) To enforce Palmeiras' standing to sue as unequivocal interested party on the matter;

(iii) To order to stay the Appealed Decision until the communication of the CAS Award, since the Palmeiras' has successfully demonstrated that the case at hand meets all the legal requirements for its concession (irreparable harm, likelihood to success to the merits and beneficial balance of interests).

Considering the utmost urgency of this case – which might be irreparably harmed if the interim measures are not granted prior to 22 July 2020 – Palmeiras respectfully requests the President of the CAS Appeal Division to issue an order upon the mere presentation of this application (inaudita altera pars), provided that the Respondent is subsequently heard. Alternatively, Palmeiras requests the President of the CAS Appeal Division to invite the Respondent within the following 48 (forty-eight) hours to present its position on the matter.

81. In merits, the Appellant hereby requests the Honorable Panel for the following relief:

(i) To set aside the Appealed Decision and to replace it with a new decision in order to recognize the termination of the employment relationship between the Player and Albirex and, consequently, to definitively lift the restriction of four months on the eligibility of the Player to play official matches;

(ii) To rule the Respondent responsible for covering all costs of the proceedings;

(iii) To order the Respondent to pay a contribution towards the Appellant's legal fees and other expenses incurred in connection with the proceedings in an amount deemed fit by the Hon. Panel".

91. In its Appeal Brief, Palmeiras submitted the following prayers for relief:

"117. Preliminarily, the Appellant hereby requests the Honorable Panel for the following relief:

(i) To enforce CAS' jurisdiction as competent to rule on the matter;

(ii) To enforce Palmeiras' standing to sue as unequivocal interested and affected party on the matter;

(iii) To set aside the Appealed Decision due to the lack of jurisdiction of the FIFA DRC and to recognize that the JFA's national sports arbitration tribunal as the exclusive jurisdiction to handle the case at hand.

118. In merits, Palmeiras hereby requests the Honorable Panel for the following relief:

(i) To set aside the challenged decision and to replace it with a new decision in order to recognize the termination of the employment relationship between the Player and Albirex;

(ii) Alternatively, to rule that the restriction of 4 (four) months on the eligibility of the Player to play official matches its illegality towards Palmeiras under the Brazilian legislation;

(iii) In any case, to definitively lift the restriction of 4 (four) months on the eligibility of the Player to play official matches;

(iv) In any case, to rule the Respondents responsible for covering all costs of the proceedings;

(v) In any case, to order the Respondents to pay a contribution towards Palmeiras' legal fees and other expenses incurred in connection with the proceedings in a fair amount deemed by this Hon. Panel;"

92. In summary, Palmeiras submitted the following in support of its Appeal:

i. Standing to sue/appeal

93. Palmeiras noted that it was not a party to the Appealed Decision. However, it submitted that it has standing to appeal the Appealed Decision as a *"third-party of good faith"* given that it is the Player's present club – and is therefore directly affected by the playing ban imposed on the Player.

94. Palmeiras noted that it only signed an employment contract with the Player two years after the Player terminated the Albirex Employment Contract and the Player's claim was lodged before FIFA on 18 April 2018. It was also one year after Albirex filed its claim at FIFA. Palmeiras stated that when Albirex filed its claim against the Player, Palmeiras did not have any standing to participate, given that it only entered into the Palmeiras Employment Contract a year later. Therefore, it did not have standing to sue before FIFA, but it does now have standing to sue before the CAS.

95. Palmeiras submitted that a fundamental principle of law is that the appealing party must have a manifest interest in the dispute, and in this regard Estelle DE LA ROUCHEFOUCAULD *('Standing to be sued, a procedural issue before the CAS', CAS Bulletin, 2010*) stated (emphasis added by Palmeiras):

"In principle, the standing to sue or to appeal belongs to any person putting forward a right of his own in support of his request. ***In other words, standing to sue belongs to any person who has an interest worthy of protection****. The standing to sue belongs also to the parties listed by the relevant regulations among the parties entitled to appeal against a particular decision. Those listed parties are obviously considered to have an interest at stake by the regulations. The Court of Arbitration for Sport (CAS) jurisprudence has constantly*

upheld this principle. In CAS/A/1674, in analyzing the Appellant's standing to appeal, the Panel determined whether the Appellant had shown that it had a "sufficient interest" in the matter being appealed. ***<u>The Panel stressed that sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the Appellant can demonstrate a sporting and financial interest</u>****".*

96. With regards to legitimate interest, LA ROUCHEFOUCAULD stated:

"According to the CAS jurisprudence, the requirement of legitimate interest is satisfied if it can be stated that the appellant (i) is sufficiently affected by the appealed decision and (ii) has a tangible interest, of financial or sporting nature, at stake. In this respect, the Appellant is directly affected by the appealed decision, if as a result of this decision the Appellant (football club) is deprived of the Player's services throughout his suspension, which has a direct impact on the Appellant's team. The fact that the Appellant also paid a substantial sum to retain the Player and continued to pay the Player's salary, despite the fact that the Player was presently unable to play is relevant".

97. Palmeiras also stated that CAS jurisprudence (*inter alia, CAS 2015/A/3959; CAS 2013/A/3140; CAS 2008/A/1674; and CAS 2010/A/2354)* has held that a party has standing to appeal if it has an interest worthy of protection, i.e. if it can show a sufficient interest in the matter being appealed.

98. In the present case, Palmeiras stated that it was the Player's current employer and the Player was already *"one of the most important athletes"* in the team. Palmeiras stated that in addition to its sporting interest, given the *"huge transfer fee paid to CAP"* and the *"exorbitant signing fees and bonuses"* it pays to the Player, it *"only makes sense if Palmeiras can benefit from the Player's sportive performance in official competitions".*

99. Palmeiras also cited the *Suarez* case (*CAS 2014/A/3665, 3666 & 3667*), stating that in both that case and the present case, *"FIFA authorities issued a sanction against a player and such sanction affected direct financial interests of a third club, resulting that such club must have the possibility to appeal such decision in order to be able to protect its legal interests, even if these interests became actual after the challenged decision was issued".*

ii. Damage suffered by Palmeiras

100. Palmeiras submitted that despite being the fourth club which the Player signed for in the context of these proceedings, it is *"the most harmed entity by far"* as a result of the Player's playing ban.

101. Palmeiras stated that Albirex unjustifiably delayed filing its claim before FIFA (one year after the Player filed his claim at FIFA), and that has resulted in it being harmed as the Player's present employer. To make matters worse, without prejudice to any playing ban imposed by FIFA, the Player has already spent four months without playing any official matches and training alone in his house due to the COVID-19 pandemic.

iii. Lack of jurisdiction of the FIFA DRC

102. Palmeiras submitted that pursuant to clause 15 of the Albirex Employment Contract, Albirex and the Player expressly elected the JFA as the competent body to settle any eventual dispute:

"15. DISPUTES

Disputes regarding the content of the contract shall be settled by the Japan Football Association (JPA). The parties expressly renounce any other general or special jurisdiction that may correspond".

103. Palmeiras submitted that the JFA independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs, since *"(i) the nomination of the arbitrators respect the ideal of parity; (ii) the system deals with the principle of the double degree of jurisdiction; (iii) the parties have the right to contentious proceedings and fair hearings; and (iv) the parties are equally handled and have the opportunity to be represented by lawyers or other experts".*

104. Accordingly, Palmeiras submitted that the FIFA DRC was not competent to hear the present dispute and should have declined jurisdiction. Therefore, the Appealed Decision must be set aside.

iv. Merits of the dispute between the Player and Albirex

105. Palmeiras submitted that even though the Albirex Employment Contract was executed until 1 January 2020, *"this instrument was based on impossible conditions, since its duration exceeds the one settled on the Loan Agreement".* The federative rights of the Player were never transferred permanently to Albirex, meaning the Loan Agreement was the essential link between the Player and the Japanese club.

106. Palmeiras stated that on 30 March 2018, Cruzeiro and the Player signed a termination agreement confirming that the Player was a free agent, which was also ratified in CBF's official records. Palmeiras submitted that after this termination, *"the Player has never consented on the definitive transfer to Albirex and, on the contrary of what was stated by the FIFA DRC (§99 of the Appealed Decision), the Player's previous consent to the pre-contract cannot be used to justify this other transfer in the future, under penalty of violation of the legal certainty and the Player's free choice".* Palmeiras stated that the Albirex Employment Contract could therefore not be considered valid for the 2018 and 2019 seasons, and the Player could not have breached that contract nor could CAP be held to have induced any breach.

107. Palmeiras stated that in any event, it did not have any influence in the events or the termination of the Albirex Employment Contract. Despite this, it is the party which is suffering financial and sportive damage, all without any prior notice or warning. Palmeiras went on to state that:

"Therefore, considering all fundaments summarized above and with the addition of the further evidence presented by CAP and the Player during the FIFA proceeding, Palmeiras has to agree that is clear Albirex' bad faith and (at least) gross negligence with regards to its contractual relationship with the Player, which was: (i) illegally structured by means of a fraudulent structure; (ii) unilaterally extended, without the Player's consent; and (iii)

timely terminated due to the non-execution of a proper document for ensuing the prorogation of the loan for the 2018 and 2019 seasons".

v. The domestic transfer of the Player from CAP to Palmeiras

108. Palmeiras noted that since the Player's transfer from CAP to Palmeiras was domestic, it was not processed through FIFA TMS. Instead, it was processed through the CBF's data management system called GestaoWeb. Palmeiras stated that it complied with all national laws and regulations, and the registration protocol was duly effected in GestaoWeb. The Palmeiras Employment Contract was entered into in accordance with Brazilian national law, specifically Article 28 of the *Brazilian Federal Law n. 9.615-1998 (*"Pele Law").

vi. Illegality of the sanction on the Player

109. Palmeiras submitted that *"any measure against the right to work is an infringement of the Brazilian Constitutional Law including any Federal Law or any Regulation within the framework of a specific activity or profession, and it is no different towards an untimely decision rendered by an international Federation which directly violates a constitutional right of the Player".*

110. Palmeiras stated that the Player's playing ban affects both the agreements it entered into with the Player and its fundamental rights sculptured in the Brazilian Federal Constitution.

111. Further, even if the Panel was to determine that the Player acted in breach of contract, Palmeiras stated that the Player would be sufficiently damaged by the economic compensation he would have to pay. As such, the imposition of a playing ban is *"redundant and disproportional"* and is also *"unequivocally unconstitutional before the Brazilian legislation".*

2. FIFA

112. In its Answer (which was in response to *CAS 2020/A/7277* and *CAS 2020/A/7318*, as well as *CAS 2020/A/7272*), FIFA submitted the following prayers for relief:

"244. Based on the foregoing, FIFA respectfully requests the Panel to issue an award on the merits:

(a) rejecting the reliefs sought by the Appellants;

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellants to make a contribution to FIFA's legal costs".

113. In summary, FIFA submitted the following in its Answer:

i. Palmeiras' lack of standing to appeal

114. With regards to Palmeiras' standing to appeal, FIFA cited *CAS 2002/O/373*, in which the Panel

stated that the standing to sue under Swiss civil law involves both a procedural and substantive aspect.

115. The procedural aspect is the so-called *"qualité pour agir"* (*"Prozessführungsbefugnis"* in German). It concerns the so-called *"droit d'action"*, which is the procedural right to obtain a judgment on the merits:

"[t]he standing to sue is related to the right of action: it is the active or passive entitlement of the right to obtain a judgment on the merits".

116. The substantive aspect of standing to sue is the so-called *"légitimation active"* (*"Sachlegitimation"* in German). It belongs to the holder ("titulaire") of the substantive right in the dispute:

"A distinction must be made between procedural standing to sue and 'légitimation'. 'Légitimation' is a matter of the claimed substantive right; it simply defines the holder of the claimed substantive right".

117. The lack of the procedural aspect of standing leads to the inadmissibility of the requested relief (*"inadmissiblibilité de l'action"*), while the lack of the substantive aspects leads to the dismissal of the claim on the merits (*"rejet de l'action"*).

118. The basic principle under Swiss law is that standing to sue presupposes both (i) that the claimant has the procedural right to bring a claim (*"qualité pour agir"*) and (ii) that the claimant is the holder of the substantive right relied upon in the claim (*"légitimation active"*). In practice, the two aspects go together as – save in very specific cases where the law expressly provides otherwise – only the holder of a substantial right is entitled to assert it before a Tribunal (according to the French adage *"nul ne plaide par procureur"*).

119. In addition to this, CAS has also developed an additional requirement in appeal proceedings meant to protect the legal system from futile claims, namely the requirement of a legitimate interest. This general requirement is contained in Article 59(2)(a) of the Swiss Civil Procedure Code (the "SCPC"), according to which the claimant must always show a "legitimate interest" (*"intérêt digne de protection"*). Under Swiss law, the claimant has a "legitimate interest" within the meaning of Article 59(2)(a) of the SCPC if the interest is personal and actual.

120. In the matter at hand, FIFA argued that Palmeiras lacks the necessary standing to bring forward the requests for relief contained in its Appeal Brief, given that it is not the holder of a direct legal interest worthy of being protected nor does it hold any "aggrieved right".

121. FIFA stated that all consequences of the Appealed Decision are directly linked to the Player himself and any possible claims to be made by Palmeiras are just derivative of the sanction on the Player. Palmeiras has failed to demonstrate any possible direct implications of the Appealed Decision on the club nor any separate "aggrieved right" from the ones of the Player. The involvement of Palmeiras in the present arbitration proceedings is in any case irrelevant to the parties that were involved in the dispute, as the club holds no separate "aggrieved right" from the ones that the Player could claim. In other words, the dismissal of Palmeiras' appeal would not be detrimental to the position of the Player, nor would it affect any other interest in any

possible manner. Equally, any possible right that could be claimed by Palmeiras would be of a peripheral nature and not relevant enough to fulfil, by itself, the required degree of interest to sustain its alleged standing to appeal.

122. FIFA also distinguished the present case from the *Suarez* case relied on by Palmeiras, on the basis that in the *Suarez* case the player was banned not only from official matches, but also from taking part in any football related activity (administrative, sporting or any other kind), as well as banned from entering the confines of any stadium for 4 months. Whereas in the present case, the Player was only banned from participating in official matches. In the *Suarez* case, the CAS panel (on appeal) determined that the specific sanction imposed on the player meant that his new club (FC Barcelona) was sufficiently affected so as to have a tangible interest of financial and sporting nature at stake. In contrast, the Player is only banned from official matches, so it is not an analogous situation.

123. Moreover, FIFA rejected Palmeiras' arguments about the alleged importance of the Player to the squad and noted that the club had two registration periods to reinforce its squad for the present season. FIFA also rejected the club's *"vague and unsubstantiated"* arguments regarding alleged financial damage it was to suffer.

124. In summary, FIFA stated that Palmeiras has no standing to appeal and as such its appeal should be rejected as unfounded.

ii. FIFA jurisdiction

125. FIFA submitted that it is undisputed that the present matter is an employment-related dispute between a club and a player of an international dimension. The only questions that remain to be seen is (i) whether the parties to the Albirex Employment Contract waived their initial agreement concerning the arbitration clause contained therein and, in the negative, (ii) if an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs exists at national level.

a) The Player and Albirex accepted FIFA's competence

126. FIFA submitted that the Player's behaviour *"does not stand the test of procedural fairness"*, noting that not only did he not object to FIFA's jurisdiction during the FIFA proceedings, but he also filed his own claim before FIFA a year earlier. However, the Player now *"radically changed his course of action"* and is now, for the first time, arguing that FIFA was not competent to hear this dispute. In short, the Player's actions are in clear violation of the common law doctrine of estoppel, and the equivalent civil law principle *venire contra factum proprium*.

127. In light of all the above, FIFA submitted that the Player is precluded from bringing forward the argument of lack of competence in the present procedure. There is certainly no merit on his vague and unsubstantiated contention that *"the right to the correct jurisdiction is a matter of public order, duly endorsed by the Human Rights conventions"*.

128. Moreover, the conduct of Albirex and the Player indicates that both signatories to the Albirex Employment Contract agreed to disregard Clause 15 by means of which the parties had initially agreed to refer disputes arising from said agreement to the JFA. Consequently, since both parties to the Albirex Employment Contract agreed to refer their dispute to the FIFA DRC, CAP and Palmeiras (if considered to have standing to appeal, *quod non*), who were not parties to that contract, are also precluded from invoking a clause that its signatories agreed to waive.

129. In summary, FIFA stated that the FIFA DRC rightly assumed the jurisdiction to entertain the claim and that the Appealed Decision is correct in this respect.

b) The Japanese NDRC does not meet the necessary requirements

130. FIFA stated that even if the Panel were to analyse the peculiarities of the Japanese NDRC, it should conclude that it was not a valid arbitral tribunal under Article 22 of the Regulations on the Status and Transfer of Players (the "RSTP"). FIFA noted that Clause 15 of the Albirex Employment Contract stated:

"Disputes regarding the content of the contract shall be settled by Japan Football Association (JFA). The parties renounce any other general or special jurisdiction that may correspond".

131. FIFA noted that not even the Appellants could agree which precise committee of the JFA would be competent. The Player referred to the Disciplinary Committee, Ethics and Mediatory Committee and Appeal Committee but did not specify which body was the appropriate tribunal. CAP referred to the Japanese League Arbitration Committee, and FIFA noted that the Japanese League is a separate organisation to the JFA (which was referred to in Clause 15). Palmeiras referred to the JFA independent arbitration tribunal. Moreover, FIFA submitted that in any event, there was insufficient evidence to conclude whether any of the aforementioned bodies satisfied FIFA Circular 1010.

iii. Albirex Employment Contract

a) Not conditioned to the execution of a future transfer agreement

132. FIFA submitted that there is no provision in the RSTP that conditions the validity of an employment contract to the execution of transfer agreements of any sort (e.g. permanent or temporary). For example, it could very well happen that an employment contract is executed while the definitive conditions of the transfer agreement are still being fine-tuned, or even when no transfer agreement is concluded between the player's old and new clubs. Despite it not being a recommended scenario, the RSTP does not prevent a player under contract from signing a new employment contract without a transfer agreement being negotiated at all. Instead of invalidating the new employment contract, the RSTP provides the necessary tools to remedy the harm that the old club may have suffered.

133. FIFA cited the examples of *CAS 2018/A/5607 & 5608* and *CAS 2013/A/3093* and stated that these situations, *"which do occur more often than one would expect, reveal that the absence of a transfer*

agreement does not invalidate the content of the labour agreement". However, in the present case a concrete framework was agreed to between Cruzeiro, Albirex and the Player in order for the latter to join Albirex for three seasons. FIFA rejected the Player's, Palmeiras' and CAP's arguments in this regard and argued that the Albirex Employment Contract was never subject to any conditions.

134. Even if the Albirex Employment Contract was made subject to a transfer agreement, FIFA argued that any such conditions would have been deemed as invalid by FIFA due to long standing jurisprudence, which has held that an employment contract cannot be conditional upon the execution of any formality that exclusively belongs to *"the sole responsibility of a club and on which a player has no influence"*. FIFA stated that to a lay person or general football fan, the execution of transfer and employment contracts may be seen as a unit. Nevertheless, a legal and practical analysis of both transactions reveal that they constitute independent matters.

135. In this case, there is no doubt that the Player and Albirex freely and willingly entered into the Albirex Employment Contract without ever conditioning it to the prior execution of subsequent loan agreements for the following two seasons. Hence, the Albirex Employment Contract cannot be deemed to have been subjected – not even implicitly – to any precondition, not even what would have been an invalid referral to the conclusion of subsequent permanent or temporary transfer agreements.

b) Player willingly entered into the contract

136. FIFA also noted that the Player voluntarily and willingly agreed to enter into a three year employment relationship with Albirex. This is not only evidenced by the contracts signed by the Player, but also the conditions under which the relationship was entered into. FIFA claimed that there *"is no indication that the Player ever inquired, let alone complained, about such regulatory issues when he signed a three year employment agreement (or the Pre-Contract with the same conditions) with an overall salary of $1,100,000, nor was any issue raised by the Player or even Cruzeiro when the Term of Agreement established that Albirex would pay a transfer fee of $1,200,000 to Cruzeiro under the premise that the Player would be transferred for three seasons"*.

137. In view of the Player's acceptance of these conditions between December 2016 and January 2017, FIFA stated that *"it is not possible to understand why on 30 November 2017 it became so important to him to re-visit the conditions under which he had agreed to enter into the relationship with Albirex by arguing for the very first time that he "was compelled to sign an employment contract for 3 years"*. FIFA stated it was *"telling"* that the Player only sent Albirex a letter after a match which confirmed that the club would be relegated to the Japanese second division for the subsequent season.

138. FIFA claimed that the Player's argument according to which he would have been *"compelled […] to sign an Employment Contract with a longer duration than the one stipulated in the Loan Agreement previously executed with Cruzeiro – demonstrating its willingness to hold the Player under its control and, at the same time, contradicting the limits of coherence and reasonableness that shall rule the negotiations" is at odds with numerous facts and arguments"*, such as:

- The Player was a signatory to the Loan Agreement and to the Albirex Employment Contract, therefore any contradictions between those documents with *"the limits of coherence and reasonableness that shall rule the negotiations"* would also apply to him;
- The fact that Albirex demonstrated *"its willingness to hold the Player under its control"* only reinforces the Japanese club's unconditioned intention to hire the Player for 3 seasons (rather than only 1);
- The fact that the Albirex Employment Contract was signed for 3 seasons also benefitted the Player as he secured his employment for the subsequent three years *"with a millionaire retribution that represented a 546% annual increase compared to his salary in the Cruzeiro Employment Contract"*.

139. Moreover, the Player's return to Japan in February 2018 is consistent with the fact that the duration of the Albirex Employment Contract was known and accepted by the Player. Therefore, FIFA stated that *"an objective analysis of the documents on file and of the overall context under which the events developed between December 2016 and February 2018 allow to understand that the Player willingly entered into a 3-year employment contract which he later on tried to terminate in order to avoid playing in the Japanese second division"*.

140. FIFA argued that, in the presence of an employment contract which the parties willingly and freely signed on 16 January 2017 for a duration of 3 seasons, it is difficult to understand why:

- CAP claims that the parties' *"intention"* for a 3 year long employment relationship would have to be given again at some point between the end of December 2017 and February 2018;
- The Player considers the *"extension of the Employment Contract shall be deemed null and void in regards to seasons 2018 and 2019"*, because he did not consent to his initial loan being converted into a permanent transfer.

141. The moment the Player and Albirex expressed their agreement by signing the Albirex Employment Contract, there was no need for both parties to voice such agreement again.

c) The Albirex Employment Contract was valid

142. FIFA reiterated that in light of the Player's *"irrefutable willingness"* to conclude the Albirex Employment Contract, it follows that the validity of the contract is *"undeniable"*.

143. Given the FIFA DRC's jurisprudence regarding the impossibility of conditioning an employment contract's validity to the final execution of a transfer agreement, this heavily relied upon line of defence of the Appellants (in the different consolidated procedures) is of no avail to them. In the alternative, even if this construction would be deemed valid (*quod non*), in view of the fact that the conclusion of a transfer agreement is not an essential element of a labour contract, there would still be no room to depart from the FIFA DRC's finding that the Albirex Employment Contract was a valid and binding agreement as from its signature. This is further

confirmed by the content of the Commentary to the RSTP which establishes that if a player *"signs a second contract, the player effectively terminates the first one"* and which some CAS panels have followed.

144. FIFA claimed that there were never any reasons to consider that the Albirex Employment Contract had ceased being valid and stated that the reasons put forth to the contrary by the Appellants (such as *inter alia* the contract was only registered on 18 April 2018) do not render the Albirex Employment Contract invalid. Further, there was no impediment whatsoever for the Player to continue performing his contractual duties with Albirex. The Player's return to Japan and the e-mails sent to Albirex during that period reveal that he was also aware of the validity and binding nature of the Albirex Employment Contract.

145. FIFA noted that the arguments put forward by the Appellants indeed contradicted each other. For example, the Player complained about not being paid between January 2018 and July 2018 (suggesting that he considered the Albirex Employment Contract to be valid), but CAP argued that those amounts were not actually paid by Albirex because the contract was not valid and binding after 1 January 2018. FIFA stated that the Appellants cannot have it both ways.

146. Similarly, FIFA rejected the Player's arguments that the Albirex Employment Contract was *"a mere simulation between Cruzeiro and Albirex"*, noting that the Player failed to explain how it could be a simulation by a party (Cruzeiro) which was not even a party to the contract. FIFA also rejected the Appellants' various allegations regarding a *"fraudulent structure"* or *"illicit structure"* and noted that the Appellants failed to substantiate such allegations.

147. FIFA submitted that *"the Appellants' case rests almost exclusively on the discrepancy between the duration of the Loan Agreement and the other agreements in place (the Pre-Contract, the Term of Agreement and the Albirex Employment Contract) signed by Albirex, the Player and/or Cruzeiro. It has already been explained why such element does not impact in any manner the Albirex Employment Contract"*.

148. For all these reasons, FIFA submitted that *"the Albirex Employment Contract was valid at all times and, therefore the FIFA DRC was right to conclude that "the parties had a valid employment contract, from 2 February 2017 to 1 January 2020, and that such contract had been agreed between the player and Albirex in full awareness of its content, which reasonable and in good faith cannot be denied"*.

iv. The Player's breach of contract

149. In light of the above, FIFA submitted that the Player unduly terminated the Albirex Employment Contract without just cause the moment he entered into an employment contract with CAP on 26 July 2018.

150. FIFA stated that it was *"quite telling that none of the Appellants have provided any concrete explanations (that may qualify as exceptions) as to why the Player should be deemed to have terminated the Albirex Employment Contract with just cause. Instead, the Player and CAP have exclusively focused on (i) arguing why said labour agreement would not be valid and (ii) explaining why the amount of compensation should be reduced and why the sanctions should not be imposed on them"*.

151. Therefore, FIFA claimed that should the Panel agree that the Albirex Employment Contract was valid, in the absence of concrete explanations from the Player there appears to not be any room to find that said binding labour agreement was terminated with just cause. Instead, as per the Appellants' own requests, the only possible next step would be to analyse the amount of compensation due and the sporting sanctions.

152. With regards to whether there was just cause to terminate, FIFA stated that the Player could expect in good faith to continue to be employed by Albirex because the club indicated its intent to continue with the employment relationship (i) tacitly by concluding the permanent transfer of the Player with Cruzeiro, and (ii) explicitly by requesting Cruzeiro to order the Player to return to Japan, by informing all clubs – including CAP – that were interested in hiring the Player about the Player's existing employment relationship and requesting the Player to return to Japan.

153. Despite this, FIFA stated that the evidence on file about the Player's sudden intention to question the validity of the agreements that he had entered into reveal that the Player never acted in good faith. FIFA cited, *inter alia*, the fact that the Player only raised his alleged concerns after it was confirmed that Albirex would be relegated to the second division, and his letters included *"blatant misrepresentations"* of FIFA regulations.

v. Consequences for the Player's breach of contract

154. FIFA submitted that the consequences of the Player's breach of contract were as follows:

a) Compensation

155. In this case, not only did Albirex lose a player it had employed to its first team, but the breach impeded the club from transferring the Player to other clubs. FIFA did not comment further regarding the amount of compensation given that this element of the dispute is independent from the decision regarding sporting sanctions, and that it falls within the *"horizontal"* dispute between the Player and Albirex. FIFA only stated that it considered that the Appealed Decision correctly calculated compensation.

b) CAP's joint and several liability

156. FIFA stated that after leaving Japan, the first club that enjoyed the Player's services was CAP. As a matter of fact, only by the signature of the CAP Employment Contract did the Albirex Employment Contract formally come to an end. In other words, CAP unquestionably became the Player's *"new club"*. FIFA stated that CAP's argument that it should not be held joint and severally liable *"misconstrues the reality"* in various respects:

- Firstly, CAP argues that Cruzeiro had transferred the Player to the Brazilian club Botafogo and that it *"acted as the one and only holder of an employment relationship with the Player"*. This is incorrect for the following reasons:

  - CAP omits that said transfer was never executed and the Player was never transferred to Botafogo. Instead, the involved parties withdrew from said deal before it could be implemented. Therefore, since any agreement that might have been signed was left without any effect by those parties, it cannot be used by CAP to its own benefit.
  - Moreover, Cruzeiro does not appear to have benefited from such failed transaction (i.e. exchange of players). Instead of exchanging players with Botafogo, according to the information provided by CAP, Cruzeiro had to pay BRL 1,000,000 more than what had been initially negotiated in order to engage the player Bruno Silva from Botafogo.

- When claiming that it was *"legally impossible for Cruzeiro to enter into a temporary transfer agreement with Albirex related to the Player for the seasons 2018 and 2019"*, CAP forgot to mention that the Cruzeiro Employment Contract was mutually terminated after the Player had been permanently transferred to Albirex (on February 2018 and in line with all the parties' consent given through the documents signed between December 2016 and January 2017). Thereafter, the Player continued to disrespect the Albirex Employment Contract, which he formally terminated once he signed the CAP Employment Contract.

- Secondly, CAP relies exclusively on one isolated paragraph of *CAS 2016/A/4408* to claim that the determining factor to identify a *"new club"* is the existence of a previous employment contract. However, when considering the entire award, it is clear the panel upheld the FIFA DRC's approach in applying Article 17(2) of the RSTP.

157. Further, FIFA invited the Panel to consider the meaning and intention of Article 17(2) of the RSTP, and noted that the Swiss Federal Tribunal (the "SFT") has held that *"*[t]*his provision establishes a passive joint liability between the author of the contractual violation* ***and the one who has profited from said violation****"* (SFT 4A_32/2016) (emphasis added by FIFA). FIFA stated that it was undeniable that CAP has profited from the Player's breach of the Albirex Employment Contract as it enabled it to engage a Player for free despite the fact he was under contract with a Japanese club.

c) Sporting sanctions on the Player

158. FIFA noted that the events in question took place in the 'protected period', as the Player was 23 years old and approximately one and a half years into the Albirex Employment Contract when it was unlawfully terminated by the Player. Accordingly, FIFA was correct in imposing sporting sanctions.

159. With respect to the Player's sanction, FIFA submitted that the legal basis is clear in the sense that if a player prematurely terminates an employment contract without just cause during the protected period not only will he be liable to pay compensation to the damaged party, but he will also incur in a sporting sanction (i.e. four months suspension).

160. FIFA agreed with the Player that there is a well-accepted and consistent practice of the FIFA DRC not to apply automatically a sporting sanction. Nonetheless, FIFA argued that this does not mean that Article 17(3) RSTP should be overlooked *"in clear cases as this one"*. Instead, the foregoing applies unless the Player manages to prove the existence of important, almost extraordinary, indications warranting a deviation from the letter of the provision such as *"a possible violation of general principles of law"* – which clearly do not exist in this case.

161. FIFA rejected the Player's respective arguments as follows:

- There was no uncertainty in the legal framework as the Albirex Employment Contract clearly and unconditionally defined its duration.
- The Player cannot seriously argue that he acted in good faith, for many of the reasons already cited previously.
- The obligation to pay compensation for breach of contract does not prevent sporting sanctions from also being imposed, and the CAS has held that the imposition of two sanctions for the breach of one provision does not breach the *ne bis in idem* principle.
- The Player's misconduct cannot receive a more favourable treatment than that received by other players in similar situations, and the Player has not met his burden of proof in establishing that his sanction should be eliminated.
- The only reason why the Player has been unable to play for almost 8 months is due to his own actions in violating the Albirex Employment Contract. In any event, his employment contract with Palmeiras does not depend on him serving the 4 month ban.

d) Sporting sanctions on CAP

162. Secondly, turning to CAP's sanction, FIFA recalls that, as per Article 17(4) RSTP, *"*[i]*t shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach"*. FIFA reiterated that CAP would classify as the *"signing club"*, and hence bears the burden of rebutting the presumption above.

163. In summary, FIFA submitted that, given the specific circumstances of this case, all of CAP's arguments as to why it should not be held as the 'signing club' should be rejected. Moreover, there was sufficient evidence of inducement by CAP in that despite Albirex informing CAP about the binding nature of the Albirex Employment Contract on 22 July 2018, CAP proceeded to conclude the CAP Employment Contract four days later on 26 July 2018. Given that it chose to overlook the Player's contractual situation, *"it therefore encouraged and enabled the Player to unlawfully terminate the Albirex Employment Contract"*.

B. CAS 2020/A/7277

1. The Player

164. The Player submitted the following prayers for relief in his Statement of Appeal:

"72. Preliminarily, the [Player] *hereby requests the Deputy President of the CAS Appeals Arbitration Division for the following relief:*

i. To enforce CAS' jurisdiction as competent to rule on the matter;

ii. To order to stay the appealed decision until the communication of the CAS Award, in accordance with the grounds presented herein;

iii. Considering the utmost urgency of this case – which might be irreparably harmed if the interim measures are not granted prior to 22 July 2020 – the [Player] *requests the President of the CAS Appeal Division to issue an order upon the mere presentation of this application (inaudita altera pars), provided that the Respondents are subsequently heard.*

73. In merits, the [Player] *hereby requests the Honorable Panel for the following relief:*

(i) To set aside the challenged decision and to replace it with a new decision in order to recognize the termination of the employment relationship between the Player and Albirex and, consequently, to definitively lift the restriction of 4 months on the eligibility of the Player to play official matches;

(ii) To rule the Respondents responsible for covering all costs of the proceedings;

(iii) To order the Respondents to pay a contribution towards the Appellant's legal fees and other expenses incurred in connection with the proceedings in an amount deemed fit by the Hon. Panel".

165. The Player submitted the following prayers for relief in his Appeal Brief:

"184. <u>Preliminarily</u>, the Player hereby requests the Honorable Panel for the following relief:

(i) To enforce CAS' jurisdiction as competent to rule on the matter;

(ii) To set aside the Appealed Decision due to the lack of jurisdiction of the FIFA DRC and to recognize that the JFA's national sports arbitration tribunal has the exclusive jurisdiction to handle this employment-related;

(iii) To order the Albirex to disclose any valid documentation capable of demonstrating the origin of the "regulatory issues" repeatedly mentioned in the Term of Agreement and in the Loan Agreement, such as the pertinent regulations, fiscal restraints, eventual economic balances, or any other document capable of justifying the contractual structure which involved the Player and raised all the controversy analyzed in the present case;

(iv) To allow the Player and the other parties to comment on the documents disclosed by Albirex before a decision is passed by the Panel.

185. In merits, the Player hereby requests the Honorable Panel for the following relief:

(i) To set aside the challenged decision and to replace it with a new decision in order to recognize the termination of the employment relationship between the Player and Albirex;

(ii) Alternatively, in the unlikely event this Hon. Panel considers that a compensation shall be due by the Player for the breach of the Employment Contract, to limit the amount of compensation to the criteria set out in this submission;

186. In any case, the Player hereby requests the Honorable Panel for the following relief:

(i) to definitively lift the restriction of 4 (four) months on the eligibility of the Player to play official matches;

(ii) to rule the Respondents responsible for covering all costs of the proceedings;

(iii) *to order the Respondents to pay a contribution towards the Player's legal fees and other expenses incurred in connection with the proceedings in an amount deemed fit by the Hon. Panel".*

166. In summary, the Player submitted the following in support of his Appeal:

i. FIFA jurisdiction

167. The Player submitted that he and Albirex had agreed to submit any dispute to the JFA pursuant to clause 15 of the Albirex Employment Contract:

"Disputes regarding the content of the contract shall be settled by the Japan Football Association (JPA). The parties expressly renounce any other general or special jurisdiction that may correspond".

168. The Player claimed that FIFA therefore had no jurisdiction over any dispute. In this regard, he stated that the only reason he submitted a claim at FIFA against Albirex was because FIFA was the only party that could release his ITC. Any employment dispute needed to be submitted to the JFA. The Player also stated:

"65. Notwithstanding, the JFA has an independent arbitral tribunal established at the national level, which includes a Disciplinary Committee, an Ethics and Mediatory Committee and an Appeal Committee (Doc. 35). In this regard, the system fully respects the principle of the double degree of jurisdiction, as well as it adopts internal remedies in order preserve the impartially and the transparency of the proceedings – as secured by the FIFA Regulations.

66. Furthermore, the composition of the abovementioned judicial bodies also observes the FIFA's criteria concerning the parity of nominations, due to the fact that all the parties have influence over the appointment of arbitrators – as it can be inferred from entity's official website. Along the same lines, the organization of the judicial bodies deals with the structural formalities demanded in the FIFA's circular no. 1010 (Doc. 36), since it nominates a chairman (and even a vice-chairman), for each of the tribunals".

169. The Player claimed that the requirements under the FIFA regulations were *"unequivocally met"* and the FIFA DRC therefore lacked jurisdiction.

170. The Player also claimed that the fact he did not contest FIFA's jurisdiction in the first instance *"does not invalidate this submission before the CAS, since the right to the correct jurisdiction is a matter of public*

order, dully [sic] *endorsed by the Human Rights conventions"*.

ii. The applicable contracts

171. The Player noted that there were three separate agreements – the Term of Agreement, the Loan Agreement and the Albirex Employment Contract. The Player submitted that due to *"regulatory constraints"* by the JFA, he was only loaned for one season and the parties needed to conclude a *"proper document"* for the Player's loan for seasons 2018 and 2019 – which never happened.

172. Accordingly, even though the Employment Contract executed between Albirex and the Player established its validity until 1 January 2020, *"this instrument was based on impossible conditions, since its duration exceeds the one settled on the Loan Agreement"*. Nonetheless, the Albirex Employment Contract and the whole contractual structure created by Albirex *"is also immoral and unlawful in light of the Swiss Law"*. The Player stated that there were *"concrete elements capable of ensuring that the* [Albirex] *Employment Contract was a mere simulation (never registered), as the parties themselves acknowledge that they were not allowed to conclude a transfer agreement for the Player due to regulatory constraints"*. As such, the Albirex Employment Contract was not valid for the 2018 and 2019 seasons, so the Player could not have breached it.

iii. "Impossible conditions" in the Albirex Employment Contract, and the approach by Cruzeiro

173. The Player stated that the contracts concluded between Albirex and Cruzeiro *"are a clear act of simulation, as the parties themselves acknowledge that they were not allowed to conclude a transfer agreement for the Player due to regulatory constraints (most likely, tax evasion)"*.

174. The Term of Agreement expressed the parties' interest to sign subsequent loan agreements with the Player. This mechanism was ratified by the parties when signing the Loan Agreement, valid as from 2 February 2017 until 1 January 2018 – otherwise they would have continued their relationship on the simple basis of the said Term of Agreement, plus the Employment Contract. In the event Albirex wanted to retain the Player's services, the parties needed to sign a new loan agreement. However, Albirex *"compelled the Player to sign an Employment Contract with a longer duration than the one stipulated in the Loan Agreement…"*. In short, Albirex signed an employment agreement with the Player for three years, despite only signing a loan agreement with Cruzeiro for the Player for one season.

175. The Player submitted that *"it seems, at the very least, suspicious"* that Albirex could not register the Player for three years, and seems even more unlikely that right after arranging the Term of Agreement and the Loan Agreement, Albirex alleged that it fixed the said internal issues and managed to sign the Albirex Employment Contract with him.

176. The Player also noted that Cruzeiro was *"a central pivot to all this controversy"* as it firstly acted as if the Cruzeiro Employment Contract was over and the Player had to return to Japan, but then also negotiated the transfer of the Player to other Brazilian clubs - and even executed a transfer agreement with Botafogo. Botafogo even announced the Player's hiring on its official Instagram

account. Cruzeiro sought to explain its actions as a *"lack of thorough knowledge of its new board of directors"*.

177. Despite this, the Player noted that Cruzeiro *"has always acted as the Player's employment relationship with Albirex was finished. Proof of this appears in the fact that: (i) the Player returned to Brazil and resumed his relationship with Cruzeiro; (ii) the Player joined Cruzeiro's training sessions during his stay in Brazil (Doc. 37); (iii) the employment contract signed between the Player and Cruzeiro was reactivated in the CBF's official registration system; (iv) Cruzeiro opened negotiations for the Player with other Brazilian's clubs; (v) Cruzeiro signed a valid transfer agreement with Botafogo assuming that it was the legitimate owner of the Player's federative rights; and (vi) Botafogo announced the hiring of the Player on its official social medias"*.

178. The Player stated that FIFA failed to take this into account and simply stated that the issue was closed by the fact the Player flew back to Japan. The Player also noted that his 'permanent' employment contract with Albirex was meant to start on 2 January 2018, but the termination agreement between him and Cruzeiro was only executed on 30 March 2018. Further, the Albirex Employment Contract executed on 16 January 2017 was only registered on 18 April 2018.

179. The Player also noted that, during the entire period between January 2018 and July 2018, Albirex did not pay him a single wage, in spite of stressing that the Albirex Employment Contract was valid and binding. At this point, in opposition to what was stated by the FIFA DRC in § 114 of the Appealed Decision, the incitement to the principle of *non adimplenti contractus* cannot be deemed as sufficient to justify Albirex's inconsistent default. Whether Albirex understood that the contract was valid and in force or not.

180. The Player claimed that he tried to resolve the matter with Albirex amicably, but Albirex refused to oblige (turning the situation into *"warlike circumstances"*). As a result the Player could not play for Albirex or Cruzeiro, nor did he receive remuneration from either club. He suffered damage from the contractual confusion caused by Albirex, but this was simply ignored by the FIFA DRC.

181. The Player stated that when he signed with CAP he considered that his relationship with Albirex was already over. Given that the Albirex Employment Contract *"was a mere simulation between Cruzeiro and Albirex"*, no compensation should be owed by the Player or CAP.

iv. Condition precedent in the Term of Agreement, and absence of Player's consent

182. The Player stated that FIFA misinterpreted the factual background of the case as it did not appreciate the condition precedent in the Term of Agreement requiring a 'proper document' to be executed if the loan of the Player was to be extended. The Player also noted the Albirex drafted the agreement, so any ambiguity should be interpreted to the Japanese club's detriment (Article 18 of the Swiss Code of Obligations (the "SCO") and *inter alia CAS 2018/A/6023*).

183. Further, the Player stated that Albirex and Cruzeiro *"secretly converted the loan into a permanent transfer"* without his consent or acknowledgement, and stated that the clubs therefore submitted *"fraudulent and controversial"* information on the FIFA Transfer Matching System (TMS). These

TMS instructions should be deemed null and void.

v. Illicit structure behind the "regulatory issues" and legal uncertainty involving the Player's contractual relationship

184. The Player stated that the entire dispute has been caused by Albirex's attempt to create a complex contractual structure in order to overcome *"regulatory issues"* in the transfer. However, in the four years that have elapsed since the beginning of negotiations *"Albirex has never explained which "regulatory issues" the club was facing that were capable of (i) preventing the signature of a definitive transfer agreement; (ii) preventing the signature of a three-year loan agreement; (iii) allowing three consecutive one-year loan agreements; and (iv) allowing the signature of a three-year employment contract with the Player; and why, just a few days later, how these severe restraints were surprisingly solved"*. The Player stated that the Panel should request Albirex (as the party holding all the essential information) to evidence these alleged regulatory issues.

vi. Nullity of the Albirex Employment Contract under the SCO

185. The Player stated that the Albirex Employment Contract is *"impossible because its duration exceeds the duration of the Loan Agreement and is thus null for the part in excess"*. Further, the Albirex Employment Contract *"and the whole contractual structure are also unlawful due to the fact that they aimed to obtain financial unlawful gain (most likely tax evasion) by Albirex – meeting the criminal type described in the article 146 of the Swiss Criminal Code…"*. The Player claimed the Albirex Employment Contract was also *"immoral as it falls under all the circumstances given by the CAS to define the concept of immorality under Swiss law"*.

186. Accordingly, the Player concluded that the Albirex Employment Contract should be considered invalid as per Article 20(1) of the SCO.

vii. Compensation

187. In the event the Panel was to determine that the Player breached the Albirex Employment Contract without just cause, the Player submitted that any compensation payable should be reduced based on the various factors contained in Article 17 of the FIFA RSTP and the following factors:

- Albirex saved more than USD 850,000 in salaries that would have been paid to the Player until the end of the Albirex Employment Contract;
- Despite the Player's best efforts, Albirex *"failed to put into effect the second loan agreement with the Player"* and it should be inferred that it was *"only relatively interested in the Player's services"* and was rather interested in *"constructing a legal situation which enabled it to claim an abusive compensation"*;
- Albirex did not incur any expenses as it did not have to hire a replacement once the Player left the club;

- Even if the Panel concludes that the Player acted in breach of contract, this was at least partially caused by the conduct of Albirex and Cruzeiro;
- FIFA determined that the compensation clause in the Albirex Employment Contract was not applicable due to a lack of proportionality;
- As a result of the COVID-19 pandemic, Palmeiras (the Player's current employer) has already reduced his salaries by 25%. The penalty imposed by FIFA would be problematic in normal situations, but is *"catastrophic"* in the present circumstances.

188. The Player submitted that the damages awarded should amount to USD 350,000 (i.e. the transfer fee paid by Albirex to Cruzeiro of USD 1,200,000 less the salaries saved of USD 850,000). Alternatively, the Panel should substantially reduce the amount of compensation awarded to Albirex.

viii. Sporting sanctions on the Player

189. The Player cited CAS jurisprudence (*inter alia*, *CAS 2014/A/3658* and *CAS 2017/A/4935*) to argue that a sporting sanction should not be automatically imposed on players under Article 17 of the FIFA RSTP.

190. The Player reiterated many of the same arguments summarised above to argue that no sporting sanction should be imposed. Further, the Player claimed that he tried to resolve the matter amicably, and in any event if a sporting sanction was imposed in addition to the economic penalty it would excessive – under penalty of *bis in idem*. Further, Palmeiras would be the party most affected despite being an innocent party. The Player also noted that he did not play football for a period of almost 8 months due to the *"chaotic scenario"* this dispute caused with respect to his ITC, so has *"already been sufficiently harmed by the whole dispute"*.

191. Accordingly, the Player requested that the 4 month period of ineligibility is completely lifted.

2. Albirex

192. Albirex submitted the following prayers for relief in its Answer:

"Procedurally:

FIRST – To order the Player to comply in full with the evidentiary request submitted above;

As to the merits:

SECOND – To dismiss in full the appeal lodged by [the] *Player;*

At any rate:

THIRD – To order the Player (and CAP) to pay all the arbitration costs and be ordered to reimburse the Club 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

FOURTH – To order the Player to pay to the Club any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 30,000 (thirty thousand Swiss Francs)".

193. In summary, Albirex submitted the following in its Answer:

i. FIFA jurisdiction

194. Albirex rejected the Player's arguments regarding FIFA incorrectly accepting jurisdiction in this dispute, and stated that:

"Such behaviour of the [Player]*, notably, denying the jurisdiction of the FIFA DRC as set out in the FIFA RSTP but, simultaneously, making using of its tools in order obtain the ITC of the Player is a clearly against the general principle of law "cuius commoda, eius et incommoda". That is, the one who seeks and obtains a benefit must also take the possible burdens coming with that benefit".*

195. Albirex also submitted that:

"For the good of the referenced legal framework, it seems reasonable – to say the least – that terms and conditions of a contract concluded between a player and a club do not supplant international premises determined by the FIFA RSTP. Within this scenario, it seems reasonable that the provisions established in Article 22, lit. a) of the FIFA RSTP overrides the contents of clause 15 of the Employment Contract".

196. Albirex also rejected the Player's arguments regarding the JFA arbitral bodies satisfying FIFA Circular 1010, and stated that he failed to meet his burden of proof in this regard. Albirex claimed it was not clear, for instance, that the parties have the right to appoint the president of the referenced tribunal. In addition, it is also uncertain whether clubs and players have equal influence in the appointment of the (up to 4) arbitrators of the J. League Arbitration Committee.

ii. As to the alleged impossible conditions in the Albirex Employment Contract

197. Albirex submitted that in the case at hand, it is undisputed that the intention of the parties has always been to use the necessary means with the purpose to guarantee (or fulfil) what the Player and Albirex had agreed many times, i.e., a 3-year employment relationship. *"Any other interpretation that the Player is maliciously trying to construct in order to justify the decision to breach the Employment Contract does not have any factual or legal basis whatsoever. It is evident that if the Player intended to have the discretion to terminate the Employment Contract unilaterally after its first year the latter should have clearly indicated it".*

198. Albirex claimed that the parties solved any alleged 'impossible conditions' when the Loan Agreement was converted into a permanent transfer on FIFA TMS. This occurred before the Player returned to Japan, but the Player unilaterally terminated the Albirex Employment Contract without just cause. Moreover, when returning to Japan the Player requested Albirex to issue tickets with the purpose of joining the 2018 pre-season period, whilst the alleged problems were still pending.

199. Albirex also noted that when the Player returned to Japan, he sent WhatsApp messages to several members of the club apologising for problems that he created in the last couple of months, and confirming his decision to stay and comply with his contract. Albirex stated that *"it is evident that the contradictory behaviour of the Player is – to say the least – a regrettable violation of the mandatory principles of good faith, as well as venire contra factum proprium (or estoppel)"*.

200. Albirex also stated that the Albirex Employment Contract was never subject to any other contract or document. Further, Cruzeiro never objected to the Player and Albirex concluding a 3-year employment contract. Indeed, when Albirex requested the conversion of the Loan Agreement into a permanent transfer Cruzeiro complied with the necessary measures through the FIFA TMS immediately.

201. Albirex rejected the Player's *"baseless and deplorable"* assertions that he was *"compelled"* to sign the Albirex Employment Contract and Term of Agreement, and stated that he failed to provide any such evidence to support these assertions.

202. Albirex argued that the validity of an employment contract is independent of the validity or even the existence of a transfer agreement. In other words, loan agreements and employment contracts are completely autonomous and independent contracts, which have no relation to each other. The agreements under the loan agreement cannot be applied or invoked to the employment contract and vice versa. In line with the above, the allegation that the Albirex Employment Contract was somehow no longer valid after the first year of the 3-year term, based upon the assumption that its terms and conditions were not compatible with the provisions established in the Term of Agreement or the Loan Agreement *"has obviously no factual or legal basis whatsoever"*.

iii. Cruzeiro's role

203. Albirex stated that Cruzeiro only negotiated a potential transfer of the Player with Botafogo because the new Board elected at Cruzeiro were not aware of the terms and conditions which were agreed between the club and Albirex. Once Albirex became aware of the negotiations, it informed both Botafogo and Cruzeiro and both clubs immediately ceased negotiations. Cruzeiro then ordered the Player to return to Japan.

204. Shortly thereafter, on 13 January 2018, Cruzeiro uploaded the relevant information into FIFA TMS with the objective of converting the Loan Agreement into a permanent transfer, as the Player's ITC had never returned to it. In essence, this meant that Cruzeiro never re-registered the Player before the CBF. Albirex also stated that Cruzeiro did not induce the Player to breach his contract, and in fact repeatedly requested him to return to Japan.

205. Albirex noted that on 23 February 2018, the Player sent WhatsApp messages to the Albirex President, official translator and former manager as well as the club's legal counsel. In those messages, the Player stated that he was not going to request being loaned out to a third club in the 2018 season. In doing so, he evidenced that he was fully aware the Albirex Employment Contract was still valid and binding. The Player also stated his intention to join Albirex's

training, and requested plane tickets for his family to travel to Japan. Albirex stated that these weren't the actions of a player who did not consider bound by an employment contract. However, the Player shortly then left Japan and returned to Brazil, seeking to join Cruzeiro again.

206. Albirex submitted that the breach of contract occurred when the Player decided to sign with CAP, meaning that CAP was the 'new club' which should be held jointly and severally liable.

iv. Failure to pay remuneration and the alleged invalidation of the employment relationship in 2018

207. Albirex submitted that it is not reasonable to believe that the Player requested it to issue business class tickets for him and his agent to travel to Japan if he considered that the Albirex Employment Contract was no longer valid. Similarly, Albirex would not have obliged, and Cruzeiro would not have allowed the Player to travel to Japan if neither party considered that the Albirex Employment Contract was valid.

208. Albirex stated that the reason it did not pay the Player between January 2018 and July 2018 was because the Player refused to provide services to the club. Although the Player sent Albirex a *"very emotional text message (via WhatsApp) apologising for the last contractual breaches"* he shortly thereafter left Japan and returned to Brazil without providing any explanation. Albirex cited *CAS 2006/A/1141* and argued that it was within its rights to withhold salaries in light of the Player's actions.

v. The real intention of the parties

209. With respect to the intention of the parties and the interpretation of the applicable contracts, Albirex submitted the following:

"236. Furthermore, whenever considering the real intention of the parties in the case at hand, it is essential to highlight that pursuant to Article 1 of the Swiss Code of Obligations, a contract requires the mutual agreement of the parties, which obligation may be either express or implied.

237. As such, when the interpretation of a contract is in dispute, the Judge seeks the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expression used by the parties, without regard to incorrect statements or manner of expression used by the parties by mistake or in order to conceal the true nature of the contract (Article 18, paragraph 1 of the Swiss Code of Obligations). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 128 III 419 consid. 2.2 p. 422).

238. The requirements of good faith tend to give preference to an objective approach. The emphasis is not so much on what the parties may have meant but on how a reasonable man would have understood their declarations (ATF 129 III consid. 2.5 p. 122; 128 III 419, consid. 2.2 p. 422)".

210. In light of the above, Albirex stated that *"there was nothing, which would eventually condition the validity of the Employment Contract to the conclusion of any other contract whatsoever – including but not limited to –*

a second loan agreement. Such approach is incontestable since in general employment contracts are completely autonomous in relation to transfer agreements". As such, in light of the above, the allegation that if the parties *"intended to extend the temporary transfer of the Player to Albirex for the 2018 and 2019 seasons, they should have executed a proper document, not only does not make any sense but also and mostly, whatsoever the scenario, does not affect the validity of the* [Albirex] *Employment Contract"*. Albirex also stated that Cruzeiro's actions (once the new Board understood the situation) in refusing to comply with the Player's intentions also evidences that the parties did not intend for this to be just a one season loan.

211. Albirex stated that even if the Panel were to consider only the terms and conditions in the Term of Agreement, it was still *"undisputed"* that the parties intended for the Player to be registered with Albirex for three seasons.

vi. The Player's alleged absence of consent or acknowledgement

212. Albirex denied the Player's claim that he did not consent to the conversion of the Loan Agreement into a permanent transfer. Albirex stated that the Player signing the Albirex Employment Contract bound him to the club for 3 seasons. Further, Albirex noted that the Player granted his consent to any sort of loan/transfer whatsoever for the period of three seasons, under the Fifth Clause of the Term of Agreement:

"The Player hereby confirms his interest and personal request to be loaned to Albirex for the three-season period and further declares to waive any salaries or payment that would be due by Cruzeiro between 2 February 2017 and 1 January 2020".

213. Any alleged misuse of FIFA TMS could only result in disciplinary sanctions, and does not necessarily result in the nullity of a contract. In any event, Albirex and Cruzeiro *"corrected the alleged problem by converting the First Loan Agreement into a permanent transfer through a specific device developed and provided by the FIFA TMS to clubs and football associations"*. Further, this correction occurred before the Player arrived in Japan for the 2018 pre-season, meaning his breach of contract occurred after the alleged problem was corrected. Therefore there was no legal basis for the Player to cite this as a reason to terminate the Albirex Employment Contract.

vii. As to the alleged "illicit structure" and "regulatory issues"

214. Albirex stated it did not understand what the Player intended with arguments regarding the alleged illegal structure of the transfer, given that he fully accepted to be a part of it.

215. Noting that the scope for terminating a contract is very limited – and must be an *ultima ratio* - Albirex submitted that there has never been *"for example, any sort of breach of confidence where the so-called clausula rebus sic stantibus would eventually apply since the Player has always been extremely aware about the terms and conditions of the Term of Agreement, the* [Loan Agreement] *and has always been the intention of the parties"*.

216. Further, the Player failed to clarify how his allegations affected him or the provisions set out in

the Albirex Employment Contract. The Player also failed to meet his burden of proof in establishing the alleged illegalities.

217. In conclusion, *"it is undisputed that by failing to carry the burden of proof of its allegations, they become legally groundless in particular if the intention was to invalidate the Employment Contract, which fulfilled the so-called "essentialia negotii" in full"*.

viii. As to the alleged nullity of the Albirex Employment Contract and violation of Swiss law

218. Albirex denied that there was any 'illicit structure' in the transfer of the Player. Albirex submitted that *"any attempt to nullify the* [Albirex] *Employment Contract based upon the allegation that there was a simulation in relation to the* [Loan Agreement] *has no legal basis whatsoever and as such, shall be set aside in full by the members of this CAS Panel"*.

219. Albirex also rejected the Player's arguments regarding the alleged impossibility of the Albirex Employment Contract (Article 20 of the SCO) as a *"malicious and bad faith construction"*, noting that the Player completed the first year of the contract. Albirex stated that *"assuming but not admitting, the fact that* [Loan Agreement] *or the Term of Agreement has – temporarily and at some point – violated some of the provisions established in Annexe 3 of the FIFA RSTP is not enough to revert them into null or void contracts"*.

220. Albirex also strongly rejected the Player's allegations of tax evasion, and noted that the Player never raised a complaint when he was in Japan. The Japanese tax authorities have also never raised any queries. *"In other words, the Player affirms that the Club and Cruzeiro E.C. developed an illegal plan but failed to provide any evidence or proof about how it occurred. Furthermore, assuming but not admitting, that such prohibited framework effectively existed, the Player (and CAP) failed to prove or demonstrate how it eventually affected the Player, as well as the losses suffered"*.

ix. As to the remuneration due by the Player and CAP

221. In respect of the compensation payable by the Player and CAP, Albirex stated that *"the FIFA DRC decided that the calculation of the compensation due to* [Albirex] *had occur in accordance with other elements. In essence, it means that the Appealed Decision decided to ignore the contractual autonomy of the parties, as well as the fundamental principle of freedom of contract"*.

222. Albirex noted that the parties had agreed a *"fixed and reciprocal compensation"* in the event of a unilateral termination without just cause, under Clause 7(1) of the Albirex Employment Contract which stated (free translation to English):

*"7. **Amount of Termination Compensation***

(1) The contractual compensation will have the following amount:

US$ 10,000,000 (ten million American dollars/net)".

223. Albirex stated that there was no reason for the above clause to be considered invalid. In in

accordance with the jurisprudence of the SFT, the compensation agreed in advance between the parties of a contract, as general rule, cannot suffer any amendment or adjust, except said contract allows it or the amount is excessive (*BGE 114 II 264 E. 1a*). The reduction of a penalty shall occur in exceptional cases only, when it is grossly unfair.

224. Albirex stated that within such a scenario, *"when deciding whether a reduction of the penalty fee is admissible, and if so, to what extent, the Panel should take into account all the circumstances of the case, in particular a series of criteria. For instance: (i) the creditor's interest in the other's party compliance with the undertaking; (ii) the severity of the default or breach; (iii) the intentional failure to breach the main obligation; (iv) the business experience of the parties; and (v) the financial situation of the debtor"*.

225. Albirex stated that there was no need to reduce the penalty in light of the circumstances in this case, and that the penalty clause does not violate public policy of the fundamental principles and rights of law. Albirex also noted that the Player two new contracts within a short period of time and obtained considerable financial advantages.

226. Albirex rejected all of the Player's arguments with respect to reducing the penalty, and reiterated the Player's bad faith throughout the dispute. Albirex also noted that the Player first argued that he was forced to sign the Albirex Employment Contract, before withdrawing that contention and deciding to *"fabricate new ones"*. Albirex also noted that it did sign a player (Leonardo Nascimento Lopes de Souza) to replace the Player, however as it was in the second division at the time the 'replacement costs amount' was lower than it would have been if the club was still in the top division.

227. Albirex also stated that CAP had failed to mention that it obtained a EUR 6,000,000 transfer fee for the Player when it transferred him to Palmeiras. Moreover, the Player earned a sell-on fee himself in the amount of EUR 1,500,000. These amounts are likely to increase in the future given the sell-on fees both parties will receive once Palmeiras transfers the Player to a further club in the future.

228. In light of the above, Albirex stated that a penalty clause of EUR 10,000,000 was fair and reasonable.

x. As to the inapplicability of the sporting sanction

229. Albirex stated that sporting sanctions had to be imposed given the Player's breach of contract without just cause took place in the 'protected period'. Albirex considered the Player was lucky to avoid being suspended for 6 months or more, and the 4 month ban imposed should be upheld.

3. FIFA

230. FIFA submitted the identical prayers for relief and arguments in its Answer for each Appeal (see *CAS 2020/A/7272* above).

C. CAS 2020/A/7283

1. Albirex

231. Albirex submitted the following prayers for relief in its Statement of Appeal:

"On the merits:

FIRST – To partially amend the Appealed Decision;

SECOND – To accept the present appeal;

THIRD – To confirm that the [Player] *breached the Employment Contract, by unilaterally terminating the Employment Contract without just cause;*

FOURTH – To order the [Player] *to pay to* [Albirex]*, USD 10,000,000 (ten million US Dollars) due as compensation plus interest at a rate of 5% p.a. 20 July 2018 until the date of effective payment;*

FIFTH – To confirm that [CAP] *shall be held jointly and severally liable for the payment of the aforementioned compensation.*

At any rate:

SIXTH - To order the Respondents to pay all arbitration costs and be ordered to reimburse [Albirex] *the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS;*

SEVENTH – To order the Respondents to pay to [Albirex] *any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel".*

232. Albirex submitted the following prayers for relief in its Answer:

"As to the merits:

SECOND – To accept in full the present Appeal Brief and, consequently, partially amend the Appealed Decision, notably, the item 3) of its Chapter IV as follows:

"3) The Player within 30 days as from the date of notification of this decision has to pay to the Club USD 10,000,000 (ten million dollars) plus default interest of at the rate of 5% p.a. starting on 27 July 2020 until effective date of payment.

THIRD – To confirm all the other items of Chapter IV of the Appealed Decision;

At any rate:

FOURTH – To order the Player (and CAP) to pay all arbitration costs and be ordered to reimburse the Club 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

FIFTH – 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 30,000 (thirty thousand Swiss Francs)".

233. In summary, Albirex submitted largely similar arguments to its Answer in *CAS 2020/A/7277*

(summarised above), however also submitted the following in support of its Appeal:

234. When deciding whether it was appropriate to reduce the penalty fee of USD 10,000,000, the Panel should consider the following factors (ATF 4C.249/2001, 16.01.2002):

- **The creditor's interest in the other party's compliance with the undertaking** – the penalty amount *"had the first objective to demotivate the Player to breach the Employment Contract and as such, permit the Club to have a maximum sportive gain. Alternatively, and if the Player decided to breach the Employment Contract, to obtain the necessary compensation"*. The penalty clause was therefore to incentivise the Player to honour his contract, rather than to serve as liquidated damages.

- **The severity of the default or breach** – Albirex stated that *"the situation is even more serious than usual when a contractual breach occurs. It is important to stress that the Player not only breached the* [Albirex] *Employment Contract in the middle of the 2018 season and within the termed "Protected Period" but just after the relegation of the Club"*. Albirex claimed that without the Player, its chances of returning to the J-League 1 in the 2018 or 2019 seasons *"turned to zero"*. However, neither CAP nor the Player cared about this and as a result, the Player signed a more lucrative contract with CAP and CAP secured *"one of the best players of the 2017 J-League 1 season without paying any transfer fee whatsoever"*.

- **The intentional failure to breach the main obligation** – Albirex claimed that *"the decision of the Player to breach the Employment Contract was explicitly intentional. Such conclusion is obvious taking into consideration several circumstances and evidences regarding the matter at hand"*.

- **The business experience of the parties** – Albirex noted that the Player (and his agent) as well as CAP were being advised by the same lawyers during the events in dispute, so the parties were well aware of the consequences deriving from the breach of the Albirex Employment Contract.

- **The financial situation of the debtor** – Albirex submitted that both the Player (having signed allegedly lucrative contracts with CAP and then Palmeiras) and CAP (having recent sold numerous players for millions of Euros in transfer fees) were in a very good financial position, and could afford the penalty amount negotiated.

235. Albirex also stated that the performance of the Albirex Employment Contract was not impossible (under Article 20 of the SCO), the performance of the contract was not unlawful or in violation of Swiss law, and the contract was not immoral. There was no unfair advantage for any of the parties in negotiating the contract and there is no evidence of the Player being pressured to sign it. Further, Albirex stated that the penalty clause in this present case was not unusual in the context of football, and claimed that there were significantly higher penalty clauses in the industry (citing an example of, *inter alia*, Karim Benzema allegedly having a penalty clause of EUR 1 billion in his contract).

236. Albirex argued that the Appealed Decision ignored the principle of contractual freedom and the autonomy that all parties have in accordance to Swiss law. Albirex also claimed that the FIFA DRC disregarded (i) the fact that the penalty clause acted as a disincentive to the Player

from breaching the contract, (ii) the transfer fee (and other affiliated fees) paid by Albirex to Cruzeiro to transfer the Player, (iii) the bad faith of the Player, (iv) the expectation created by the Player who stated his desire to abide by the contract, only to disappear a few days later, and (v) the value of the services of the Player, which was reflected in the transfer market.

237. Albirex noted that it was not fair that the club had to pay USD 1,200,000 to Cruzeiro to sign the Player, but then three years later is only awarded USD 1,129,499 in damages for the Player's breach when on the other hand, CAP (who did not pay any transfer fees for the Player), profits by selling the Player on to Palmeiras for EUR 12,000,000. Albirex stated that by ordering the Player and CAP to pay it only USD 1,129,499 in compensation, the FIFA DRC was sending a message to the football community that *"crime does pay"*.

238. Albirex stated that the Player, in bad faith, also hid the existence of an image rights agreement and private agreement with CAP. The club only became aware of this through media interviews in Brazil. Albirex claimed that it seems reasonable to believe that if the members of the FIFA DRC had access to the actual total amounts received by the Player from CAP, the conclusions reached in the Appealed Decision were going to be drastically different.

239. With respect to the remuneration earned by the Player, Albirex claimed that:

"… CAP paid the Player as image rights: (i) USD 62,210 due in the 2018 season (July-December); (ii) USD 149,304 due in the 2019 season; (iii) USD 149,304 due in the 2020 season; and (iv) USD 62,210 due in the 2021 season (January-July). […] *In addition, CAP and the Player entered into an agreement under which the latter was entitled to receive 50% of any transfer fee that the former received from a third club in the future regarding his permanent transfer".*

240. Accordingly, Albirex claimed it was undisputed that the Player breached the Albirex Employment Contract and signed the CAP Employment Contract in order to obtain a considerable financial advantage.

241. Albirex submitted detailed calculations for what it considered to be the lost value of services it suffered, and concluded that it amounted to USD 8,424,025. Moreover, interest of 5% p.a. should be awarded from the date of the breach of contract – i.e. 26 July 2018, rather than 29 March 2019 as awarded in the Appealed Decision.

242. In conclusion, Albirex submitted that the Appealed Decision should be set aside and that Albirex is awarded the full amount of the penalty clause – i.e. USD 10,000,000.

2. The Player

243. The Player submitted the following prayers for relief in his Answer:

"130. Preliminarily, the Player hereby requests the Honorable Panel the following relief:

(i) to overturn the decision rendered by the Deputy President of CAS Appeals Division´s in order to rule that Albirex's Appeal Brief is inadmissible due to the untimely filing and, as a consequence,

to withdraw Albirex's Appeal Brief, in accordance to article R51 of the CAS Code and to the CAS well-established jurisprudence, dully endorsed by the Swiss Federal Tribunal.

131. *In merits, the Player hereby requests this Honorable Panel to totally dismiss the present Appeal Brief and, consequently, reject all its allegations. As a consequence, to order that* [Albirex] *shall bear all costs and a contribution towards the Player´s legal fees and other expenses incurred, such as translations and relevant costs incurred in connection with this proceeding.*

132. *Alternatively, in accordance with the terms of the Player's Appeal brief, the Player hereby requests this Panel to address the compensation mitigation factors in order to rule that the quantum of the compensation awarded by FIFA DRC must be reduced to zero and the four months restriction of eligibility imposed on the Player must be set aside".*

244. In summary, the Player reiterated the arguments put forth in his Appeal Brief (summarised above in *CAS 2020/A/7277*), but also submitted the following in support of his Answer:

i. Admissibility of Albirex' Appeal Brief

245. The Player submitted that Albirex failed to file its Appeal Brief in time, meaning that the submission should be disregarded as inadmissible.

ii. The points Albirex did not address in its Appeal Brief

246. The Player noted that Albirex failed to explain the 'transitory restraints' which were a crucial issue in this case. The Player claimed that Albirex needed to explain to the Panel what these restraints were, in order for the Panel to assess the real justification for Albirex not signing the Player on a definitive basis for 3 seasons.

247. The Player also noted the 'controversial approach taken by Cruzeiro', stating that the club's actions in agreeing a transfer of the Player to Botafogo (after the Player returned from Japan) proved that the Player's federative rights never permanently transferred to Albirex. Cruzeiro sought to explain this as a *"lack of thorough knowledge of its new board of directors"*. The Player stated that the FIFA DRC failed to take this issue into account, as it concluded that the issue was 'closed' due to the Player flying back to Japan.

248. The Player also noted that Albirex failed to mention that its counsel acts on behalf of Cruzeiro in several matters, and indeed currently represents Cruzeiro in various matters. The Player stated that:

"That is only one possible conclusion to all these questions: Cruzeiro and Albirex had (and still have) a common ground of a dual and concomitant legal representation by the same lawyers and the Player was simply left behind in a tangle of conflicting decisions referring to his own personal and professional life".

249. The Player argued that the fulfilment of the Albirex Employment Contract was therefore impossible, immoral and illegal. It was impossible due to the fact that the contract exceeded the term of the Loan Agreement, and it was unlawful because the whole contractual structure was

aimed at obtaining an unlawful financial gain – *"most likely tax evasion by Albirex"*. The Player claimed it was also immoral under Swiss law.

250. The Player also rejected Albirex's arguments regarding the alleged breach occurring during the protected period, claiming that there was no valid employment contract for 3 years, so the 'protected period' cannot be recognised.

iii. In the alternative, the compensation payable

251. In the event that the Panel determined that compensation was payable to Albirex, the Player rejected the amount of compensation requested by Albirex (i.e. USD 10,000,000). The Player noted that Albirex admitted that the purpose of the penalty amount *"was a protection in relation to any eventual offers from Chinese clubs…"*. As such, the clause was aimed at protecting Albirex's interests against Chinese football clubs, so *"not even Albirex believes that the penalty clause was indeed reciprocal and should be imposed on the Player"*. The Player claimed that in no circumstances should the penalty clause be imposed on him, especially given that he was a Brazilian employee providing services in Japan without speaking English or Japanese.

252. The Player also noted that Albirex saved more than USD 850,000 in salaries that would have otherwise been payable to him, and despite his numerous letters Albirex did not *"regularize his contractual situation"* and *"failed to put into effect the second loan agreement to correct the irregularities occasioned by the mysterious "transitory restraints / regulatory issues"*. The Player claimed this demonstrated that Albirex was only *"relatively interested"* in services, but was more interested in *"constructing a legal situation which enabled it to claim an abusive compensation"*.

253. The Player also noted that CAS jurisprudence (*CAS 2019/A/6444-6445*) has held that no compensation can be due by an athlete to a club even if the athlete terminated the contract without just cause, if the circumstances warranted it. The Player claimed that, given the circumstances of the present case, the Panel should similarly reduce the compensation payable to nil.

254. The Player also rejected Albirex's claims regarding an alleged replacement cost, noting that the player it claims was an *"indispensable substitute"* (Leonardo Nascimento Lopes de Souza) was only signed a year after he left the club, and played a different position (striker) to him (winger).

3. CAP

255. CAP submitted the following prayers for relief in its Answer:

> *"252. In view of all the above,* [CAP] *hereby reaffirms the content and pertinent arguments of its Appeal Brief filed on 14 September 2020 in CAS 2020/A/7318, to which he makes full reference, requesting this Honourable Court to dismiss the baseless arguments and fallacious allegations put forward by* [Albirex] *and to:*
>
> *e) Dismiss Albirex's appeal since FIFA had no competence to deal with the present dispute and to*

render the Appealed Decision;

f) *Declare Albirex's appeal as inadmissible, in accordance to articles R32 and R51 of the CAS Code;*

g) *Alternatively, in the event the Panel determines that it has jurisdiction and that Albirex's appeal is admissible:*

   i. *order Albirex to produce the evidence requested in Chapter VII above;*

   ii. *reject Albirex's appeal in the merits in totum;*

   iii. *in the unlikely event* [Albirex's] *claims are accepted and the Panel considers that the compensation set in the Appealed Decision should be increased, limit the amount of compensation according to the criteria set out in this Answer;*

h) *Order* [Albirex] *to bear all administrative and procedural costs eventually incurred by the Respondents in the present case".*

256. In summary, CAP submitted the following in support of its Answer:

i. FIFA did not have jurisdiction

257. CAP claimed that FIFA did not have jurisdiction to hear this dispute, as the parties had agreed for any disputes to be submitted to the JFA under clause 15 of the Albirex Employment Contract. CAP stated that, as the party which drafted the Albirex Employment Contract, Albirex bore the burden of proof in establishing why the JFA would not have jurisdiction. CAP also stated that the J. League Arbitration Committee is an independent and impartial tribunal that satisfies the requirements of FIFA Circular 1010. Therefore, CAP submitted that FIFA should not have seized jurisdiction over this dispute.

ii. Admissibility of Albirex's appeal

258. CAP submitted that the Appeal Brief filed by Albirex was filed late, and therefore its Appeal should be considered withdrawn.

259. On 23 September 2020, the Deputy President issued his decision with regards to granting Albirex a further extension request. On 30 October 2020, the Panel confirmed to the parties that it considered the Deputy President's decision as final, and that it could not review or reconsider it. Following the Panel's decision, CAP (and indeed the Player) filed a claim before the SFT, as a *"procedural precaution in the event that the Panel confirms that its decision was final"*.

260. In short, CAP submitted that Albirex's deadline to file its Appeal Brief was 14 September 2020. It ultimately filed this submission on 28 September 2020. CAP argued that Albirex' Appeal should therefore be automatically be considered withdrawn pursuant to Article R51 of the CAS Code.

261. Accordingly, CAP requested the Panel to reconsider its decision with respect to the admissibility

of Albirex's Appeal Brief.

iii. Amount of compensation due

262. CAP rejected Albirex's request for USD 10,000,000 of compensation as clearly excessive.

263. CAP noted that the Term of Agreement contained a penalty clause of USD 1,000,000 in the event the Player *"failed to execute the necessary documents to allow the Player to be registered with Albirex for the 2017, 2018 or 2019 season…"*. CAP argued that it was *"legally and economically misconceived"* to apply a USD 10,000,000 penalty rather than a USD 1,000,000 when the consequences and the alleged damage are the same.

264. CAP stated that Albirex first agreed a fair estimation of the Player's market value in the tripartite agreement (i.e. Term of Agreement) only to then insert a disproportionate penalty clause into the Albirex Employment Contract amounting to ten times the amount previously agreed between the parties. Accordingly, CAP argued that the amount of damages should not exceed USD 1,000,000.

265. Alternatively, CAP argued that the USD 10,000,000 should be reduced for proportionality under Swiss law (Article 163 SCO) and CAS jurisprudence (e.g. *CAS 2014/A/3858*), as it is manifestly excessive. CAP noted that based on his salary under the Albirex Employment Contract, the Player would have had to provide his services for 27 years in order to earn the amount established in the penalty clause.

266. CAP also rejected Albirex's attempt to compare the present penalty clause with the 'release clauses' of players such as Karim Benzema and Luka Modric, noting that those players instead had 'buy-out clauses' which were mandated under Spanish law (*Real Decreto 1006/1985*). Accordingly, those clauses cannot be compared to the present penalty clause. CAP noted that *CAS 2016/A/4550 & 4576* confirmed the distinction between the two.

267. CAP also stated that when considering the penalty clause under the criteria established by Swiss doctrine and CAS jurisprudence – i.e. (i) the creditor's interest in the other party's compliance, (ii) the severity of the breach, (iii) the intentional failure to breach the main obligation, (iv) the business experience of the parties, and (v) the financial situation of the debtor – this only further confirms that the penalty clause should be reduced.

268. CAP also stated that if the market value of the Player was to be taken into account when calculating damages, the relevant figure is somewhere between USD 302,297 (the penalty amount included in the transfer agreement between Cruzeiro and Botafogo – which ultimately did not materialise) and USD 1,200,000 (the loan fee paid for the Player's services). CAP also stated that Albirex's attempts to include the Player's future transfer value when he was transferred to Palmeiras years later had no logical nexus to the premature termination of the Albirex Employment Contract. Therefore, this figure should not be considered for the purposes of calculating compensation, in line with CAS jurisprudence (*CAS 2017/A/4935*).

269. Further, CAP stated that the amount of salaries Albirex saved was USD 800,000, which should be set off against any damages awarded. Subsidiarily, the amount of salaries not paid to the Player whilst the Albirex Employment Contract was valid, USD 194,569.88, should be deducted.

270. CAP also stated that if the Player acted in breach of contract without just cause, then Albirex and Cruzeiro contributed to this termination *"in such a significant manner that such a termination is directly attributable to them…"*.

iv. Wrong calculation by Albirex

271. CAP argued that Albirex sought to cite various figures which were not relevant to the calculation of damages in the present case – such as the Player's future transfer value, future salaries (plus signing fees, image rights etc.), the 'termination fine' (*clausula indenizatoria desportiva*) under Brazilian law and even commission allegedly paid to an agent on behalf of the Player. CAP requested the Panel to disregard all of these amounts.

D. CAS 2020/A/7318

1. CAP

272. CAP submitted the following prayers for relief in its Statement of Appeal:

"14. Based on the factual and legal arguments that shall be further explained and specified in the Appeal Brief, [CAP] *hereby submits the present Statement of Appeal with the petition for the order of the following pleas for relief:*

a) Declare that [FIFA] *lacked jurisdiction to deal with the present dispute and thus annul the Appealed Decision;*

b) Subsidiarily, uphold the present appeal and set aside the Appealed Decision, replacing it by an Arbitral award which:

i. Dismisses all allegations put forward by Albirex;

ii. Declares that the Employment Contract between Albirex and the Player was not breached without just cause by the Player;

iii. Declares that the Player shall pay no compensation to Albirex;

iv. Lifts the ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods imposed on CAP;

Alternatively, in the event the Player is found liable to pay compensation to Albirex:

c) Establishes that the relevant amount be reduced under the criteria of specificity of sport, FIFA RSTP, Swiss law and FIFA and/or CAS jurisprudence;

d) Declares that CAP is not the new club of the Player, pursuant to art. 17 par. 4 of the FIFA RSTP, and thus (i) shall not be jointly and severally liable for any compensation eventually due

by the Player and (ii) shall not be imposed a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods;

e) Consider Cruzeiro as the new club of the Player, pursuant to art. 17 par. 4 of the FIFA RSTP;

f) In the unlikely event this Honorable Court considers that CAP is the new club of the Player, declares that CAP has not induced the breach of the contract by the Player and thus (i) shall not be jointly and severally liable for any compensation eventually due by the Player, who shall be considered the sole debtor of such amount, and (ii) shall not be imposed a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods;

In any case

g) Order Respondents to reimburse [CAP] *for legal expenses added to any and all FIFA and CAS administrative and procedural costs, already incurred or eventually incurred, by* [CAP]*;*

h) *Grants CAP a contribution towards his legal fees and other expenses incurred in connection with the proceedings to be determined ex aequo et bono by CAS, pursuant to art. R65.3 of the CAS Code".*

273. CAP submitted the same prayers for relief in its Appeal Brief as it did in its Statement of Appeal, save for the following amended prayers:

"[…]

d) Declares that CAP is not the new club of the Player, pursuant to art. 17 par. 4 of the FIFA RSTP, and thus (i) shall not be jointly and severally liable for any compensation eventually due by the Player;

[…]

f) In the unlikely event this Honorable Court considers that CAP is the new club of the Player, declares that CAP has not induced the breach of the contract by the Player within the Protected Period and shall not be imposed a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods;

In any case

g) Order that the file is sent back to FIFA for the realization of an investigation of the Albirex and Cruzeiro and the imposition of the appropriate sanctions;

h) Order Respondents to reimburse [CAP] *for legal expenses added to any and all FIFA and CAS administrative and procedural costs, already incurred or eventually incurred, by* [CAP]*;*

i) Grants CAP a contribution towards his legal fees and other expenses incurred in connection with the proceedings to be determined ex aequo et bono by CAS, pursuant to art. R65.3 of the CAS Code".

274. In summary, CAP submitted largely the same arguments and evidence as it did in its Answer in *CAS 2020/A/7283* (summarised above), and also submitted the following in support of its Appeal:

i. The Term of Agreement and Loan Agreement

275. CAP argued that in entering the Term of Agreement and Loan Agreement, *"the parties had (i) expressed Albirex's intention in retaining the Player's services during three seasons; (ii) introduced a condition precedent according to which, if they intended to extend the temporary transfer to the 2018 and 2019 season, they were required to do so by signing future loan agreements which extended the temporary transfer"*.

276. CAP claimed that *"the conclusion that can be extracted from the clear wording of the Term of Agreement and the* [Loan Agreement] *is one and only: that the Player had the obligation to return to Cruzeiro and resume his employment relationship with the Brazilian club (which, indeed, he did)… In other words, the understanding between the contracting parties was that the loan had expired and, in the event they intended to extend it for one or two further seasons, they would have to execute a proper document establishing in details the conditions of a new loan – which they never did"*.

277. CAP also submitted that FIFA failed to adequately consider the fraudulent structure of the transfer:

"The Appealed Decision has clearly ignored the suspiciousness of Albirex's conduct and the real motives behind the whole contractual situation, assuming that those were not important to adjudicate this dispute. However, the evading tactics engaged by [Albirex] *to avoid explaining those "regulatory issues" leave no other explanation other than the fact that Albirex was indeed pursuing illegal purposes while setting up the Fraudulent Structure"*.

278. Further, CAP considered that the structure of the transfer violated Articles 3, para. 1 and 9.1, para. 2 of Annexe 3, and Article 18bis of the FIFA RSTP.

279. CAP claimed that the Player did not consent to the conversion of the Loan Agreement to a permanent transfer, and *"since the Player's consent is the key element to any successful and valid transfer (see CAS 2010/A/2144, CAS 2010/A/2098), the unilateral conversion of the loan into a permanent transfer without the Player's consent or knowledge breached the applicable rules and shall therefore be deemed null and void"*.

ii. The invalidity of the Albirex Employment Contract after 1 January 2018

280. CAP claimed that since the parties failed to enter into the proper document required to extend the loan to the 2018 season, the Albirex Employment Contract was in any case no longer valid and effective after 1 January 2018. Following Albirex's failure and unwillingness to adjust the irregularities and enter into a "proper document" with the Player, the latter had no other choice but to return to Brazil and resume his employment relationship with Cruzeiro.

281. Further, CAP claimed that the reason why Albirex failed to pay any amounts to the Player in 2018 is not that it was excused from doing so due to an alleged breach of the Player, but rather that those amounts were actually not due, since the Albirex Employment Contract was not valid and binding after 1 January 2018.

282. In any event, CAP considered that the 'fraudulent structure' of the transfer was in violation of

Swiss law.

iii. CAP is not the 'new club'

283. CAP submitted that in the event the Player is found to have acted in breach of contract without just cause, CAP should not be held as the 'new club of the Player, as it should be Cruzeiro instead. CAP stated that upon leaving Albirex, the Player returned to Cruzeiro and although he was not reintegrated into its squad, Cruzeiro sought to negotiate a transfer of the Player to Botafogo. In fact, Cruzeiro ended up paying Botafogo compensation of BRL 1,000,000 due to the transfer falling through.

284. In addition, FIFA regulations and CAS jurisprudence (e.g. *CAS 2016/A/4408*) when a contract linked to a temporary transfer is terminated, the club of origin is considered as the 'new club'. Given the above circumstances, Cruzeiro should be considered as the Player's 'new club'.

iv. As to the compensation due by the Player and CAP

285. CAP submitted that it did not induce the Player to breach the Albirex Employment Contract, nor does it bear any fault. It only negotiated with the Player *"months after the Player had left Japan, when the Player had already declared that he did not recognise the* [Albirex] *Employment Contract as valid for the 2018 season and had already even lodged a claim at FIFA"*. Accordingly, the Player should be the sole person responsible to pay compensation to Albirex, and/or CAP's liability shall be considerably reduced.

v. As to the absence of inducement by CAP and the severity of the sanction imposed

286. For the same reasons set out above, CAP stated that its involvement with the Player began months after the Player terminated the Albirex Employment Contract. *"Even if that was not the case, CAP took all the appropriate due diligence steps within the Brazilian registration system in order to confirm his free agent status"*. Accordingly, CAP should not be subject to a ban on registering players.

2. Albirex

287. Albirex submitted the following prayers for relief in its Answer:

"Procedurally:

FIRST - To order CAP to comply in full with the evidentiary request submitted above;

As to the merits:

SECOND – To dismiss in full the appeal lodged by CAP;

At any rate:

THIRD - To order the Player (and CAP) to pay all arbitration costs and be ordered to reimburse the Club 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

FOURTH– 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 30,000 (thirty thousand Swiss Francs)".

288. In summary, Albirex submitted largely the same arguments and evidence it did in its submissions in *CAS 2020/A/7277* and *CAS 2020/A/7283* (see above), in support of its Answer, so it will not be repeated here for the sake of brevity.

3. Cruzeiro

289. Cruzeiro submitted the following prayers for relief in its Answer:

"For all the above, [Cruzeiro] *respectfully request that this Panel:*

a. Dismisses the Appeal lodged by CAP;

b. Confirms the [Appealed Decision]*;*

c. *Condemns CAP to solely bear the arbitration costs and to pay the legal fees to Cruzeiro in the amount deemed appropriate by the Panel".*

290. In summary, Cruzeiro submitted the following in support of its Answer:

291. Cruzeiro denied CAP's assertions that it was the Player's 'new club'. Cruzeiro stated that:

"CAP performed every single obligation of the new club in the book. Not once has [CAP] *acted in a manner such as to honestly believe that Cruzeiro was* [the Player's] *new club: they sent Albirex a request for documents and, on TMS, they entered all the information required from the new club; an ITC was requested from the Japanese Football Association ("JFA") by CBF on behalf of them; and, finally, in the position of the new club, they requested that the Player was provisionally registered with the club, in view of the JFA's lack of cooperation".*

292. Further, Cruzeiro argued that if CAP truly believed that Cruzeiro was the Player's new club, then *"the whole registration procedure would have taken place within CBF's system – the use of TMS and the need of an ITC are definitive proof that, when signing* [the Player]*, CAP was transferring him directly from Albirex, meaning that, evidently,* [CAP] *was correctly considered by FIFA as being the* [Player's] *new club, and, therefore, liable as to arts. 17.2 and 17.4 of the RSTP".*

293. Cruzeiro also alluded to what it considered to be procedural bad faith by CAP, noting that one of the quotes in the media which CAP claimed was by Cruzeiro's Vice-President (that Cruzeiro *"had received plenty of offers for the Player and that it would be better for Cruzeiro if the Player signed for another club"*) was in fact a quote from a reporter. Cruzeiro submitted that this was evidence of *"CAP's will to turn the procedure to its favor by use of force".*

294. Cruzeiro concluded that *"every single party involved in the present transaction is aware of the fact that Cruzeiro has nothing to do with the present matter, including CAP, as previously proven. FIFA itself has recognized, in the decision fought by CAP, that Cruzeiro has no liability as to the amounts claimed in this arbitration – in fact, the only procedure in which Cruzeiro was included as a respondent was the present one, out*

of 4 procedures in course concerning the present matter…. Evidently, [CAP]*, in an attempt to split the amounts it is supposed to pay, is trying to include Cruzeiro in the list of liable parties, which will certainly not stand".*

4. The Player

295. The Player submitted the identical prayers for relief that he submitted in *CAS 2020/A/7283* (see above). In addition, the Player submitted the identical arguments and evidence in his Answer, so it will not be repeated here for the sake of brevity.

5. FIFA

296. FIFA submitted the identical prayers for relief in its Answer for each Appeal (see *CAS 2020/A/7272* above). In addition, FIFA submitted the identical arguments and evidence in its Answer, so it will not be repeated here for the sake of brevity.

VI. JURISDICTION OF THE CAS

297. 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.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

298. Article 58, para. 1 of the FIFA Statutes states:

"Appeals against final decision 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".

299. The Parties accepted the jurisdiction of the CAS. The jurisdiction of the CAS was not disputed by any of the Parties, and all the Parties signed the Order of Procedure. It follows that the CAS has jurisdiction to hear this dispute.

VII. ADMISSIBILITY

300. The Statements of Appeal, which were filed on 15 July 2020 (*CAS 2020/A/7272*), 20 July 2020 (*CAS 2020/A/7277*), 23 July 2020 (*CAS 2020/A/7283*), and 31 July 2020 (*CAS 2020/A/7318*), complied with the requirements of Articles R47, R48, R49 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

301. The Panel notes that in *CAS 2020/A/7283,* the Respondents challenged the admissibility of

Albirex's Appeal Brief, claiming that it was filed late. Albirex claimed that it filed it in accordance with an extension of time given by the Deputy President of the CAS Appeals Division. The Panel were twice asked to overrule that extension, but the Respondents failed to demonstrate how the Panel would be able to do so, even if it wanted. There is no power given to a CAS panel in the CAS Code to review decisions taken by the President or Deputy President of the CAS Appeals Division, nor was any jurisprudence made available to the Panel. Rather, CAP turned to the Swiss Federal Tribunal, but did not ask it (or the Panel) to halt these proceedings pending any decision. CAP was content for the matter at hand to proceed and participated fully at the hearing. The Panel therefore could only reject the challenges to the admissibility of Albirex's Appeal Brief, without prejudice to any decision the Swiss Federal Tribunal may ultimately take.

302. None of the parties objected to the admissibility of any of the other Appeals. It follows that the Appeals are admissible.

VIII. APPLICABLE LAW

303. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

304. Article 57, para. 2 of the FIFA Statutes states that:

"[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

305. The Parties were in agreement that the applicable law in this case were the various regulations of FIFA – in particular the RSTP– and additionally Swiss law.

306. Additionally, Palmeiras submitted that *"the Federal Constitution of Brazil, the Brazilian Federal Law n. 9.615-1998, also known as the "Pele Law" and CBF Rules and Regulations"* also apply.

307. The Panel determines that the FIFA regulations, namely the FIFA RSTP, are applicable in the present matter, with Swiss law applying subsidiarily to fill in any *lacuna* in the FIFA regulations.

IX. MERITS OF THE CLAIM

A. Summary of the main issues

308. In summary, the issues which the Panel needs to address are as follows:

i. The standing of Palmeiras to sue, and of Cruzeiro to be sued;

ii. Did FIFA have jurisdiction to hear this dispute?

iii. Is the Albirex Employment Contract a standalone agreement, or is it affected by the Term of Agreement and/or the Loan Agreement?

iv. Pursuant to Art 10.1 of the RSTP, was the Player's consent needed (if not implied/given) for Albirex to convert the Player's loan to permanent transfer?

v. Is the Albirex Employment Contract void under Swiss law?

vi. If not, when did the Albirex Employment Contract end?

vii. Who ended the Albirex Employment Contract?

viii. Was there just cause to terminate the Albirex Employment Contract?

ix. What is the compensation due as a result of the termination of the Albirex Employment Contract?

x. Is any club joint and severally liable for the compensation due?

xi. Should the Player be subject to sporting sanctions?

xii. Should the Player's 'new club' be subject to sporting sanctions?

309. The Panel will address these issues in turn.

310. For the sake of completeness, the Panel notes that when Palmeiras filed its Statement of Appeal (in *CAS 2020/A/7272*) on 15 July 2020, it requested a stay of execution of the Appealed Decision. On 22 July 2020, the Player's Order on Provisional Measures (in *CAS 2020/A/7277*) was granted, thereby staying the execution of the Appealed Decision. In light of this, Palmeiras wrote to the CAS Court Office on 24 July 2020 stating that it *"has no objection to the fact that our request for stay is not assessed at this moment by CAS, as long as the request for stay granted for the [Player] in the procedure CAS 2020/A/7277 […] is maintained"*. Whilst Palmeiras ultimately never withdrew its request for provisional measures, given that the Appealed Decision was stayed (due to the Player's Order on Provisional Measures) the Panel considers this issue to be moot. Accordingly, it will not address this issue further.

i. The standing of Palmeiras to sue, and of Cruzeiro to be sued

311. As a preliminary matter, the Panel notes that Palmeiras filed an appeal against the Appealed Decision (*CAS 2020/A/7272*) although it was not a party to the Appealed Decision, on the basis that it was the Player's present club and therefore it had a sporting and financial interest worth protecting. Accordingly, the Panel needs to determine whether Palmeiras has standing to sue in the present dispute.

312. In summary, the Panel agrees with FIFA's position that Palmeiras does not have standing to sue in the present matter. As noted by FIFA, all the consequences of the Appealed Decision are directly linked to the Player himself (and his "new club", which, as can be seen below, is not Palmeiras) and any possible claims to be made by Palmeiras are just derivative of the sanction

on the Player. Palmeiras does not have any separate *"aggrieved right"* from the Player and the dismissal of Palmeiras' Appeal would not be detrimental to the position of the Player, nor would it affect any other interest in any possible manner.

313. Palmeiras relied on the *Suarez* case, but the Panel does not consider it to be an analogous case to the present circumstances. In the *Suarez* case, the player was banned not only from official matches, but also from taking part in any football related activity (administrative, sporting or any other kind) as well as being banned from entering the confines of any stadium for 4 months. That CAS panel (on appeal) in that case determined that the specific sanction imposed on the player meant that his new club (FC Barcelona) was sufficiently affected so as to have a tangible interest of financial and sporting nature at stake. Conversely, in the present case, the Player is only banned from official matches. It is not analogous to the *Suarez* case, and the Panel does not consider that Palmeiras has a tangible interest of financial and sporting nature at stake, unlike FC Barcelona did in the *Suarez* case.

314. Moreover, the Panel notes that Palmeiras was clearly aware of the risk that the Player could be banned for breach of the Albirex Employment Contract. At the hearing, the Panel heard that the club had considered signing him before CAP did and were therefore aware of the dispute with Albirex. It ultimately decided not to sign him at that stage, to ensure it would not be joint and severally liable for any compensation the Player may end up paying to Albirex. It did eventually sign him from CAP, before the dispute was settled. It signed him in the knowledge that he may face such a ban.

315. Accordingly, the Panel concludes that Palmeiras does not have standing to sue in the present case. Accordingly, any arguments and prayers for relief submitted in its Appeal in *CAS 2020/A/7272* are rejected.

316. There is also a question about whether Cruzeiro has the standing to be sued in this matter. The Panel notes that Cruzeiro acted as an intervening party before the FIFA DRC. During the present CAS proceedings, CAP included Cruzeiro as a respondent in its Appeal (*CAS 2020/A/7318*), and CAP directed some of its prayers for relief against Cruzeiro – notably that Cruzeiro should be considered as the Player's "new club" instead of CAP. In order for the Panel to determine which club was the correct "new club", Cruzeiro needs to be heard on this issue.

317. Accordingly, the Panel concludes that Cruzeiro does have standing to be sued in the present proceedings.

ii. Did FIFA have jurisdiction to hear this dispute?

318. The Player (in *CAS 2020/A/7277*) and CAP (in *CAS 2020/A/7318*) requested the Panel to conclude that the FIFA DRC incorrectly seized jurisdiction over this dispute. As such, one of the preliminary issues the Panel needs to determine is whether FIFA had jurisdiction to render the Appealed Decision.

319. The Panel notes that both Albirex and the Player took their disputes to FIFA. Article 22 of the

FIFA RSTP does provide the FIFA DRC with jurisdiction over a contractual dispute between a club and a player, with an international dimension. Importantly, neither objected to FIFA's jurisdiction at the time and neither claimed that the JFA had sole jurisdiction. The Panel could see other documents (such as the Term of Agreement and Loan Agreement) which gave jurisdiction to FIFA. Conversely, it was not clear which body at the JFA (or indeed the J-League) could have dealt with the dispute.

320. Indeed, the Panel concurs with FIFA that even the Appellants could not agree which precise committee of the JFA would be competent. The Player referred to the Disciplinary Committee, the Ethics and Mediatory Committee and the Appeal Committee, but did not specify which body was the appropriate tribunal. CAP referred to the Japanese League Arbitration Committee, but the Japanese League is a separate organisation to the JFA (which is the body referred to in Clause 15 of the Albirex Employment Contract). Palmeiras referred to the JFA independent arbitration tribunal. In addition to the above and in any event, the Panel considers that there is insufficient evidence to determine conclusively whether any of the aforementioned bodies satisfies FIFA Circular 1010.

321. The Panel was unconvinced by the Player's arguments that he only turned to FIFA on 20 April 2018 to get an ITC. His request was for FIFA to conclude that he should be released from the Albirex Employment Contract. Ultimately, his will was for FIFA to deal with this contractual dispute and only after he received the Appealed Decision that he decided he would look to object to FIFA's juridiction. FIFA rightly submitted that he is estopped from doing so.

322. The Panel notes that CAP have raised the same arguments, despite not being a party to the Albirex Employment Contract. Their submissions effectively support the Player's submissions, but fall with his.

323. Accordingly, and on balance, the Panel concludes that FIFA did, in fact, have jurisdiction over this dispute.

iii. Is the Albirex Employment Contract a standalone agreement, or is it affected by the Term of Agreement and/or the Loan Agreement?

324. The Panel notes the position of the Player that the Loan Agreement was just for one season and that, once expired, it automatically put an end to the Albirex Employment Contract, despite that having a 3 year term.

325. The Panel notes that there is no express termination provision within the Albirex Employment Contract to that effect. Contracts can be made conditional on each other, but that is not the case here. The Panel notes that the CAS considered a similar issue in *CAS 2019/A/6463 & 6464:*

> *"125. The first reason why they do not consider the Huesca Employment Contract as valid is because pursuant to Article 151 SCO the contract was allegedly subject to certain necessary prerequisites or implied condition precedents, neither of which were fulfilled. More specifically, the Appellants argue that, before*

the Huesca Employment Contract, the clubs had to enter into a written transfer agreement and the Player had to terminate the Östersunds Employment Contract.

126. The Panel observes that there is no rule in the RSTP setting out the specific order of steps that must be taken to sign a player. While CAS panels have previously declared that the ideal or "ordinary course" of a transfer is the signature of a transfer agreement followed by the signature of the employment contract (see CAS 2016/A/4489 at para. 99), they have not – and rightfully so – considered that to be the only and mandatory way. In practice, transfers occur in a variety of different manners. For example, a typical way is for the parties to sign all agreements – the transfer agreement, the new employment contract, and the termination of the old employment contract – all in one sitting, with the specific aim to avoid the exact complications that arose in the present case. As there is no mandatory sequence of events for the transfer of a player, the Panel finds that the validity of the Huesca Employment Contract was not preconditioned on the clubs entering into a written transfer agreement (which, in any case, as held supra at para. 121 et seq., the clubs did by email of 7 August 2018) or on the termination of an existing employment contract".

326. In the case at hand, the Panel agrees that the FIFA RSTP does not establish the need for a contract of employment to be linked to a transfer or loan agreement. They can stand independently from each other. Albirex and the Player signed the Term of Agreement envisaging a 3 year deal and this was confirmed in the actual Albirex Employment Contract that shortly followed. The Player was content with this arrangement until the point Albirex were relegated and only then looked to utilise the lack of a second loan agreement being signed as a lever to end the Albirex Employment Contract.

327. The Panel noted that there was no condition with the Albirex Employment Contract for a loan agreement to be valid or subsisting. It appeared that the parties were anticipating that the loan would be made a permanent transfer, as soon as Albirex had dealt with its mysterious regulatory issue.

328. The Player said he read all the contracts along with his father and his lawyer – Mr Ribeiro. He signed the Albirex Employment Contract voluntarilily.

329. In any event, the Term of Agreement envisaged the arrangements lasting for 3 years and clause 10 of the Term of Agreement expressly stated that the Loan Agreement would not change the Term of Agreement.

330. Ultimately, the Panel determined that the Albirex Employment Contract should be treated as a stand-alone agreement. Its term was for 3 years and there was no need to imply a term that should the Loan Agreement not be renewed, then the agreement would automatically end.

iv. Pursuant to Art 10.1 of the RSTP, was the Player's consent needed (if not implied/given) for Albirex to convert the Player's loan to permanent transfer?

331. The Panel notes that the Player and CAP made numerous submissions about the alleged lack of consent by the Player for his loan with Albirex to be converted into a permanent transfer.

Conversely, Albirex argued that the Player signing the Albirex Employment Contract bound him to the club for 3 seasons. Further, Albirex noted that the Player granted his consent to any sort of loan/transfer whatsoever for the period of three seasons, under the Fifth Clause of the Term of Agreement:

"The Player hereby confirms his interest and personal request to be loaned to Albirex for the three-season period and further declares to waive any salaries or payment that would be due by Cruzeiro between 2 February 2017 and 1 January 2020".

332. It seems clear to the Panel that the Player was prepared to be transferred permanently to Albirex and to play for them for 3 years. Albirex had some regulatory issues that required it to take the Player on loan initially, but it had the ability to make the arrangements permanent. The Player agreed to this at the outset and signed the contracts that put these arrangements in place. His consent had already been provided.

v. Is the Albirex Employment Contract void under Swiss law?

333. The Player and CAP both argued that the Albirex Employment Contract should be considered as null and void under Swiss law for numerous reasons, which the Panel considers below. In analysing those arguments, the Panel recognises that pursuant to Article 8 of the Swiss Civil Code (the "SCC"), each party must prove the facts upon which it is relying to invoke a right.

334. Firstly, the Player and CAP claimed that even though the Albirex Employment Contract established its validity until 1 January 2020, *"this instrument was based on impossible conditions, since its duration exceeds the one settled on the Loan Agreement"*. Therefore, the contract was void pursuant to Article 20(1) of the SCO, which states that a contract *"is void if its terms are impossible, unlawful or immoral"*. Albirex strongly denied this assertion.

335. On balance, the Panel is not convinced that performance of the Albirex Employment Contract was impossible. The Term of Agreement provided the mechanism for a second loan agreement (and penalties upon the Player and Cruzeiro if one was not signed) or for the loan transfer to become permanent. The Panel is also not convinced that the contract was immoral either, as there is simply no evidence upon which it could reach such a conclusion. There was speculation from various parties (alleging *inter alia*, tax evasion) as to why the various applicable contracts were drafted in the way they were, however the Parties failed to provide any evidence to support these allegations. Moreover, the Panel notes that the key parties affected by the contracts (the Player, Cruzeiro and Albirex) explicitly agreed to the structure of the transfer by signing all the relevant documents. Accordingly, these arguments are rejected.

336. The Player argued that Albirex *"compelled* [him] *to sign an Employment Contract with a longer duration than the one stipulated in the Loan Agreement…"*. However, as noted above, the Player confirmed that he was not forced to sign any document, and also received advice from his lawyers before signing the contracts. It appears that the Player only sought to raise this argument in November 2017, after Albirex was relegated from the top division in Japan. The Panel rejects this argument.

337. The Player also argued that the Albirex Employment Contract *"and the whole contractual structure are also unlawful due to the fact that they aimed to obtain financial unlawful gain (most likely tax evasion) by Albirex – meeting the criminal type described in the article 146 of the Swiss Criminal Code…"*. However, once again, there was no evidence before the Panel to substantiate this allegation, and this was mere speculation as to why Albirex were constrained from signing the Player permanently at the outset. For reasons known only to itself, Albirex steadfastly declined to inform the Panel what the regulatory issue that it faced were, but the Player bore the burden of proof in establishing this, which he failed to meet. The Panel therefore also rejects this argument.

338. The Player argued that the contracts concluded between Albirex and Cruzeiro *"are a clear act of simulation, as the parties themselves acknowledge that they were not allowed to conclude a transfer agreement for the Player due to regulatory constraints (most likely, tax evasion)"*. Once again however, there was simply no evidence before the Panel to substantiate this assertion. The Player bore the burden of proof in establishing this, which he failed to meet. The Panel therefore also rejects this argument.

339. Lastly, CAP argued that the structure of the transfer violated Articles 3, para. 1 and 9.1, para. 2 of Annexe 3, and Article 18bis of the FIFA RSTP. However, the Panel notes that whether or not the structure of the transfer violated the aforementioned provisions of the FIFA RSTP was a purely disciplinary matter for FIFA to determine. Even if the transfer structure did amount to a violation of those provisions (and the Panel does not make a determination on this issue either way), then it would simply result in disciplinary sanctions against the parties involved. It does not invalidate the signed contracts.

340. In summary, the Panel rejects all the arguments submitted by the Player and/or CAP in this regard, and concludes that the Albirex Employment Contract is not void under Swiss law or the FIFA RSTP.

vi. If not, when did the Albirex Employment Contract end?

341. The position taken by the FIFA DRC in the Appealed Decision was that the Albirex Employment Contract ended when the Player entered into the CAP Employment Contract on 26 July 2018. The Panel notes, however, that the Player looked to abandon the relationship in December 2017 and even appeared ready to sign for Botafogo in that same month.

342. Following the hearing, the Panel were left with the impression that the Player was in the middle of a confusing set of circumstances that Albirex's regulatory issues started. As the season finished in Japan, Albirex seemed content to allow the Loan Agreement to end, yet not to produce a new loan agreement or to make the transfer permanent. The Player returned to Brazil and to his previous club, Cruzeiro, who (as there had only been a loan at that stage) still had a contract with him.

343. The Panel noted the "mistake" of Cruzeiro in its attempt to transfer the Player to Botafogo, however, this transaction was never completed. Apparently, the Board of Cruzeiro had changed and it was unaware of the contracts with Albirex. Once its lawyers advised, Cruzeiro told the Player to go back to Japan. The Player did what he was told on 10 February 2018.

344. However, once in Japan, apart from having a medical check-up, he was left alone, did not train with the team or get to meet any officials from Albirex. At this stage he had not been paid by Albirex for a few months. After 12 days he decided that he had had enough and returned to Brazil. Once there, he wanted to re-join Cruzeiro, but that club decided to mutually terminate their contract with him. He was then back in Brazil, still not being paid. Albirex contacted the CBF to warn off any other clubs that might look to sign him. The Player confirmed at the hearing that he knew he was never going back to Japan.

345. On 20 April 2018, the Player turned to FIFA to get them to confirm that the Albirex Employment Contract was at an end. As stated above, his claim was closed as the FIFA DRC would not provide a formal declaration of termination.

346. The Panel notes that there was no formal (or written) termination of the Albirex Employment Contract (in the way there was with the Cruzeiro Employment Contract) at the time he signed an employment contract with CAP, however, it felt that the employment relationship had ended long before that point in July 2018.

347. The Player had been treated as an 'object', after he first returned from Japan. He went back to Cruzeiro, only to be sent to Botafogo, then sent back to Japan, where he was simply ignored. The Panel determines that there was a point in time prior to him signing with CAP, when both his and Albirex's conduct and words demonstrated to the Panel that the employment relationship had come to an end.

348. The Player turned to FIFA on 20 April 2018 seeking a declaration that his contract with Albirex could be declared at an end. FIFA wouldn't entertain the request.

349. Albirex made a request to the Player to return to Japan on 23 March 2018. Then a final demand on 11 April 2018 to return by 25 April 2018. Albirex stated that if he didn't return, then it would terminate the Albirex Employment Contract on 26 April 2018. Despite this threat, the Player didn't return and Albirex didn't formally terminate the contract.

350. The Panel take the view that as at 25 April 2018, both parties knew the employment relationship was over. It concludes that the Albirex Employment Contract effectively ended that day.

vii. Who ended the Albirex Employment Contract?

351. Whilst the Panel notes that Albirex had stopped paying the Player since the end of the first season and had seemingly ignored him when he returned to Japan for 12 days in February 2018, it was the Player that took the positive steps to end the relationship. He seemed to want to leave Albirex once it was relegated, he was looking to re-join Cruzeiro, then Botafogo, ultimately did go back to Japan, but then left, never to return in February 2018. He ignored the request and demand to return in March and April 2018.

352. The Panel determines that it was the Player's actions and behaviour that ended the relationship by April 2018 and caused the end of the Albirex Employment Agreement.

viii. Was there just cause to terminate the Albirex Employment Contract?

353. The Panel notes that the Player has not attempted to use this as a reason to justify his actions and behaviour that ended the Albirex Employment Contract. He relied upon the Swiss law arguments that have been considered above. The Panel notes that there was no definition of "just cause" in the FIFA RSTP at the time of the end of the Albirex Employment Agreement, but that this concept does exist in Swiss law. However, it was the Player's actions and behaviours more than Albirex's that resulted in the contract ending and as such, the Player did not have just cause.

ix. What is the compensation due as a result of the termination of the Albirex Employment Contract?

354. The Panel notes the submissions from Albirex that it should be awarded the USD 10 million sum referred to in the Albirex Employment Contract. According to Albirex, this would be in line with Article 17.1 of the FIFA RSTP, as the parties to the Albirex Employment Contract had pre-determined the compensation for a breach of that contract without just cause. Albirex additionally considered the Player's future transfers to demonstrate that this sum was an accurate reflection of the Player's value and the losses suffered by it.

355. On the other hand, the Player argued that this amount is clearly excessive and should be reduced according to Swiss law, challenged whether future transfers had any relevance and pointed to other factors such as the sum Botafogo had agreed with Cruzeiro, the fact that Albirex had saved 8 monthly salaries and that the Player had not been paid over that period by anyone.

356. The Panel recognises the long line of CAS jurisprudence that considers the compensation that should be due to a club, following the breach of an employment contract by a player. Ultimately there are many ways to calculate compensation in such Art 17.1 cases and none are binding on any CAS panel. The *Webster* method would involve the residual value of the employment contract; the *Mutuzalem* method would consider the likely value of his services and take into consideration such elements as the new salaries with CAP, the old with Albirex, the replacement fee of a similar player for Albirex (where perhaps the best evidence available to the Panel would be the USD 300,000 Botafogo would have paid Cruzeiro for the Player, rather than considering the future transfer by CAP, as noted in the *Zinchenko* case (CAS *2017/A/4935*)); and the *De Sanctis* method would not seem appropriate in the case at hand, as there was no direct replacement, rather a player brought in a year later in a different position. The Panel notes that in the Appealed Decision, FIFA's method was the averaging of the old and new salaries and adding the unamortized transfer fee.

357. The Panel also notes that different contracts signed as part of the process in the Player joining Albirex contained different penalties. For example, if the Player had refused to sign a second loan agreement, then Albirex had set a penalty of USD 1 million in the Loan Agreement.

358. At the end of the day, the Panel notes that there is a clause in the Albirex Employment Contract that purports to establish the level of compensation that should be paid to it by the Player.

When considering any other method of calculating such compensation following the differing ways under CAS jurisprudence and when considering the alternative penalty clause in the Loan Agreement and what Botafogo valued the Player at, it is clear to the Panel that a USD 10 million penalty clause is manifestly excessive. The Panel were not persuaded by Albirex's arguments that these clauses are needed to act as an incentive on players not to breach contracts of employment. It didn't work in this instance, even when the sum was so high. The Panel considered the severity of the breach and whether this was intentional, but also considered the actions of Albirex, in particular when it ignored the Player on his return to Japan in February 2018. The Panel noted that both parties had the benefit of legal advice, however, it was difficult for the Player's advisors to understand what the regulatory issues that Albirex faced when they would not share that information with them. Finally, the Panel considered the financial situation of both parties. The Player may have managed to get his career back on track and earn well from CAP and Palmeiras, but only after over half a year in the wilderness.

359. In accordance with Article 163 of the SCO, the Panel should reduce this amount to a level that is no longer excessive. On balance, the Panel feels that whatever mechanism it applied following Article 17.1 of the RSTP and the CAS jurisprudence, it would end up at roughly the same amount as the FIFA DRC had awarded Albirex in the Appealed Decision. Therefore, this amount represents a sum that is no longer excessive and the Panel determines to confirm that sum.

x. Is any club joint and severally liable for the compensation due?

360. CAP sought to argue that Cruzeiro should be considered the "new club", as the Player returned from Japan at the end of 2017 and started to train with that club again and it then looked to transfer the Player to Botafogo. In the alternative, CAP argued that it played no part in the Player ending the Albirex Employment Contract, so should have no liability either.

361. The Panel notes the wording of Articles 17.2 and 17.4 of the FIFA RSTP. With Article 17.2 there is no requirement for fault or involvement on behalf of the "new club", it is automatically liable along with the player for any compensation awarded. Whereas, with Article 17.4, there is an assumption of fault or involvement, that can be rebutted.

362. In the case at hand, the Player's temporary return to Cruzeiro and the failed attempt to transfer him to Botafogo were prior to the end of the Albirex Employment Contract. At that stage, there may have been breaches, but the contract was still "alive". It was only when it ended in April 2018 that compensation for the Player's breach took place and any new club would then join him with shared liability for such compensation.

363. The Panel determines to confirm that CAP was that new club. It was the next to register the Player once it claimed the ITC and it was the one that benefited from signing the Player without any fee. Any question of fault or involvement in the breach of the Albirex Employment Contract is irrelevant for the purposes of Article 17.2 of the FIFA RSTP, but will be considered further below, in relation to Article 17.4.

364. It follows that the FIFA DRC was correct in making CAP jointly liable for the compensation due to Albirex.

xi. Should the Player be subject to sporting sanctions?

365. The Panel notes that FIFA confirmed that in Articles 17.3 & 17.4 of the RSTP, despite the wording including "shall", it (and therefore the Panel) can consider such the issue of sporting sanctions on a case by case basis.

366. The Panel determines that had the FIFA DRC had the opportunity to have heard from the Player and the witnesses, it would have understood that he was treated as an object by Cruzeiro and Albirex, until he reached a point where he could take no more and he abandoned Japan, without informing anyone he was going, in case they stopped him. It was clear to the Panel that Albirex was additionally at fault by creating a confusing set of arrangements due to some apparent regulatory constraints, which it refused or failed to explain to the Panel.

367. This was not a case of a player looking to leave one club to join a new club on a better contract. If anything, his initial wish to return to Cruzeiro would have left him on a worse contract. The Player then waited over half a year without a club or any money, before CAP took a chance on him.

368. The Panel determines that in these unique circumstances it would not be appropriate to apply sporting sanctions on the Player and determines to cancel the sanction in the Appealed Decision.

xii. Should the Player's 'new club' be subject to sporting sanctions?

369. As noted above, the Panel has determined that CAP is the new club, for the purposes of the FIFA RSTP.

370. Having determined the Albirex Employment Contract was ended in April 2018, the Panel notes that CAP's first discussions with the Player were only in July 2018. As such it could not have induced the Player to breach the Albirex Employment Contract without just cause.

371. CAP's involvement with the Player shown to be after he had already determined to end the Albirex Employment Contract, and as such CAP have rebutted the presumption that it induced the breach. It did not induce the breach and therefore should not face any sporting sanctions either. The Panel determines to cancel the sanction in the Appealed Decision.

B. Conclusion

372. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds as follows:

- *CAS 2020/A/7272* – Appeal is dismissed;

- *CAS 2020/A/7277* – Appeal is partially upheld;
- *CAS 2020/A/7283* – Appeal is dismissed; and
- *CAS 2020/A/7318* – Appeal is partially upheld.

373. The Appealed Decision is amended by the cancellation of the sporting sanctions on the Player and CAP at paragraphs 9 and 10 of part IV of the decision; with the remaining paragraphs 1 to 8 of part IV of the decision being confirmed.

374. All other prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 15 July 2020 by Sociedade Esportiva Palmeiras (*CAS 2020/A/7272 Sociedade Esportiva Palmeiras v. FIFA*) against the decision rendered by the FIFA Dispute Resolution Chamber dated 18 June 2020, is dismissed.

2. The appeal filed on 20 July 2020 by Ronielson Da Silva Barbosa (*CAS 2020/A/7277 Ronielson Da Silva Barbosa v. Albirex Niigata Inc & FIFA*) against the decision rendered by the FIFA Dispute Resolution Chamber dated 18 June 2020, is partially upheld.

3. The appeal filed on 23 July 2020 by Albirex Niigata Inc. (*CAS 2020/A/7283 Albirex Niigata Inc. v. Ronielson da Silva Barbosa & Clube Atlético Paranaense*) against the decision rendered by the FIFA Dispute Resolution Chamber dated 18 June 2020, is dismissed.

4. The appeal filed on 31 July 2020 by Club Atlético Paranaense (*CAS 2020/A/7318 Club Atlético Paranaense v. Albirex Niigata Inc., Cruzeiro EC, Ronielson da Silva Barbosa & FIFA*) against the decision rendered by the FIFA Dispute Resolution Chamber dated 18 June 2020, is partially upheld.

5. The decision rendered by the FIFA Dispute Resolution Chamber dated 18 June 2020, is amended by the cancellation of the sporting sanctions on Ronielson da Silva Barbosa and Clube Atlético Paranaense at paragraphs 9 and 10 of part IV of the decision; with the remaining paragraphs 1 to 8 of part IV of the decision being confirmed.

(…)

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