Arbitration CAS 2021/A/7636 SønderjyskE Fodbol A/S v. Fédération Internationale de Football Association (FIFA) & Dabo Babes Football Club, award of 27 June 2022

Panel: Mr Jacopo Tognon (Italy), President; Mr Mark Hovell (United Kingdom); Mr Lars Hilliger (Denmark)

Football
Compensation for training
CAS jurisdiction
Condition for a FIFA proposal to become final and binding
Admissibility of the appeal
Applicable law
Scope of FIFA authority to issue a "proposal"
Notification of a decision
Consequences of FIFA's failure to issue a complete proposal

1. **If a FIFA letter confirming the proposal issued by the FIFA DRC regarding the amounts in dispute relating to training compensation produced legal effects towards the parties involved, it has to be considered as an appealable decision, pursuant to Article 58 para. 1 of the FIFA Statutes. And if FIFA decided that the proposal became final and biding, there are no further internal remedies available at FIFA and CAS has jurisdiction to hear this case.**

2. **The proposal regarding the amounts in dispute relating to training compensation issued by the FIFA DRC in accordance with Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the Procedural Rules) and FIFA Circular 1689, becomes final and binding only in case both parties accept the proposal or if none of the parties objects it within the stipulated term. In any case, the parties to which a proposal is addressed do not know whether the other party accepted or objected such proposal until proper confirmation is given by FIFA. Therefore, a proposal shall not be considered a final and binding decision. In this respect, pursuant to Article 13(3) FIFA Procedural Rules (2021 edition), only a "confirmation letter" from FIFA is a decision that definitely produces legal effects towards the parties involved.**

3. **An appeal filed by a club within the deadline provided for by article R49 of the CAS Code against the decision issued by FIFA confirming the FIFA proposal is admissible. Indeed, it is not of a mere informative nature but is a final decision producing legal effects towards the parties involved.**

4. **Pursuant to Article 26 of the FIFA Regulations on the Status and Transfer of Players (RSTP, 2020 edition), disputes regarding training compensation *"shall be assessed***

according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose". **Disputes related to training compensation and solidarity mechanism are usually governed by Annex 6 of the FIFA RSTP. Pursuant to the principle of *lex specialis derogat legi generali*, Annex 6 of the FIFA RSTP prevails being it a more specific provision compared to the rules set forth by the FIFA Procedural Rules. Therefore, all disputes concerning training compensation shall be submitted and managed through TMS. This is confirmed by FIFA Circular 1689 which provides that FIFA proposals in cases regarding training compensation are notified through TMS.**

5. **As per the clear wording of Article 13 of the FIFA Procedural Rules and FIFA Circular 1689, FIFA administration has in principle the authority to issue a proposal to the parties involved in disputes regarding training compensation with respect to the amounts owed, upon condition that (1) the dispute has no complex facts and legal issues or (2) in cases in which the FIFA DRC has a clear and established jurisprudence. The condition that the dispute concerns no complex factual or legal issues shall be ascertained on a *prima facie* basis. Furthermore, the FIFA administration shall establish, always on a *prima facie* basis, whether all the regulatory requirements for being entitled to receive training compensation are met. According to the mechanism of article 13 of the FIFA Procedural Rules, (i) FIFA has in principle the authority to issue proposals, if either of the pre-requisites (1) and (2) are met; (ii) FIFA has ample discretion in making that assessment but it should not act arbitrarily and should carry out proper due diligence; (iii) failure by a party to respond to a proposal qualifies as acceptance; (iv) notification of a proposal via TMS is valid and permitted; (v) the parties have the duty to regularly check the "Claims" tab in TMS. The occurrence of all the above requisites has to be verified on a case-by-case basis.**

6. **As a basic rule, a decision or other legally relevant statement is considered as being notified to the relevant person whenever that person has the opportunity to obtain knowledge of its content irrespective of whether that person has actually obtained knowledge. Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content. In this respect, in case of failure of a party to respond to or reject a FIFA proposal notified by TMS within 15 days, such proposal is considered accepted, and the party is considered having waived the right to request a formal decision.**

7. **If the FIFA administration has exceeded its ample discretion in the evaluation of the complexity of the dispute and no evaluation on the merits of the dispute has taken place before the competent sport adjudication body, the appealed decision should be annulled and the case referred back to FIFA pursuant to article R57 CAS Code. The objectives of not depriving the parties of one level of adjudication and of allowing a unitary assessment of all the relevant aspects of the dispute must prevail over the advantages with respect to time and costs that a direct adjudication on the merits of the case by a CAS panel would imply.**

I. PARTIES

1. SønderjyskE Fodbold A/S (the "Appellant" or the "Club" or "SønderjyskE") is a Danish football club, affiliated to the Danish Football Federation, which in turn is affiliated to the *Féderation Internationale de Football Association* ("FIFA").

2. The *Fédération Internationale de Football Association* ("FIFA" or the "First Respondent") is the international governing body of football, based in Zurich, Switzerland.

3. Dabo Babes Football Club (the "Second Respondent" or "Dabo") is an amateur club from Nigeria, affiliated to the Nigerian Football Federation (the "NFF"), which in turn is affiliated to FIFA.

4. The Club, FIFA and Dabo are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Whilst 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 its reasoning.

6. On 4 January 2019, the Appellant and the Second Respondent entered into a transfer agreement (the "Transfer Agreement") for the definitive transfer of the player X., born on 16 December 2000 (the "Player"), according to which the Appellant agreed to pay to the Second Respondent the amounts as follows:

   "1. SE pays a total transfer fee including training compensation of EUR 7,000 gross (VAT to be paid in Nigeria) to Dabo to be paid by release of TMS.

   2. SE pays a bonus of EUR 13,000 gross, when Nazifi has played 5 games in start 11 for SE in Superliga.

   3. SE pays a bonus of EUR 25,000 gross, when Nazifi has played 25 games in start 11 for SE in Superliga.

   4. SE pays a bonus of EUR 20,000 gross, when Nazifi has scored his first 15 goals for SE in Superliga

   5. SE pays a bonus of EUR 20,000 gross, when SE qualifies for European Group Stage, while Nazifi is still in SE.

6. SE give 30% sell on to Dabo on amount more than already paid in transfer and bonuses. For example, Nazifi gets sold from SE for a transfer amount of EUR 1,000,000 after having played 25 games in start 11 for SE in Superliga, then Dabo will receive EUR 285,900 gross (VAT to be in Nigeria).

Dabo need to send an invoice to SE on the amounts (…)".

7. The Appellant and the Player signed an employment agreement valid from 5 January until 31 December 2019 according to which the Player was entitled to receive a monthly salary of DKK 21.500 gross as a remuneration for his professional services rendered in favour of the Appellant, plus bonuses (the "Employment Agreement").

8. According to the Appellant, the Second Respondent was aware of the fact that the training compensation was included in the transfer fee.

9. On 31 January 2019, the Second Respondent issued the relevant invoice for the payment of the transfer fee in the amount of EUR 7,000 and the Appellant, in turn, proceeded with the payment of such sum.

10. However, the Second Respondent filed a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting the distribution of the training compensation in connection with the transfer and registration of the Player.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

11. On 23 November 2020, Dabo lodged a claim before the FIFA DRC, claiming EUR 186,500 and 5% interest *p.a.* as outstanding training compensation.

12. On 2 December 2020, the FIFA DRC Secretariat issued the following proposal (the "Proposal") to SønderjyskE and Dabo:

"[…] in accordance with Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, i.e. the Procedural Rules, and the FIFA Circular 1689, please find enclosed the proposal made by the FIFA secretariat in accordance with the above mentioned provision (Enclosure 1).

In sum, the proposed amount due by the respondent to the claimant is as follows:

EUR 243'287.67 as training compensation, plus 5% interest p.a. as of the due date

In accordance with Article 13 of the Procedural Rules, it is informed that the parties have to either accept or reject the proposal ***within the 15 days following this notification via TMS, i.e. until 17 December 2020****. In this regard, the Claimant is limited only to accept or reject the proposal, excluding hereby any possibility to amend its original claim.*

In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.

In case of rejection by the respondent [i.e. SønderjyskE], the latter will have ***five additional days, i.e. until 11 January 2021*** *to provide its position to the claim. Should the respondent wish to extend its deadline to file its position, it must request said extension before the expiration of the above mentioned date, in which case the deadline is automatically extended for* ***ten (10) additional days , i.e. until 21 January 2021*** *in accordance with Article 16 par. 11 of the Procedural Rules.*

Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.

Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties" (emphasis in original).

13. On 16 December 2020, Dabo informed the FIFA DRC Secretariat that it accepted the Proposal by writing the following:

"Reference is made to the correspondence dated 2 December 2020 wherein the FIFA Administration made a proposal with regard to the distribution of training compensation in connection with the registration of the Player, X.

Kindly take this as communication of the Claimant's acceptance of the proposal by the FIFA Administration".

14. SønderjyskE did not reply to the Proposal within the time limit granted therein.

15. On 18 December 2020, FIFA informed Dabo and SønderjyskE as follows (the "Appealed Decision"):

"We refer to the above-mentioned matter and in particular to the proposal made by the FIFA secretariat in accordance with Article 13 Procedural Rules.

As mentioned in our previous communication, in case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA administration within the stipulated deadline, the proposal will become binding.

Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, the Respondent, ***SønderjyskE****, has to pay to the Claimant,* ***Dabo Babes FC****, within 30 days as from the date of this notification, if not done yet, the amount of* ***EUR 243'287.67, plus 5% interest p.a. as of the due date*** *until the date of effective payment.*

In the event that the aforementioned sum is not paid by the Respondent [SønderjyskE] within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

The Claimant [Dabo] is directed to inform the Respondent [SønderjyskE] immediately and directly of the account number to which the remittance is to be made and to notify the FIFA Dispute Resolution Chamber of every payment received" (emphasis in original).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

16. On 8 January 2021, SønderjyskE filed an appeal against the Appealed Decision by submitting a Statement of Appeal before the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Club requested the case to be submitted to a Panel of three arbitrators and appointed for its part Mr Mark Hovell. However, the Appellant reserved its right to *"appoint a Sole arbitrator when the Claimant so requests, and the Respondent does not pay its share of the advance of costs within the time limit fixed by the CAS Court Office"*.

17. On 15 January 2021, the Second Respondent filed a request for termination of the procedure.

18. On 18 January 2021, the Second Respondent objected to the jurisdiction of the CAS and requested that the President of the CAS Appeals Arbitration Division issue a preliminary ruling.

19. On 19 January 2021, the Second Respondent filed another objection to the jurisdiction of the CAS and reiterated its request that a preliminary ruling be issued by the President of the CAS Appeals Arbitration Division.

20. On 25 January 2021, the Appellant filed its comments on the Second Respondent's request for termination and objections to CAS jurisdiction.

21. On the same day, the First Respondent appointed for its part Mr Lars Hilliger, objected to the admissibility of the appeal and filed a request for bifurcation.

22. On 26 January 2021, the Second Respondent agreed to the joint nomination of Mr Hilliger.

23. On 8 February 2021, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief.

24. On 9 February 2021, the CAS Court Office invited the Respondents to file their Answers within the applicable time limit.

25. On the same date, upon request of the First Respondent, the CAS Court Office confirmed that the First Respondent's deadline for filing its Answer was set aside and that a new deadline would be set after the payment by the Appellant of its share of the advance of costs.

26. On 17 February 2021, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and reset the First Respondent's deadline to file its Answer.

27. On 18 February 2021, the CAS Court Office, pursuant to Article R54 of the CAS Code, informed the Parties that the Panel appointed to decide the case was constituted as follows:

President: Mr Jacopo Tognon, Attorney-at-law in Padova, Italy

Arbitrators: Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom

Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark

28. On 22 February 2021, the First Respondent requested that the time limit to file its Answer be suspended pending a decision on its request for bifurcation (see para. 20 above).

29. On 23 February 2021, the CAS Court Office acknowledged receipt of First Respondent's letter and granted FIFA's request for suspension pending further instructions from the Panel.

30. On 1 March 2021, upon request of the Appellant, the CAS Court Office informed the latter that the Respondents did not pay their share of the advance of costs and, thus, the CAS Court Office invited the Appellant to clarify whether it preferred to submit the dispute to a Sole Arbitrator instead of a Panel of three members.

31. On 8 March 2021, the CAS Court Office acknowledged receipt of Appellant's letter informing that it preferred to maintain the appointment of the Panel instead of a Sole Arbitrator.

32. On 29 March 2021, on behalf of the Panel, the CAS Court Office invited (i) the Appellant to comment by 8 April 2021 on FIFA's letter of 25 January 2021 with particular reference to its objection to the admissibility of the appeal and the request of bifurcation; and (ii) the First Respondent to provide the CAS Court Office with copy of the complete case file related to this appeal.

33. On the same date, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in this matter, which would be held by videoconference, regarding the issues of jurisdiction and admissibility.

34. On 30 March 2021, the CAS Court Office, acknowledging the availabilities of the Parties, informed them that the hearing would be held on 6 May 2021 via videoconference.

35. On 31 March 2021, FIFA filed the complete case file connected to these arbitration proceedings.

36. On 1 April 2021, the CAS Court Office acknowledged receipt of Second Respondent's request to be granted the opportunity to submit its comments on FIFA's objection to the admissibility of the appeal and its request for bifurcation.

37. On 6 April 2021, on behalf of the Panel, the CAS Court Office, with reference to its letter of 1 April 2021, informed the Parties that the request made by the Second Respondent was granted and invited the latter to submit its considerations by 16 April 2021.

38. On 12 April 2021, the CAS Court Office acknowledged receipt of Appellant's comments on FIFA's objection to the admissibility of the appeal and its request for bifurcation as well as the Appellant's considerations on the Second Respondent's opportunity to file its comments on jurisdiction, admissibility and request for bifurcation.

39. On 14 April 2021, the CAS Court Office acknowledged receipt of Second Respondent's comments on FIFA's objection to the admissibility of the appeal and its request for bifurcation.

40. On 15 April 2021, the CAS Court Office acknowledged receipt of FIFA's signed Order of Procedure.

41. On 19 April 2021, the CAS Court Office acknowledged receipt of the Appellant's and the Second Respondent's respective signed Orders of Procedure.

B. The First Hearing

42. On 6 May 2021, in addition to the Panel and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the first hearing on jurisdiction and admissibility:

On behalf of the Appellant:

- Mr Luis Cassiano Neves, counsel;
- Ms Matilde Costa Dias, counsel.

On behalf of the First Respondent:

- Mr Miguel Liétard Fernández-Palacios, Director of Litigation;
- Mr Jaime Cambreleng Contreras, Head of Litigation
- Mr Alexander Jacobs, Senior Legal Counsel.

On behalf of the Second Respondent:

- Mr John Nnona, counsel;
- Mr Pius Ndubuokwu, counsel.

43. At the opening of the hearing, the Parties confirmed that they had no objections to the appointed Panel. During the hearing, the Parties made submissions in support of their respective arguments with respect to jurisdiction and admissibility and answered some questions from the Panel.

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

C. Post Hearing Submission

45. On 21 June 2021, the CAS Court Office informed the Parties that the Panel had decided that the CAS had jurisdiction to decide this appeal pursuant to Article R55 of the CAS Code. The Panel further decided that the letter sent by FIFA on 18 December 2020 was an appealable decision and, therefore, the appeal was admissible. With the same letter, the CAS Court Office sent to the Parties the Award issued in the case *CAS 2020/A/7252 BFC Daugavpils v. FC Kairat & FIFA* and requested them to provide their comments on such Award by 1 July 2021. The Parties were also requested to inform the CAS Court Office by 1 July 2021 if they preferred for a hearing on the merits to be held or for the Panel to decide this matter solely on the basis of the Parties' written submissions.

46. On 2 July 2021, the CAS Court Office acknowledged receipt of the Second Respondent's letter of 30 June 2021, the First Respondent's letter of 1 July 2021 and the Appellant's letter of 1 July 2021, with reference to the respective Parties' positions on the Award rendered in the case *CAS 2020/A/7252*. The CAS Court Office further noted that the Appellant requested a hearing while the Respondents preferred the Panel to decide solely on the basis of the Parties' written submissions.

47. On 7 July 2021, the CAS Court Office invited the First Respondent to submit its Answer on the merits within the subsequent twenty days.

48. On 26 July 2021, the First Respondent's request to have the deadline for filing its Answer postponed of 10 days was granted.

49. On 5 August 2021, the CAS Court Office acknowledged receipt of the Second Respondent's Answer filed on 24 February 2021 and the First Respondent's Answer filed on 5 August 2021.

50. On 12 August 2021, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in this matter.

51. On 19 August 2021, the CAS Court Office, acknowledging the availabilities of the Appellant and the First Respondent and the silence of the Second Respondent on the proposed dates, informed the Parties that the hearing would be held on 5 October 2021, via videoconference or in person, and invited the Parties to provide the CAS Court Office with a list of their respective hearing attendees by 10 September 2021.

D. The Second Hearing

52. On 5 October 2021, in addition to the Panel and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the second hearing:

On behalf of the Appellant:

- Mr Luis Cassiano Neves, counsel;

- Mrs Matilde Costa Dias, counsel;
- Mr Nasiru Jibril, witness;
- Mr Cem Sagar, witness;
- Mr Joao Carvalho, witness;
- Mr Eby Emenike, witness;
- Mr Hans Jorgen Haysen, witness.

On behalf of the First Respondent:

- Mr Miguel Liétard Fernández-Palacios, Director of Litigation;
- Mr Alexander Jacobs, Senior Legal Counsel.
- X., FIFA Case Manager

On behalf of the Second Respondent:

- Mr John Nnona, counsel;
- Mr Pius Ndubuokwu, counsel.

53. The Panel heard evidence from X., FIFA Case Manager, and from Mr Nasiru Jibril, Mr Cem Sagar, Mr Joao Carvalho, Mr Eby Emenike and Mr Hans Jorgen Haysen, as witnesses of the Appellant. In particular:

i. X. explained that the mechanism of Article 13 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") works with two pre-requisites. The fast-track system is successfully implemented when a case is without any complex factual circumstances or when there is established jurisprudence of the FIFA DRC or the CAS relevant to the case before it. The case handler carries out a *prima facie* assessment, based on a brief analysis of a case. Specifically, X. provided some examples: whether the claim is time-barred, whether it is addressed to correct Respondent, whether the Player was ever registered with club or whether there is a termination with just cause or not. In the case at stake, the analysis was made and no complex issues were found by X. X. further affirmed that in the letters that FIFA sends to the parties with a proposal, FIFA does not explain which of these pre-requisites applies, nor the rationale behind the proposal; there is only the indication of the sum the case handler has calculated to be due. In the case at hand, X. looked at the evidence in the TMS system (the Transfer Agreement) but stated that there were no contradictory elements or complex factual issues. With respect to fast-track system as a whole, the statistics demonstrated that, more than 2,000 cases had been lodged in the system and of those 70% of the claims were admissible

and proposals were issued. Those rejected were sent to the FIFA DRC. Approximately 20% (cases with complex issues) went directly to FIFA DRC. For example, FIFA has many cases involving forgeries or unsigned agreements; in those cases, he felt that it was preferable to send them to the respondents, to enable them to have their point of view understood.

ii. Mr Nasiru Jibril confirmed that he was the TMS manager for the NFF but he is no longer the manager in the Federation due to a disciplinary suspension of four months that he received after an internal inquiry. He further confirmed that on 24 May 2019 he issued the player passport, after having received information from the Second Respondent, which demonstrated that the Player was a professional.

iii. Mr Cem Sagar affirmed that he has been an intermediary and an agent for many years. He further confirmed that he was aware of the facts of the case since he was in charge of the entire transfer negotiations relating to the Player joining the Club from Dabo. Indeed, he was the person that put the two parties in contact. He also confirmed that it was clearly stated in the Transfer Agreement that training compensation was included in the transfer fee and that the Appellant drafted the Transfer Agreement. He was the Player's agent, but was authorised by both parties. Indeed, both parties (the Club and Dabo) signed the Transfer Agreement and then it was sent to him via email.

iv. Mr Joao Carvalho affirmed that he was an expert in relation to the use of the TMS system at clubs, and that he did not have any interest in this case. He has been the TMS manager of Sporting Club Braga since 2017. That club has two TMS Managers, but he was the one involved in all the claims. He also confirmed that he opens regularly TMS, every day at his office. He further affirmed that whilst he knew the mechanism of Article 13 of the FIFA Procedural Rules, there is no alarm or e-mail alert that reminds TMS users of any deadlines. Therefore, it is impossible to understand if a claim has to be rejected or not, without checking the TMS system regularly. If a party does not reject a proposal, it can become binding; but he noted that there is no sign or alarm that goes off to warn the users to accept or reject any proposal.

v. Ms Eby Emenike affirmed that she is a registered intermediary at the FA in England. She stated that the Player played as a professional with the club Kano Pillars. He was initially there on loan in 2015. After playing well for Kano's youth team, the Player was offered a professional contract. That contact started on 1 January 2017. The Player was transferred to Denmark afterwards.

vi. Mr Hans Jorgen Haysen confirmed that he was the TMS manager of the Appellant, but he had since retired from that job. There were two people carrying out the functions of a TMS Manager - normally he used to go on the system when there was an international transfer in the transfer window. He had another colleague that used to enter in the system too. On 24 December 2020, he received an email from John Nnona claiming the training compensation referred to in the Proposal so he entered in the TMS. It was in that precise moment that he realized that a claim was pending. With respect to the negotiations, he remembered that the training compensation was included in the

Transfer Agreement. He also remembered having seen the Transfer Agreement signed by Dabo. For sure, he worked with Cem Sagar on the transfer. He uploaded the version of the Transfer Agreement signed by Dabo and paid them the USD 7,000, but he did not remember to keep a copy of the Transfer Agreement signed by the Club. Mr Segar was the Player's agent and they made this deal together. The Appellant paid him. He finally confirmed that he personally signed the Transfer Agreement.

54. The Second Respondent did not have any witness at the hearing. Thus, no testimony was rendered for Dabo.

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

V. SUBMISSIONS OF THE PARTIES

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

57. Considering that the Respondents raised an objection to the admissibility of the appeal, the arguments of the First Respondent and the Second Respondent are set out first, before the position of the Appellant.

A. First Respondent's Submissions

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

(i) FIFA objected that the Appealed Decision is an appealable decision because a letter to be qualified as appealable decision *"needs to contain several elements as clarified by CAS jurisprudence […] the relevant communication needs to contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"*. The Appealed Decision *"did not contain any ruling, was of a mere informative nature and did not in itself decide that the proposal made by the FIFA administration dated 2 December 2020 was becoming binding by means of the said communication"*.

(ii) FIFA filed a request for bifurcation in order for a (preliminary) decision to be issued on the admissibility of this appeal. At this respect, it would be burdensome on the Respondents to present an exhaustive submission as to the merits of the present appeal when there is a high likelihood that no such review on the merits would be required.

(iii) The Appellant waived its opportunity to submit its position on the Proposal sent on 2 December 2020, that was tacitly accepted and, thus, became final and binding. The Appellant is precluded from revisiting the Appealed Decision insofar as it concerns the

amount awarded in the Proposal. Indeed, the FIFA administration can make written proposals with respect to certain matters, such as training compensation, that the parties are free to accept or reject within 15 days. However, the failure to answer to a proposal is deemed as acceptance and the latter will become binding. In this respect, Article 13 of the FIFA Procedural Rules and Circular 1689 are unambiguous in terms of the consequences of a failure to respond to a proposal and it is evident that the Appellant's failure to respond to the Proposal qualified as an acceptance of such Proposal. The award rendered by CAS in the case *CAS 2020/A/7252* confirmed such mechanism.

(iv) The first requirement set forth by Article 13 of the FIFA Procedural Rules, according to which the FIFA administration can make proposal in disputes relating to training compensation and solidarity mechanism, is fulfilled since the dispute regards training compensation. Furthermore, the dispute has to be without complex factual or legal issues. In this respect, following an initial assessment by the FIFA administration of the claim dated 23 November 2020, no red flags were identified for a significant factual or legal complexity. In any case, as confirmed in the award rendered in the case *CAS 2020/A/7252*, the FIFA administration has ample discretion in the assessment of the complexity of factual and legal issues, which is counterbalanced by the right of the parties to reject the relevant proposal and receive a reasoned decision.

(v) All claims related to training compensation shall be notified and managed through TMS, in accordance with Article 1 Annexe 6 of the FIFA Regulations of the Status and Transfer of Players (the "FIFA RSTP") and Circular 1689. In case a party requests a formal decision by rejecting the proposal, then the proceedings shall be conducted in accordance with the FIFA Procedural Rules. It is proven that FIFA duly uploaded the Proposal and rendered it at the disposal of both the Appellant and the Second Respondent. FIFA's position at this regard was also confirmed in the case *CAS 2020/A/7252*. Pursuant to the provisions of Annexes 3 and 6 of the FIFA RSTP, all stakeholders have a general duty and obligation to regularly access TMS. FIFA notes that the Appellant had accessed TMS prior to December 2020. Furthermore, the Appellant's TMS manager logged out of the TMS system on 26 November 2020 and, thus, it is evident that it failed to apply the required diligence in regularly check TMS. FIFA's position on the duty to regularly check TMS every three days was also confirmed in the case *CAS 2020/A/7252*.

(vi) Allowing appeals before CAS against such proposals when they have become final and binding would render the system implemented by FIFA as ineffective.

(vii) This appeal is in conflict with the principle of *"venire contra factum proprium"*. FIFA's argument is confirmed by the award issued in the case CAS *2020/A/7252*, in which the CAS panel based its conclusion of preclusion on such principle. Indeed, the Appellant shall be considered estopped from changing its course of action since it created the legitimate expectation that it accepted the Proposal and, thus, that the dispute was settled.

(viii) The legal consequence of the Appellant's failure to object to the Proposal is not a waiver to its right of appeal but an implicit acceptance of the Proposal, which is akin to the execution of a settlement agreement.

(ix) The conclusion of the case *CAS 2020/A/7252* can be adopted also in this matter.

(x) It is not the Proposal system that "curtailed the parties' right to appeal", but it is the fact that the Appellant renounced to challenge the Proposal.

(xi) FIFA declined to comment on the merits of the dispute since in case the Panel would consider that the Proposal can be challenged, the dispute would cease to have a vertical component and would become horizontal and FIFA does not have standing in such horizontal disputes.

(xii) In its request for bifurcation, FIFA requested CAS to rule that the present appeal is inadmissible. In its Answer on the merits, its requests for relief are the following:

"a. to reject the appeal on the merits;

b. to order the Appellant to bear all costs incurred with the present procedure".

B. Second Respondent's Submissions

59. The Second Respondent's submissions, in essence, may be summarised as follows:

(i) There are no objections to the First Respondent's application for bifurcation.

(ii) On 2 December 2020, the FIFA Secretariat made a Proposal pursuant to Article 13 of the FIFA Procedural Rules. The Parties were advised that in case of failure to provide their answer within the prescribed deadline, such Proposal would become binding. Considering that the Second Respondent accepted the Proposal and the Appellant failed to provide its answer within the granted deadline, in accordance with the provision of Article 13 of the FIFA Procedural Rules, such Proposal became final and binding.

(iii) In view of the fact that no decision was issued on the merit, the Panel shall have nothing to review and, thus, it shall not hear the case *de novo* and issue a new decision that replaces the Appealed Decision.

(iv) The FIFA DRC can only make a decision on the merits of a claim for training compensation pursuant to Articles 22(d) and 24 of the FIFA RSTP. In any event, considering that the Appellant refused the opportunity to submit the matter to the Single Judge for a formal decision, it would be unfair to order that the matter be referred back to FIFA. Furthermore, the Panel shall not annul the Appealed Decision and refer the case back to FIFA for a formal decision on the merits. In this respect, indeed, the Appellant rejected the opportunity to have the matter referred to the FIFA DRC or the Single Judge even if it was advised in the FIFA's letter of 2 December 2020. By not

rejecting the Proposal made by FIFA on 2 December 2020, the Appellant accepted such Proposal and, thus, it shall not argue at this stage about its appropriateness. Furthermore, it shall be noted that the Appellant decided not to exhaust the internal remedy available in accordance with the Proposal.

(v) The CAS lacks jurisdiction to entertain this appeal considering that the Appealed Decision shall not be considered as a decision of a federation but a decision of the Parties because of the FIFA's Proposal of 2 December 2020, which was not rejected by the Parties. The Appealed Decision shall not be qualified as a decision because it was a mere communication and it was the act or omission of the Parties that produced legal effect.

(vi) With respect to the Appellant's argument of the doctrine of *ultra petita*, it is worth mentioning that the Proposal was a rejectable offer by an administrative body of FIFA since it was without prejudice to the right of the parties to reject it and submit the matter to FIFA DRC for a formal decision. The doctrine of *ultra petita* shall not be interpreted as to go against the decision of the parties considering the principle of *pacta sunt servanda*.

(vii) The Appellant did not allege the non-service or non-receipt of the FIFA's letters respectively dated 2 and 18 December 2020. However, the Appellant argued that such letters were not properly notified since they were sent through TMS platform. In any case, the Appellant had access to the TMS department and, pursuant to the applicable laws and regulations, it had the responsibility to regularly check TMS.

(viii) It is not true that FIFA denied the Appellant its right to be heard in a fair hearing. Indeed, it was the Appellant that failed to take advantage of the opportunity afforded by FIFA.

(ix) The Panel has full power to review only in cases where a decision exists on the merits and in this case there is no decision on the merits and, thus, the Panel shall have no power to review.

(x) In any event, the Appellant shall be considered liable to pay the Second Respondent training compensation for its activity rendered in the training and development of the player X. from the period starting from 1 January 2015 to 29 January 2019.

(xi) The Panel is further invited to exclude all the exhibits submitted by the Appellant since they are documents that were available to the Appellant before the issuance of the Appealed Decision.

(xii) The Transfer Agreement submitted by the Appellant (as its exhibit 5) was never sent to the Second Respondent and it was never uploaded on TMS.

(xiii) Moreover, the documents submitted by the Appellant (as its exhibit 8) do not prove that Mr Cem Sagar was authorized by the Appellant to act on its behalf.

(xiv) With respect to the award rendered in the case *CAS 2020/A/7252*, the Second Respondent agrees with the conclusion reached in such award that the acceptance of a proposal corresponds to the conclusion of a settlement agreement. Thus, by failing to reject the Proposal, the Appellant is estopped from challenging the amount agreed that should, therefore, be paid in favour of Dabo. Furthermore, as confirmed in the award rendered in the case *CAS 2020/A/7252*, the FIFA administration has ample discretion in the assessment of the complexity of factual and legal issues, which is counterbalanced by the right of the parties to reject the relevant proposal and receive a reasoned decision and, therefore, the FIFA was entitled to issue the Proposal. The Second Respondent further agrees with the above-mentioned award when it affirms that the notification via TMS is proper and permitted.

(xv) The Second Respondent's requests for relief are as follows:

"a. The panel should dismiss the appeal in limine for its inadmissibility;

b. The panel should dismiss the appeal in limine and decline jurisdiction to entertain the appeal as CAS lacks the jurisdiction to entertain an appeal over a decision of parties;

c. The Appellant should bear the entire costs of the arbitration;

d. The panel should utilize this opportunity to condemn the unprofessional and hurtful comments made by the Appellant towards the 2nd Respondent and in view of that condemn the Appellant to pay the sum of EUR 15,000 (Fifteen Thousand Euros) to the 2nd Respondent as contribution towards the 2nd Respondent legal costs in this proceedings. The largely disrespectful comments are highlighted as follows:

- *"the facts of the present case clearly deviate from the nonsensical story by the Second Respondent before FIFA" (please see paragraph 94 of the Appellant's appeal brief).*
- *"In defense of its outlandish views, the Second Respondent shamelessly upholds …" "In other words, the exact opposite of what the Second Respondent, with equal measures of naivete and nefarious intent" (All in paragraph 98 of the Appeal brief).*
- *"…crass senseless and the absurdity of its false allegations…" (paragraph 150 of the Appeal brief).*

The 2nd Respondent considers these remarks to be very disrespectful and inciteful as it struggled to read through the Appeal brief which was littered with insults and derogatory remarks. Counsel must maintain decorum towards fellow counsel in arbitral proceedings.

e. The panel in its inherent powers should order the Appellant to send a written apology to the 2nd Respondent for the derogatory remarks highlighted in paragraph d above;

f. That a hearing should not be ordered in this appeal;

Alternatively:

should the panel decide that it has jurisdiction to entertain the matter and that the appeal decision is admissible:

a. The appeal should make an order upholding the appealed decision.

b. The Appellant should bear the entire costs of the arbitration.

c. The panel should utilize this opportunity to condemn the unprofessional and hurtful comments made by the Appellant towards the 2nd Respondent and in view of that condemn the Appellant to pay the sum of EUR 15,000 (Fifteen Thousand Euros) to the 2nd Respondent as contribution towards the 2nd Respondent legal costs in this proceedings. The largely disrespectful comments are highlighted as follows:

[…]

d. The panel in its inherent powers should order the Appellant to send a written apology to the 2nd Respondent for the derogatory remarks highlighted in paragraph c above;

e. That a hearing should not be ordered in this appeal.

Alternatively:

In the (unlikely) event the matter is heard de novo, the 2nd Respondent will pray for the following reliefs:

a. The appeal should make an order upholding the appealed decision.

b. The matter should not be referred back to FIFA for a formal decision in view of the Appellant's earlier rejection to have the matter referred to a Single Judge of the sub-committee of the Dispute Resolution Chamber.

c. The Appellant should bear the entire costs of the arbitration.

d. The panel should utilize this opportunity to condemn the unprofessional and hurtful comments made by the Appellant towards the 2nd Respondent and in view of that condemn the Appellant to pay the sum of EUR 15,000 (Fifteen Thousand Euros) to the 2nd Respondent as contribution towards the 2nd Respondent legal costs in this proceedings. The largely disrespectful comments are highlighted as follows:

[…]

e. The panel in its inherent powers should order the Appellant to send a written apology to the 2nd Respondent for the derogatory remarks highlighted in paragraph d above;

f. That a hearing should not be ordered in this appeal". (emphasis omitted)

C. Appellant's Submissions

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

(i) All requirements set forth in Article R47 of the CAS Code have been respected and the only possible solution to revert the Appealed Decision is by exercising the right of appeal before the CAS.

(ii) The Appealed Decision was not an administrative act issued by the FIFA Players' Status Committee, since it has *"animus decidendi"*. The Appealed Decision condemned the Appellant to pay the amount of EUR 243,287.67 as training compensation and, thus, had an impact on the legal sphere of the Appellant and, therefore, it is an appealable decision.

(iii) Once the Proposal dated 2 December 2020 became final, the Appellant had no other procedural instrument for a review or amendment of such Proposal within FIFA judicial system and, thus, the only option it had was to file an appeal before the CAS.

(iv) On 4 January 2019, the Appellant and the Second Respondent signed the Transfer Agreement for the definitive transfer of the Player, according to which the Appellant agreed to pay to the Second Respondent various amounts (see para. 6above)

(v) The Appellant and the Player signed the Employment Agreement valid from 5 January until 31 December 2019 according to which the Player was entitled to receive a monthly salary of DKK 21.500 gross as a remuneration for his professional services rendered in favour of the Appellant, plus bonuses.

(vi) The Second Respondent was aware of the fact that the training compensation was included in the transfer fee. On 31 January 2019, the Second Respondent issued the relevant invoice for the payment of the transfer fee in the amount of EUR 7,000 and the Appellant, in turn, proceeded with the payment of such sum. The Appellant is not liable to pay any amount as training compensation.

(vii) The Appellant formally contested the integrity and reliability of the Player's Passport submitted by the Second Respondent (as its Exhibit 10).

(viii) In January 2019, the Second Respondent represented to the Appellant that the Player was a professional player, and not an amateur, with a contractual relationship with the Second Respondent and, thus, the Appellant decided to execute the Transfer Agreement.

(ix) The Appellant objected the Second Respondent's interpretation of the wording of Clause 1 of the Transfer Agreement and stressed that the Parties agreed both the payment of a transfer fee which included any training compensation.

(x) The Appealed Decision was in breach of the principle of *"non ultra petita"*.

(xi) The Appellant was not informed that its failure to comply with the FIFA's instructions within the deadline established in the FIFA's Proposal constituted a waiver to its right of appeal and it was not directly and properly notified since it was only notified via TMS.

(xii) FIFA was in breach of its duty to properly conduct a due diligence on the documents submitted.

(xiii) Considering that the Proposal was notified to the Appellant on 2 December 2020, the 15-day period should have been assessed as of 5 December 2020, namely 3 days after the date of notification. Indeed, Article 2.1 of the Annex 6 to the FIFA RSTP provides that *"all clubs and all member associations shall check the Claims tab in TMS at regular intervals of at least three days"*.

(xiv) FIFA passed from a Proposal (the one dated 2 December 2020) to a communication (the one dated 18 December) and did not provide any ground or legal remedy to revert the result.

(xv) All internal remedies available to the Appellant have been exhausted and there was no possibility for the latter to revert the outcome of the Appealed Decision before FIFA.

(xvi) The Proposal should not have been sent since it was not a case without complex factual and legal issues.

(xvii) According to the Appellant, there is no need for bifurcation of the present case.

(xviii) With respect to the award rendered in the case *CAS 2020/A/7252*, the Appellant submits that the facts and legal considerations which led to such award are different from the facts and legal considerations of the case hereof. The main consequence of the award *CAS 2020/A/7252* is that in case a party fails to object to a proposal, it is waiving its right to challenge it and, thus, to appeal, and such waiver is invalid. The FIFA Procedural Rules only state that proposals not objected will become final but they do not state that by not objecting them the parties waive their right of appeal. In case FIFA wanted the proposals not objected to be not appealable, it would have so stated.

(xix) The principle of *"venire contra factum proprium"* requires two elements, namely (i) that there was a change in the position of a party and (ii) that the other party will suffer detriment as a consequence of such change in position. At this respect, neither of said conditions are met in case a party fails to reply to a proposal. A club, which (passively) fails to object to a proposal, does not adopt any contrary behaviour. Therefore, such conditions are not present in case a party remains silent after the submission of a FIFA's proposal.

(xx) Passive non-objection to a proposal cannot be compared to a situation in which a party enters into a settlement agreement with the other party.

(xxi) There would be an unequal treatment between clubs that receive a proposal and those, which are requested to reply to a claim in both cases with respect to training compensation.

(xxii) There is a potential violation of the parties' right to be heard and due process due to the reasons as follows: (i) proposals are always sent *ex parte* and on the basis of the original claim; (ii) proposals are only notified via TMS without any alert or guarantees of proper notification; (iii) the time limit to file an answer is 20 days, whilst a proposal becomes binding only after 15 days; (iv) proposals system will deprive the parties' right of appeal.

(xxiii) The Appellant's requests for relief are as follows:

"(i) Determine that the appeal filed by SønderjyskE Fodbol A/S is admissible.

(ii) Determine that FIFA Decision dated 18 December 2020 is set aside.

(iii) Issue a new decision which shall replace the Appealed Decision determining that the Appealed Decision is null and void, and consequently, the Appellant is not liable for the payment of any amount under the concept of training compensation.

(iv) Declare that the costs of the present arbitration shall be equally borne by both Respondents and that award the payment of contribution towards the Appellant legal fees in the amount of € 20.000, 00".

VI. JURISDICTION

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

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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".

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

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

63. The Appellant relied on Articles 57 and 58 of the FIFA Statutes as conferring jurisdiction on the CAS. The First Respondent does not contest the jurisdiction of the CAS, whilst the Second Respondent disputed that the CAS has jurisdiction to hear the matter at hand.

64. In particular, the Second Respondent contests the jurisdiction of CAS because: (i) the Appealed Decision was not a decision of a federation (FIFA) but a decision of the parties and it was of a mere informative nature and, thus, it is not an appealable decision; (ii) the Appellant has not exhausted all legal remedies available at FIFA since it did not reject the Proposal.

65. The Panel notes that the issue whether an appealed decision constitutes a decision is sometimes decided and handled by the CAS as a question of jurisdiction (*CAS 2019/A/6253*)

and sometimes as a matter of admissibility (*CAS 2017/A/5058*). With respect to this argument, the Panel is of the opinion that the Appealed Decision actually constitutes a decision. In any case, the reasons adopted by the Panel to reach such conclusion will be better analysed under the admissibility section of this Award, below, since the Respondents also challenge the admissibility of the appeal.

66. The Panel is also aware that there is an additional debate as to whether the exhaustion of legal remedies is a question of admissibility or jurisdiction (RIGOZZI/HASLER in ARROYO (Ed.), Arbitration in Switzerland, Article R47 of the CAS Code, N 37; MAVROVATI/REEB, The Code of the Court of Arbitration for Sport – Commentary, Cases and Materials, Article R47N 12 and 32). However, the Panel finds that in this case this argument shall not be considered as a question of jurisdiction. Indeed, whilst failure to reject the Proposal might preclude the Panel from addressing the merits of the appeal, this does not change the fact that there are no further internal remedies available at FIFA since FIFA decided that the Proposal became final and binding. As it will be better addressed under an admissibility perspective below, a confirmation letter that affected the legal position of the Parties only confirmed the Proposal.

67. Therefore, in light of the fact that the Appealed Decision, as it will be better outlined below, produced legal effects towards the Parties involved and it has to be considered as an appealable decision, pursuant to Article 58 para. 1 of the FIFA Statutes, CAS has jurisdiction to hear this case. Furthermore, the CAS jurisdiction is confirmed by the signing of the Order of Procedure by the Parties.

VII. ADMISSIBILITY

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

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

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

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]".

70. The Appealed Decision was notified to the Appellant on 18 December 2020 and the Appellant filed its Statement of Appeal on 8 January 2021. Therefore, the 21-day deadline to file the appeal was met.

71. However, the Respondents disputed the admissibility of the appeal. Indeed, the Respondents argued that in the absence of a clear objection made by the Appellant by the prescribed term, the Proposal submitted on 2 December 2020 had already entered into force and, thus, the Appealed Decision of 18 December 2020 could not be an appealable decision, being it of a

merely informative nature. Therefore, in case SønderjyskE wanted to challenge the Proposal, it had to object to the Proposal within the granted time limit.

72. The Proposal provided, *inter alia*, as follows:

"In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding".

73. The Panel notes that the Appealed Decision confirmed the content of the Proposal and stated that it entered into force determining the following:

"Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, the Respondent, ***SønderjyskE, has to pay to the Claimant, Dabo Babes FC, within 30 days as from the date of this notification, if not done yet, the amount of EUR 243'287.67, plus 5% interest p.a.*** *as of the due date until the date of effective payment.*

In the event that the aforementioned sum is not paid by the Respondent [SønderjyskE] within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision" (emphasis added).

74. The Panel notes that the Appealed Decision confirmed that the amount of EUR 243,287.67 was to be paid by SønderjyskE to Dabo, as proposed by FIFA in the Proposal. However, the Panel finds that the Appealed Decision contains certain aspects that were not contained in the Proposal, but that were only imposed on the Appellant in a final and binding manner with the Appealed Decision.

75. Indeed, the Appealed Decision (similarly to what happened in CAS 2020/A/7252) (i) confirmed that the Proposal was binding either in case it was accepted by all parties or if the parties failed to provide an answer within the prescribed deadline; (ii) confirmed that the Proposal had become binding; (iii) confirmed that SønderjyskE had to pay an amount of EUR 243,287.67 to Dabo, whilst the Proposal only refers to this amount as a proposal that could still be subject to objections; (iv) provided for a grace period of 30 days; (v) determined that interest of 5% *p.a.* in case of failure to proceed with the relevant payment within the 30-day period granted; and (vi) determined that the matter would be referred to the FIFA Disciplinary Committee should SønderjyskE fail to pay the due amount to Dabo within 30 days.

76. The argument submitted by the Second Respondent according to which the Appealed Decision was of a mere informative nature and did not produce legal effects since it was the act and/or omission of the parties that produced legal effects does not persuade the Panel.

77. Indeed, the Panel observes that the amount indicated in the Proposal becomes final and binding only in case both parties accepted the Proposal or if none of the parties objects it within the stipulated term. In any case, it is worth noting that the parties to which a proposal is addressed do not know whether the other party accepted or objected such proposal until proper confirmation is given by FIFA.

78. In light of the above, the Panel considers that a proposal shall not be considered a final and binding decision. On the contrary, only a "confirmation letter" from FIFA – such as the Appealed Decision – is a decision that definitely produces legal effects towards the parties involved

79. The Panel – as determined already in CAS 2020/A/7252 – would like to highlight the provision of Article 13(3) FIFA Procedural Rules (2021 edition), which states that *"[t]he confirmation letter shall be considered a final and binding decision pursuant to the FIFA Regulations on the Transfer and Status of Players"*. Despite such provision not being directly applicable to this appeal – since it was implemented during these proceedings before CAS – the Panel is of the opinion that it endorses FIFA's practice.

80. Indeed, the consent of both the Appellant and the Second Respondent – even tacit – was required before the Proposal could become final; without this, a confirmation letter, such as the Appealed Decision, is required.

81. In consideration of the above, the Panel finds that SønderjyskE's appeal against the Appealed Decision is admissible. However, as set out in CAS 2020/A/7252, this does not automatically imply, that the Club can challenge the amount awarded to Dabo by means of the Appealed Decision, which issue will be addressed in detail below.

VIII. LAW APPLICABLE TO THE MERIT

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

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

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

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

84. SønderjyskE submitted that the FIFA RSTP, January 2020 edition, and the FIFA Procedural Rules, June 2020 edition, govern the present dispute and Swiss law shall be applied subsidiarily.

85. Pursuant to Article 26 of the FIFA RSTP, June 2020 edition, disputes regarding training compensation *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*.

86. Given that Dabo filed its claim with FIFA on 23 November 2020, the Panel shall decide the present matter pursuant to the relevant FIFA regulations, and more specifically the FIFA RSTP and the FIFA Procedural Rules, as in force at the relevant time of the dispute, namely

the June 2020 edition both with respect to the RSTP and the FIFA Procedural Rules, and Swiss law shall be applied subsidiarily.

IX. LEGAL ARGUMENTS

87. Notwithstanding the above conclusions with respect to the jurisdiction of CAS and the admissibility of this appeal, the main issues to be resolved by the Panel in deciding this dispute are the following:

(a) Was FIFA entitled to issue the Proposal?

(b) If not, what are the consequences of FIFA's failure to issue a complete/correct Proposal?

88. As an initial matter, the Panel notes that disputes related to training compensation and solidarity mechanism are usually governed by Annex 6 of the FIFA RSTP. At this respect, Article 1 of such Annex 6 provides as follows:

"1. All claims related to training compensation according to article 20 and to the solidarity mechanism according to article 21 must be submitted and managed through TMS. The claims shall be entered in TMS by the club holding a TMS account or, in the case of a club without a TMS account, by the association concerned.

2. Unless otherwise specified in the provisions below, the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber shall be applied to the claim procedure, subject to any slight deviations that may result from the computer-based process".

89. Pursuant to the well-established principle of *lex specialis derogat legi generali*, widely applied by CAS jurisprudence (see, *inter alia*, *CAS 2017/A/5003, CAS 2015/A/4229, 2013/A/3274*), Annex 6 of the FIFA RSTP prevails being it a more specific provision compared to the rules set forth by the FIFA Procedural Rules.

90. Therefore, the Panel finds that all disputes concerning training compensation, as the one between the Appellant and the Second Respondent, shall be submitted and managed through TMS.

91. The Panel further observes that also the FIFA Circular no. 1689, by providing that FIFA administration proposals in cases regarding training compensation are notified through TMS, confirms the ruling set forth in Annex 6 of the FIFA RSTP. Indeed, such Circular stresses that *"the PSD will make the claim available to the respondent and, at the same time, will provide the parties with a written proposal via TMS which will contain, in particular, the following information […]. Once the proposal of the PSD has been notified to the parties via TMS, the parties will have 15 days to either accept or reject the proposal […]. Should none of the parties reject the proposal of the PSD within the 15 days following its notification via TMS, the proposal will become binding on them"* (emphasis omitted).

92. Finally, the Panel points out that Article 2 of Annex 6 of the FIFA RSTP provides as follows:

"1. All clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements.

2. Professional clubs and member associations will be fully responsible for any procedural disadvantages that may arise due to a failure to respect paragraph 1 above".

93. Furthermore, the FIFA Circular no. 1689 states the following:

"Finally, we kindly remind you that according to art. 2 par. 1 of Annexe 6 of the RSTP, all clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days" (emphasis omitted).

94. The Panel notes that Article 2 of Annex 6 of the FIFA RSTP not only requires the clubs to regularly check the "Claims" tab in TMS but it also provides that a failure of a club to do so will not be considered as a valid justification and, thus, such club shall bear all the disadvantages deriving therefrom.

(a) Was FIFA entitled to issue the Proposal?

95. Article 13 of the FIFA Procedural Rules (2020) provides as follows:

"1. In disputes relating to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has clear, established jurisprudence, the FIFA administration (i.e. the Player's Status Department) may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. At the same time, the parties shall be informed that they have 15 days from receipt of FIFA's proposal to request, in writing, a formal decision from the relevant body, and that failure to do so will result in the proposal being regarded as accepted by and binding on all parties.

2. If a party requests a formal decision, the proceedings will be conducted according to the provisions laid down in these rules".

96. As clarified by the FIFA Circular no. 1689, such provision was introduced in order to expedite the decision-making process in training compensation and solidarity mechanism cases without complex factual or legal issues. The Panel notes from the statistics quoted by FIFA at the hearings, this fast-track system has proved extremely effective.

97. As a consequence of the foregoing and the clear wording of Article 13 of the FIFA Procedural Rules, FIFA administration has in principle the authority to issue a proposal to the parties involved in disputes regarding training compensation – as in the case at hand – with respect to the amounts owed, upon condition that the dispute has no complex facts and legal issues or in cases in which the FIFA DRC has a clear and established jurisprudence.

98. Indeed, as to the requisites of the Proposal, the Panel finds that, according to Article 13 of the FIFA Procedural Rules, the FIFA administration may issue proposals in disputes related to training compensation *"without complex factual or legal issues"*.

99. The condition that the dispute concerns no complex factual or legal issues, as confirmed by FIFA Circular no. 1689, shall be ascertained on a *prima facie* basis. Furthermore, the FIFA administration shall establish, always on a *prima facie* basis, whether all the regulatory requirements for being entitled to receive training compensation are met.

100. The Panel notes that the system implemented by Article 13 of the FIFA Procedural Rules has the potential to settle a significant number of disputes efficiently and rapidly and, in any case, either of the parties, which have the right to ask for a reasoned decision, can reject the proposal issued by FIFA administration.

101. In this respect, the First Respondent, in its comments to the award rendered in *CAS 2020/A/7252*, stressed that the FIFA administration has "ample discretion" in its assessment of the complexity of the factual and legal issues. The First Respondent, indeed, reiterated that such *prima facie* analysis is justified by reasons of efficiency and the right of the parties to reject the relevant proposal and to ask for a reasoned decision further compensates it.

102. In this sense, the Panel notes that also the Second Respondent, in its comments to the award rendered in *CAS 2020/A/7252*, emphasised that the FIFA has ample discretion to issue proposals, being such fact counterbalanced by the possibility of all parties involved to reject the proposal and to request a reasoned decision.

103. However, even if the Panel agrees that the FIFA administration has ample discretion in determining whether a case is to be considered complex or not and, thus, if it has the authority to issue a proposal, the Panel is of the firm opinion that the FIFA administration shall not exercise such ample discretion arbitrarily or unreasonably.

104. In the case at hand, X. clearly explained during the hearing the process he followed. Indeed, the fast-track system is implemented by him when a case does not entail complex factual circumstances or there is a clear and established FIFA DRC jurisprudence in favour of the claimant. He further confirmed that he makes a *prima facie* assessment based on a brief analysis of a case, being at this stage based solely on the claim before it and what information he could see in the TMS, without the position of the counter-party.

105. In this specific case the FIFA administration went beyond its margin of ample discretion in determining the complexity of the case and it did not appear to conduct sufficient due diligence or sufficient investigation prior to determining to issue the Proposal.

106. Indeed, the Panel notes that on 23 November 2020, Dabo lodged a claim before the FIFA claiming EUR 186,500 and 5% interest p.a. as outstanding training compensation. This claim was based on the Transfer Agreement which stated that the transfer fee of EUR 7,000 included the training compensation. Dabo made it clear that its interpretation of that phrase was "to include" training compensation on top of the transfer fee; whereas, the Club's position – as presented before the Panel – was that the EUR 7,000 (together with the numerous possible additional sums and the sell on), was all to be inclusive of the training compensation. There was a clear dispute between the two Parties, which would need to be resolved. That would not seem to the Panel to represent a "simple" case, suitable for the fast-track, based on

the wording of the Transfer Agreement. Further, there was a dispute as to whether the Transfer Agreement was binding or not. Dabo claimed that the Club had never signed it. The versions in the TMS appeared to be the version signed by Dabo. Where was the version signed by the Club? Was there a version signed by the Club? Why did Dabo invoice the Club for the EUR 7,000 and the Club pay this sum if the Transfer Agreement had not been signed by both parties? There seemed a factual and evidential issue here that needed determining. Again, this did not point to a simple case suitable for the fast-track. Finally, the Proposal reported as amount to be paid in favour of Dabo the sum of EUR 243, 287, 67 plus 5% interest p.a. as of the due date. Clearly, for FIFA, Dabo had mistakenly calculated what was allegedly due to it, unless the amount was set as such for any other reason not known to FIFA. Perhaps the calculation needed to be put back to the parties, before a proposal was issued. Already since FIFA came up with another amount than Dabo, it would appear as if the dispute was not from *prima facie* analysis without complex factual and/or legal issues.

107. Crucially, the Panel wishes to emphasise that there is no reasoning in the Proposal, nor in the Appealed Decision, justifying such increase, and there is not even an indication of the method used in proposing such different amount, nor was there any statement from FIFA stating which of the two pre-requisites it was engaging and why (i.e. whether the case was *"without complex factual or legal issues"*, or whether there was *"clear, established jurisprudence"*).

108. As stated above, the Panel is of the opinion that this case should not have been qualified as "simple" and that pre-requisite was not engaged, as such the FIFA administration should not have issued the Proposal but referred the case to the FIFA DRC.

109. In light of the above, the Panel finds that the FIFA administration, in this specific case, was not entitled to issue the Proposal notified to the Parties on 2 December 2020.

110. That stated, this Panel confirms that it agrees with the findings of previous CAS jurisprudence as to the mechanism of Article 13 of the FIFA Procedural Rules (*CAS 2020/A/7252* and *CAS 2020/A/7516*) and, particularly, with the following:

(i) that FIFA has in principle the authority to issue proposals, if either of the pre-requisites are met;

(ii) that FIFA has ample discretion in making that assessment (but it should not act arbitrarily and should carry out proper due diligence);

(iii) that failure to respond to a proposal qualifies as acceptance;

(iv) that notification of a proposal via TMS is valid and permitted;

(v) that the parties have the duty to regularly check the "Claims" tab in TMS.

111. Indeed, regarding point (i) above, this Panel finds that Article 13 of the FIFA Procedural Rules provides, in principle, the basis for the FIFA administration to issue proposals in disputes related to training compensation upon the condition that such disputes are without complex factual or legal issues or concern cases in which the FIFA DRC already has a clear and

established jurisprudence. However, as previously stated, the occurrence of all the above requisites has to be verified on a case-by-case basis.

112. Furthermore, with respect to point (iv) above, Article 13 of the FIFA Procedural Rules expressly provides that in case of failure of a party to respond to a proposal issued by FIFA administration within 15 days such proposal is considered accepted. This is also confirmed by the FIFA Circular no. 1689, which determined that *"this proposal will become final and binding after 15 days following its notification if it is accepted by all parties or the parties fail to provide an answer within the deadline"*. Such FIFA Circular further clarified that *"once the proposal of the PSD has been notified to the parties via TMS, the parties will have 15 days to either accept or reject the proposal and provide the reasons which could justify the rejection. […] Should none of the parties reject the proposal of the PSD within the 15 days following its notification via TMS, the proposal will become binding on them"* (emphasis omitted). Thus, in light of the clear wording of the provision laid down in Article 13 of the FIFA Procedural Rules as well as the clear content of the FIFA Circular no. 1689, the Panel finds that a failure of a party to reply to a proposal shall be considered as an acceptance.

113. With regard to point (iv) above, the Panel agrees with the statement made in *CAS 2006/A/1153*, which reads as follows:

> *"As a basic rule, a decision or other legally relevant statement is considered as being notified to the relevant person whenever that person has the opportunity to obtain knowledge of its content irrespective of whether that person has actually obtained knowledge. Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content (CAS 2004/A/574)".*

114. Thus, there are two requirements that have to be met for having a "receipt" of a communication, namely: the communication must have entered into the "sphere of influence" of the addressee and one can expect under the circumstances that the addressee take note of it (see at this regard *CAS 2019/A/6253*).

115. Thus, the Panel finds that a failure of a party to reject a proposal constitutes a waiver of the right to request a formal decision.

116. Furthermore, as mentioned above (see paras 88 ff), a club shall regularly check the "Claims" tab in TMS, failing which such club will bear the disadvantages deriving therefrom.

117. Finally, the Panel notes the lack of any reasoning in the Proposal or the Appealed Decision as regards the engagement of the pre-requisites. Without wanting to slow down what is undoubtedly a welcomed new fast-track process for training compensation and solidarity payment claims, the Panel respectfully suggests that any proposal could state which (perhaps both) pre-requisite has been engaged and some words stating why. To do so would be sufficient to establish a complete proposal. In the case at hand, the Panel felt that the Proposal was incomplete in that regard that opened the door for this appeal to CAS. Had the Appellant ignored a complete proposal, then its failure to respond may have resulted in a different outcome. The Panel sees this as a unique set of circumstances.

(b) Which are the consequences of FIFA's failure to issue a complete/correct Proposal?

118. In consideration of all the foregoing, the Panel finds that in the case at hand the FIFA administration has exceeded its ample discretion in the evaluation of the complexity of the dispute. This was simply not a matter that should have been sent down the fast-track route.

119. Therefore, pursuant to Article R57 of the CAS Code, this Panel annuls the Appealed Decision and refers the case back to FIFA.

120. In this respect, the Panel notes that Article R57 of the CAS Code allows CAS panels to issue a new decision or to annul the decision and refer the case back to the previous instance. In circumstances where there was no decision taken on the merits at the first instance, the Panel determines that it should not render a decision on the merits of the case and substitute a FIFA decision which never considered the merits, rather it is more appropriate to return the case to FIFA (see *CAS 2012/A/2854;* MAVROMATI/REEB, op. cit., Article R57 N 20).

121. In light of the above, this Panel would deprive the Parties of one level of adjudication, if it was to render an award on the merits of a dispute never examined by the FIFA competent body (see *CAS 2007/A/1301*).

122. Indeed, the Panel finds that, in the event no evaluation on the merits of the dispute has taken place before the competent sport adjudication body, the objectives of not depriving the Parties of one level of adjudication and of allowing a unitary assessment of all the relevant aspects of the dispute must prevail over the advantages with respect to time and costs that a direct adjudication on the merits of the case by a CAS panel would imply.

123. Therefore, the case must be referred back to the competent sport adjudication body, the FIFA DRC.

X. CONCLUSIONS

124. The Panel concludes that in light of the above findings:

a. The CAS holds jurisdiction to adjudicate the case;

b. The appeal is admissible;

c. The FIFA administration lacked the authority to issue the Proposal, as the necessary pre-requisites were not met in the case at hand;

d. The Appealed Decision is annulled and the case is referred back to FIFA DRC.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS has jurisdiction to rule on the appeal filed by SønderjyskE Fodbold A/S on 8 January 2021 against the decision issued by FIFA on 18 December 2020.

2. The appeal filed by SønderjyskE Fodbold A/S on 8 January 2021 against the decision issued by FIFA on 18 December 2020 is admissible.

3. The appeal filed by SønderjyskE Fodbold A/S on 8 January 2021 against the decision issued by FIFA on 18 December 2020 is upheld.

4. The decision issued by FIFA on 18 December 2020 is annulled and the matter is referred back to FIFA for a formal decision on the merits.

5. (…).

6. (…).

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