



Arbitration CAS 2009/A/2000 Eduardo Julio Urtasun v. Fédération Internationale de Football Association (FIFA), award of 25 August 2010

Panel: Mr Michele Bernasconi (Switzerland); Sole Arbitrator

Football

Employment contract between a club and a physical trainer

Notion of appealable decision before the CAS

Principles of interpretation of the relevant rules

Scope of jurisdiction of FIFA's deciding bodies towards a coach and a physical trainer

Incidence of the link between a coach's contract and a physical trainer's contract in connection with FIFA jurisdiction

1. According to article 63 of FIFA Statutes CAS has jurisdiction towards a challenged letter issued by a FIFA body if the following requirements are fulfilled: (i) the letter is a “decision”, (ii) the letter is a “final decision” which means that all internal channels for review have been exhausted and finally, (iii) the letter was passed by [one of] FIFA’s legal bodies. According to CAS case law, the existence of a decision does not depend on the form in which it is issued. A communication intending to be considered a decision must contain a ruling. Under certain circumstances, ‘negative decisions’ or ‘refusal to decide’ can be considered as appealable decisions. In this respect a letter of FIFA to a physical trainer declining its jurisdiction and implicitly informing the latter that he has to seek relief in front of another jurisdiction, possibly a civil court, obviously affects the physical trainer’s legal situation and must be considered a decision. Moreover, a decision (of non-competence) mentioned in a letter taken by the Deputy Head of the Players’ Status Department of FIFA who signed the correspondence on behalf of FIFA’s Players’ Status Committee must be considered a “final” decision for it was passed on behalf of the Players’ Status Committee whose decisions can be appealed before CAS.
2. Under Swiss law, there are several interpretation methods that can be used to establish the scope of a rule: the grammatical, the historical, the systematic and the teleological methods. The judge(s) or arbitrator(s) are free to apply any of these methods. But, priority must be given to the true purpose of the rule (*ratio legis*) in order to avoid any interpretation that would contradict or overlook this true purpose. In this respect, CAS must also duly apply its knowledge of sport matters and take into account the specificities and technicalities of such matters. Finally, not only the practice of the association itself, but also the behavior and the customs of the members of that association are to be considered in order to understand the real meaning of a certain rule.
3. Based on the grammatical method, the word and notion of “coach” can be generally defined as a person who trains a person or team in sport. But, in the specific context of

(professional team) sports – such as football, for instance – the term “coach” commonly means the person in charge of the team and leading the team on the sports ground, during competition and practice. The coach is commonly also responsible for the tactical choices regarding the team. This definition of the term “coach” is not comparable with the activity of a physical trainer, especially when the physical trainer works under the instructions of the coach as a member of a technical team lead by the coach. The physical trainer is only in charge of the fitness (or physical condition) of the players he works with. Yet, the activity of a physical trainer is not a football-specific occupation. Therefore, in accordance with FIFA’s long practice and regulations, a physical trainer – contrary to a coach – is not in a position to have his employment-related dispute against the football club he works for heard by FIFA.

4. The fact that a physical trainer is a member of a technical team together with the coach of the football club they are working for and that the termination/cancellation of their contracts are linked together is of no help to allow the physical trainer to file his claim before FIFA.

Mr. Eduardo Julio Urtasun (the “Appellant”) is a physical trainer. He is of Argentinean nationality.

The Fédération Internationale de Football Association (FIFA or the “Respondent”) is the governing body of football on worldwide level and has its registered seat in Zurich, Switzerland.

On February 25, 2009, the Appellant was hired to work as physical trainer (“*preparador físico*”) of a Mexican football team called “*Tigres de la Universidad Autónoma de Nuevo Leon*” (UANL) (“*Tigres de la UANL*”), a team playing in the national premiere league (“*Primera División Nacional*”) in Mexico.

On that day, he signed two distinct employment contracts: one for a four months period until June 30, 2009, and the second one for the successive period starting July 1st, 2009 and ending on June 30, 2011 (i.e. the next two seasons). Parties expressly specified in the second contract that this contract would only enter into effect in case the team was not relegated at the end of the 2009 Clausura tournament ending at the term of the first contract (i.e. June 30, 2009 at the latest).

The Appellant was hired together with the new coach (“*entrenador*”) of the team and a new technical assistant (“*auxiliar técnico*”). Each of them also signed two employment contracts for the two same successive periods of time as the Appellant did.

Pursuant to the two contracts signed by the Appellant, parties agreed that in case of an anticipated termination or cancellation of the contractual relationship with the coach, the Appellant’s contracts would also be automatically cancelled. The same rule would also apply to the technical assistant as such contractual clause was also part of his employment contracts. Pursuant to their employment contracts, both the Appellant and the technical assistant are said to be part of the “technical team” (“*cuerpo técnico*”) together with the coach.

All three members of the so called “technical team” worked for the Mexican Club’s football team “*Tigres de la UANL*” until the end of the 2009 Clausura tournament.

At the end of this tournament, the “*Tigres de la UANL*” football team was able to maintain its place in the national premiere league and, thus, the “*Tigres de la UANL*” football team was not relegated. Upon fulfilment of such condition, the respective second employment contract of each of the three members of the so called “technical team” automatically came into force and effect, which means that their respective contracts were now running until June 30, 2011.

However, it appears that the Mexican Club hired in the meantime another technical manager (“*director técnico*”), i.e. a new coach for the same football team. In fact, on June 4, 2009, the Appellant, together with the other two members of the “technical team”, went to the Club and came along with a notary public to record the events on site. On that occasion, they got confirmation of the hiring of a new technical manager (i.e. coach) and were informed therefore by the Club that they did not have to come back to the Club in the future. In addition, they were also not allowed anymore to get full access to the Club’s facilities, as mentioned in the minutes written by the notary public.

Thus, the whole situation resulted – according to the Appellant – “[...] *in the termination of the contractual relationship between the Club and the technical team due to the Club’s unilateral decision of not allowing the technical team to perform the duties that they had been hired to perform*”.

According to the Appellantin reaction to their employer’s behaviour, each of the three members of the “technical team” filed claims before the Commission for Conciliation and Resolution of Controversies (“*Comisión de Conciliación y Resolución de Controversias*”) of the Mexican Football Federation Association (“*Federación Mexicana de Fútbol Asociación AC*”). According to the Appellant such Commission concluded that it lacked jurisdiction to hear the claims brought by all three members of the “technical team”.

In consequence, all three members of the “technical team” allegedly decided to bring the case before FIFA. In particular, the Appellant filed his claim on October 1st, 2009.

According to the Appellant, FIFA accepted hearing the claims of the coach and the technical assistant.

However, by letter dated October 26, 2009, FIFA declined jurisdiction over the Appellant’s claim. In reaction to FIFA’s letter dated October 26, 2009, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS) on November 17, 2009.

By letter dated October 26, 2009 and written in Spanish, FIFA declined jurisdiction over the Appellant’s claim dated October 1st, 2009.

The letter was signed by the Deputy Head of the Players’ Status Department of FIFA on behalf of FIFA’s Players’ Status Committee.

Basically, FIFA declined its jurisdiction (in the above mentioned correspondence) based on article 22 lit. c of the (FIFA) Regulations on the Status and Transfer of Players, as well as on article 6 § 1 of the (FIFA) Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber:

- Pursuant to article 22 lit. c of the (FIFA) Regulations on the Status and Transfer of Players, “[w]ithout prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: [...] c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level”.
- According to article 6 § 1 of the (FIFA) Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, “[p]arties are members of FIFA, clubs, players, coaches or licensed match and players' agents”.

Thus, FIFA, i.e. the Players' Status Committee, denied its jurisdiction based on the fact that the Appellant, being a physical trainer (“*preparador físico*”) and not a coach (“*entrenador*”), did not fall within the scope of jurisdiction of FIFA's deciding bodies.

[...] En consecuencia, teniendo en cuenta que usted se desempeñaba como preparador físico y dicha función no se encuentra contemplada en ninguna de las partes antes mencionadas, lamentamos poner en su conocimiento que no podemos intervenir en su favor en el presente asunto [...].

[...] As a consequence, taking into account that you work as a physical trainer and that this position is not enumerated in any of the aforementioned parts, we are sorry to bring to your knowledge that we cannot intervene in your favor in the matter at stake [...].

[free translation]

In addition, FIFA also indicated in its correspondence to the Appellant dated October 26, 2009 that the considerations exposed by FIFA in that correspondence were only of informative nature and made on the basis of the information and documentation the Appellant provided FIFA with, without prejudice to any decision that could be passed in this or a similar case at a later stage. The original version of the letter was written in Spanish, and the here relevant part of it reads as follows:

[...] Finalmente, por favor tome nota que las manifestaciones precedentes son a título informativo y en base a la información y documentación por usted remitida a la FIFA, sin perjuicio de cualquier decisión que pudiera adoptarse en éste o en un caso similar en una etapa posterior [...].

On November 17, 2009, the Appellant submitted his statement of appeal to CAS.

On November 26, 2009, The Appellant filed his Appeal Brief with CAS.

On November 27, 2009, FIFA sent a correspondence to CAS arguing basically that the letter dated October 26, 2009 could not be considered a decision.

On December 4, 2009, the Appellant sent a correspondence to CAS requesting the case to be heard by a sole arbitrator instead of a panel of three arbitrators, unless the Respondent would contribute with a share of the advance of costs.

On December 29, 2009, the Respondent filed his Answer with CAS.

By letter dated January 11, 2010, FIFA informed CAS that it still wished the case to be heard by a panel of three arbitrators.

On February 8, 2010, CAS informed the parties that, in accordance with Article R50 of the Code of Sports-related Arbitration, the Deputy President of the CAS Appeals Arbitration Division had decided that the case would be referred to a sole arbitrator. Parties were also informed of the opportunity given to them to agree on the name of the sole arbitrator.

Finally, the Order of Procedure was signed by both parties: CAS acknowledged receipt of the signed order on June 18 respectively June 22nd, 2010. By signing the order, parties confirmed their agreement that the sole arbitrator may decide the matter based on the parties' written submissions. Pursuant to Article 57 of the Code of Sports-related Arbitration, the sole arbitrator considered himself to be sufficiently informed to decide this matter without the need to hold a hearing.

The purpose of the appeal lodged by the Appellant, Mr Eduardo Julio Urtasun, is to seek acknowledgement of FIFA's Players' Status Committee's jurisdiction over the Appellant's claim against the Mexican Club "*Tigres de la UANL*".

The Appellant challenged what he considered to be not only a decision but also a final – and, therefore, appealable – decision, namely FIFA's letter dated October 26, 2009.

On November 26, 2009, the Appellant filed its Appeal Brief, and confirmed his previous request, asking CAS to declare that the (FIFA's) Players' Status Committee was competent to hear his employment claim against the Mexican Club "*Tigres de la UANL*".

Even though both parties agreed that the Appeal Brief could be filed in Spanish, the Appellant provided CAS with an English translation of it on April 6, 2010, translating its request as follows:

"Therefore, we hereby request the Court:

- 1.- Admit this appeal against FIFA's decision.*
- 2.- Reverse the appealed decision by declaring that Player's Statutes [sic] Committee has jurisdiction to hear the employment claim of Eduardo Julio URTASUN from Argentina against the Club Tigres of the UANL, México.*
- 3.- Costs be awarded to F.I.F.A."*

On December 29, 2009, the Respondent filed an answer with the CAS, taking the following conclusions:

"Conclusions

- 3.1 In light of these considerations, we insist that the correspondence dated 26 October 2009 is not an appealable decision. We therefore request that the present appeal be declared inadmissible.*

- 3.2 *Alternatively, we request the CAS to reject the present appeal against the mentioned correspondence issued by the administration of FIFA as to its substance.*
- 3.3 *Furthermore, all costs related to the present procedure as well as the legal expenses of the Respondent shall be borne by the Appellant”.*

LAW

Applicable law

1. Article 58 of the CAS Code of Sports-related Arbitration (2004 edition, the “CAS Code”) provides that:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
2. Article 62 § 2 of FIFA Statutes reads as follows:
“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
3. In the present matter, parties have not elected for any law to apply. Therefore, the Rules and Regulations of FIFA apply primarily, and Swiss law applies subsidiarily.

CAS Jurisdiction

- A. *In General*
4. The jurisdiction of CAS is disputed in the present matter. In fact, FIFA is arguing that the challenged letter dated October 26, 2009 is not a formal decision. In this respect, according to FIFA, the appeal filed with CAS by the Appellant against that letter must be declared inadmissible. In consequence, the admissibility constitutes the preliminary issue in the case at hand.
- B. *CAS jurisdiction regarding the appeal against FIFA’s letter dated October 26, 2009: Is the letter a formal and final decision?*
5. The admissibility of an appeal before CAS shall be examined in light of Article R47 (1) of the CAS Code, which provides that:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

6. This article clearly stipulates that the appeals before CAS shall be lodged against a decision of a federation, association or sports-related body.
7. The same general principle is gathered in article 63 § 1 of FIFA Statutes, which reads, in its pertinent part, as follows:
 1. *Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
 2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*

[...]”.
8. The Appellant filed his Appeal against FIFA’s letter dated October 26, 2009, before CAS. The Appellant submits that this letter is an appealable decision according to article 63 of FIFA Statutes.
9. It results from the above that CAS has jurisdiction in the matter at stake if FIFA’s letter dated October 26, 2009 meets all the following requirements:
 - a) The letter is a “decision”.
 - b) The letter is a “final decision”, which means that all internal channels for review have been exhausted, i.e. there are no other options for appeal within FIFA (art. 63 (2) of FIFA Statutes).
 - c) And, finally, the letter was “[...] passed by [one of] FIFA’s legal bodies [...]” (art. 63 (1) of FIFA Statutes).
- a) Is the FIFA letter dated October 26, 2009 a “decision”?
10. CAS had to deal several times already with the question whether or not a challenged correspondence issued by an association had to be considered a decision. The applicable FIFA regulations, namely FIFA Statutes, do not provide any definition for the term “decision”. According to Swiss case law related to administrative procedure, cited for instance in CAS 2004/A/659, *“the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision”.*
11. Based on CAS case law, the following considerations must be taken into account to establish whether or not FIFA’s letter dated October 26, 2009 is a decision:

- The existence of a decision does not depend on the form in which it is issued. Indeed, according to CAS Award 2005/A/899, “[...] *The form of communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal [...]*”.
 - A communication intending to be considered a decision must contain a ruling. In other words, it must tend to affect the legal situation of its addressee or other parties. Such position is held, among others, in CAS awards, such as – for instance – CAS Award 2008/A/1633 or CAS Award 2005/A/899. In this respect, the last quoted award clearly states that “[...] *What is decisive is whether there is a ruling, or, in case of denial of justice, an absence of ruling where should have been a ruling in the communication*”. Furthermore, a ruling may also be issued in cases in which the sports-related body refuses to deal with a request. Thus, such refusal can also be considered a decision under certain circumstances. In fact, this principle has also been recognized by CAS jurisprudence:
 - For example, in CAS 2007/A/1251, FIFA enumerated (in a letter to the Appellant) several reasons for which it deemed FIFA’s decision-making bodies lacked competence to entertain the Appellant’s request and invited the latter to seek relief in front of the competent (civil) court. Based on this situation, CAS found that by responding in such manner the Appellant’s request for relief, “[...] *FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting [the Appellant]’s legal situation [...]*”. Thus, CAS finally came to the conclusion that “[...] *despite being formulated in a letter, FIFA’s refusal to entertain [the Appellant]’s request was, in substance, a decision*”.
 - In CAS 2005/A/899, CAS also clearly underlined the fact that “[...] *there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request*”.
12. Based on the above, an appealable decision of a sport federation/association is “[...] *normally a communication of the association directed to a party and based on an “animus decidendi”, i.e. an intention of a body of the association to decide on a matter, being also only the mere decision on its competence (or non-competence). A simple information, which does not contain any ‘ruling’, cannot be considered as a decision. Under certain circumstances, ‘negative decisions’ or ‘refusal to decide’ can be considered as appealable decisions [...]*” [BERNASCONI M., When is a “decision” an *appealable* decision?, in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the Court of Arbitration for Sport*, p. 273].
13. It appears from the challenged FIFA letter dated October 26, 2009 that FIFA declares that it is not in a position to intervene in the matter at stake, even though it also says in the meantime that the information given in the letter is without prejudice to any decision that could be passed in this or a similar case at a later stage. At first glance, these two statements made by FIFA may seem quite contradictory: Indeed, how could FIFA pass a decision in the present case at a later stage for instance when it clearly states that it cannot intervene in this very same case? In order to clarify what FIFA intended in its challenged letter, CAS must establish what FIFA’s true and real intention was at the time it wrote that letter. In this respect, the letter must be interpreted in a way that allows avoiding the above mentioned apparent contradiction. Based on the principle of trust and *bona fides*, the content of the letter must be understood in the way any neutral and common reader would understand it.

14. Based on these considerations and on the specific circumstances of the present case the Sole Arbitrator believes that FIFA clearly denied its jurisdiction by saying that it was not in a position to intervene in this case. The fact that FIFA also expressed that the information given in the letter was without prejudice to any decision that could be passed in this or a similar case at a later stage was possibly just stated in order to try to invite the Appellant to refrain from an appeal. However, it appears that the denial of jurisdiction expressed by FIFA in the challenged letter must be understood as a final refusal to deal with the Appellant's request. Furthermore, by declining its jurisdiction and saying it was not in a position to intervene in the matter at stake, FIFA implicitly informed the Appellant that he had to seek relief in front of another jurisdiction, possibly a civil court. Yet, in this respect, by implicitly telling the Appellant that he should submit his claim before another jurisdiction, it appears – based on CAS jurisprudence (CAS 2008/A/1633, § 38) already quoted here above – that it could be possibly contended that the challenged letter incorporated a ruling affecting the legal situation of the Appellant. In fact so it is. The denial of jurisdiction made by FIFA was not merely “temporary”, rather it must be seen as “[...] a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request” (CAS 2005/A/899, § 12). Indeed, by writing the letter to the Appellant, FIFA absolutely and definitely closed the possibility of dealing with his case. Such situation obviously affects the Appellant's legal situation. Therefore, the challenged FIFA letter dated October 26, 2009 must be considered a decision.
- b) Is the FIFA letter dated October 26, 2009 a “final decision”?
15. In order to be heard by CAS, a decision must be “final”. In other words, all internal means of recourse must have been exhausted before the case can be heard by CAS, pursuant to article 63 of FIFA Statutes and article R47 of the CAS Code.
16. FIFA Statutes and regulations contain no general definition of what must be considered a “final” decision. However, various provisions of the regulations, such as for instance article 23 of the Regulations on the Status and Transfer of Players, specify which body's decisions are subject to an appeal in front of CAS.
17. For instance, in this particular case, article 23 § 3 (last sentence) of the Regulations on the Status and Transfer of Players reads as follows:
“Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS)”.
18. In the particular case, the decision (of non-competence) mentioned in the letter dated October 26, 2009 was taken by the Deputy Head (*“Jefe Adjunto”*) of the Players' Status Department of FIFA who signed the correspondence on behalf of FIFA's Players' Status Committee.
19. Thus, the challenged letter must be considered a “final” decision: It was passed on behalf of the Players' Status Committee whose decisions can be appealed before CAS, according to article 23 § 3 (last sentence), and there is no element submitted by the Parties that could lead the Sole

Arbitrator to believe that, against such decision, an internal appeal with another FIFA's body would have been possible.

- c) Was the decision issued by a competent FIFA decision-making (legal) body?
20. The challenged decision was taken on behalf of the Players' Status Committee. Pursuant to article 23 § 1 of the Regulations on the Status and Transfer of Players, this Committee shall adjudicate on all disputes in accordance with article 22 lit. c of these regulations (for the content of this article, see above § 18 of the award), i.e. employment-related disputes namely between a club and a coach (that have an international dimension).
21. Thus, it appears that the Player's Status Committee is indeed the competent FIFA decision-making (legal) body to hear the Appellant's claim, provided that – on the merits (see below) – the Appellant can be considered as a coach. Accordingly, the Players' Status Committee is also competent to examine its jurisdiction (article 3 § 1 of the Rules Governing the Procedures of the players' Status Committee and the Dispute Resolution Chamber).
22. However, in its letter dated November 27, 2009, FIFA clearly disputed the fact the challenged decision (i.e. FIFA's letter dated October 26, 2009) was an act of a deciding body of FIFA, such as the Players' Status Committee. In this respect, it stated that “[...] *the letter was signed by a member of the Players' Status and Governance Department, in other words the FIFA administration [...]. [...] the relevant correspondence was [...] [not] signed by the Secretary General of FIFA in accordance with art. 68 par. 3 lit (b) of the FIFA Statutes [...]*”.
23. Although the letter dated October 26, 2009 was signed by a member of the Players' Status and Governance Department, FIFA omits to point out that this member (which is the Deputy Head of the above mentioned department) signed on behalf of the Players' Status Committee. In this respect, it would be excessively formalistic to find that a decision signed by such a person on behalf of the competent legal body was not passed in fact by this legal body itself, according to the principle of *bona fides*, moreover as article 23 § 3 of the Regulations for the Status and Transfer of Players expressly provides that under certain circumstances a case may be settled by a single judge. The Appellant was indeed entitled to consider that the challenged decision had been passed by FIFA's competent legal body to hear his claim, i.e. the Players' Status Committee.
- d) Conclusion
24. Based on the above mentioned considerations, it follows that CAS has jurisdiction to decide on the present dispute, according to R47 of the CAS Code.

Admissibility

25. The appeal was filed within the deadline provided by FIFA Statutes (21 days according to article 63 § 1 FIFA Statutes). Furthermore, it complied with all other requirements of article R48 of the CAS Code, including the payment of CAS court office fees.
26. It follows that the appeal is admissible.

Merits

A. The Issue

27. The issue to be resolved by the Sole Arbitrator in deciding this dispute as to the merits is the following:
 - Does the Appellant, as a physical trainer, fall within the scope of jurisdiction of FIFA's deciding bodies? In other words, the question to answer in the present award is to determine whether or not FIFA, i.e. its Players' Status Committee, is competent to hear the Appellant's claim against the Mexican club "*Tigres de la UANL*" regarding their employment-related dispute.

B. The Applicable Rules

28. According to article 22 lit. c and 23 § 1 of the (FIFA) Regulations on the Status and Transfer of Players, without prejudice to the right of any player or club to seek redress before a civil court, FIFA's Players' Status Committee is competent for employment-related disputes between a club and a coach that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.
29. Pursuant to article 6 § 1 of the (FIFA) Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, parties involved in procedures before the Players' Status Committee are members of FIFA, clubs, players, coaches or licensed match and players' agents.
30. The Appellant is a physical trainer.
31. Based on the two above mentioned rules, the only way for the Appellant to have his claim heard by the competent FIFA legal body would be to consider him as a coach.
32. FIFA Statutes and regulations contain no definition of the "coach" notion. Thus, this notion must be defined by way of interpretation of these two rules.

C. *The interpretation of the relevant rules*

33. The interpretation of the rules of a sport association is very much similar to the one of state laws. “[...] *The interpretation has to be rather an objective one, and unlike for contracts, the personal intention of the involved parties is not of first relevance*” (BERNASCONI M., *When is a “decision” an appealable decision?*, in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the Court of Arbitration for Sport*, p. 262).
34. Under Swiss law, there are several interpretation methods that can be used to establish the scope of a rule: the grammatical, the historical, the systematic and the teleological methods. The judge(s) or arbitrator(s) are free to apply any of these methods. But, priority must be given to the true purpose of the rule (the *ratio legis*) in order to avoid any interpretation that would contradict or overlook this true purpose.
35. In this respect, CAS must also duly apply its knowledge of sport matters and take into account the specificities and technicalities of such matters.
36. Finally, not only the practice of the association itself, but also the behavior and the customs of the members of that association are to be considered in order to understand the real meaning of a certain rule (see BERNASCONI M., *When is a “decision” an appealable decision?*, in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the Court of Arbitration for Sport*, p. 263).
37. Considering the facts of the matter at stake, and in particular the two employment contracts signed by the Appellant, it clearly appears that he was hired as a physical trainer (“preparador físico”) and not as coach (“entrenador”). As one of the three member of the technical team of the “Tigres de la UANL” football team, he was also clearly not considered as the coach of the team but as the physical trainer, the coach being one of the other members of the technical team. This being said, the question arising in this context is whether or not the notion of “physical trainer” falls within the notion of “coach” as intended by FIFA regulations.
38. Based on the grammatical method, which consists in verifying “[...] *the grammatical meaning of the rule, looking at the “ordinary” meaning of the language used, at the syntax of the norm and, if provided, at the wording used in the translation of the rule in other languages*” (BERNASCONI M., *When is a “decision” an appealable decision?*, in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the Court of Arbitration for Sport*, p. 262-3), the word and notion of “coach” can be generally defined as a person who trains a person or team in sport. But, in the specific context of (professional team) sports – such as football, for instance – the term “coach” commonly means the person in charge of the team and leading the team on the sports ground, during competition and practice. The coach is commonly also responsible for the tactical choices regarding the team.
39. This definition of the term “coach” is not comparable with the activity of a physical trainer, especially when the physical trainer works under the instructions of the coach as a member of a technical team lead by the coach. The physical trainer is only in charge of the fitness (or physical condition) of the players he works with.

40. Moreover, according to the objectives of FIFA mentioned in article 2 of its Statutes, it makes no doubt that the enumeration of the parties listed for instance by article 6 § 1 (FIFA) Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber includes only parties whose activities are exclusively related and limited to football. Thus, the Respondent is right by saying that “[...] *the dispute resolution system set up under the auspices of FIFA is clearly limited to parties with a football-specific occupation [...]*”. This results not only from a teleological interpretation method, i.e. from the rationale of the rule, but also from a systematic interpretation method, according to which the interpretation given herein (see above, § 34) to the term “coach” perfectly fits into the context of the whole regulation. Yet, the activity of a physical trainer is not a football-specific occupation. In fact, working as a physical trainer, the Appellant could surely be in charge of the fitness of any other athlete in any other sports, not only of football players. Also, a physical trainer can work for many clubs and/or assist athletes of several sports disciplines at the same time.
41. Furthermore, the fact that a physical trainer is not in a position to have his employment-related dispute against the football club he works for heard by FIFA is also in accordance with FIFA's long practice, i.e. FIFA's constant interpretation of its own relevant regulation [for an example, see Decision of the Players' Status Committee dated May 20, 2005 in the case del Bosque, Cereijo, Martín and physical trainer Espín vs Besiktas Football Club).
42. Based on these considerations, the Appellant does not fall within the scope of jurisdiction of FIFA's deciding bodies. Thus, the question is now whether or not the fact that the Appellant was part of a technical team together with the coach of the team they were working for may help the Appellant to be considered a “coach” in the case at hand, although he cannot be considered a coach per se.
- D. *What is the incidence of the link between the coach's contracts and the Appellant's contracts?*
43. As previously mentioned (see above), the Appellant's contracts were linked to the ones signed by the coach with respect to the cancellation or termination of these agreements: In case of an anticipated termination or cancellation of the contractual relationship between the club and the coach, the Appellant's contracts would be automatically cancelled, too. They were both part of the technical team of the football club, together with the technical assistant as third member. Therefore, the Appellant asserts that his contracts are an accessory to the ones of the coach's employment contracts and, thus, ought to be heard by the same court that shall examine the coach's ones (see above). In this respect, the Appellant pointed out the existence of a “*waterfall employment contract*”.
44. The Appellant's point of view must be rejected. Even though there is a contractual link between the coach's contracts and the Appellant's contracts with respect to the cancellation or termination of their respective agreements, there is neither any legal basis under Swiss law nor any specific rule in FIFA's regulations assuming that a dispute arising in such circumstances from the Appellant's employment contracts with the club must be heard by the same jurisdiction as the one competent to hear the coach's claim. The Appellant signed his own and distinct contracts with the club. The only link between his contracts and the coach's contracts

refers to the termination/cancellation of the contracts, with no reference at all to any jurisdiction clause or attraction (*“attraction de compétence”*).

45. In this respect, the reference made by the Appellant to article 170 of the Swiss Code of Obligations is absolutely irrelevant, as such article only applies to the assignment of claims under Swiss law which has nothing to do with the matter at hand: the assignment of a claim has never occurred in this case.
46. The same applies regarding the reference to a so-called *“waterfall employment contract”* (see above) which is also irrelevant here, as such legal construction did not exist in the matter at stake. In fact, the existence of a waterfall contract would have meant that the club only signed a contract with the coach and not with the other members of the technical team who would have been the employees of the coach, which was obviously not the case in the present case.
47. Based on these considerations, the fact that the Appellant was a member of a technical team together with the coach of the football club they were working for and that the termination/cancellation of their contracts were linked together is of no help to allow the Appellant to file his claim before FIFA.

E. *The employment contracts of the appellant (provision “decima sexta”)*

48. Clause *“decima sexta”* of the employment contracts signed by the Appellant with the club reads as follows:

*“La **EMPRESA** y el **PREPARADOR FISICO** convienen que, en caso de desavenencia entre ellos, recurrirán a los tribunales Laborales en el Estado de Nuevo León y Federación Mexicana de Fútbol”.*

“The company and the physical trainer agree that, in case of dispute between them, they shall revert to the labour courts of the State of Nuevo León and the Mexican Football Federation” [translation].

49. This clause expressly provides that the jurisdiction of local courts has been foreseen by the parties. In this respect, the Appellant should revert to such jurisdiction and not to FIFA’s.
50. According to the Appellant, the *Comisión de Conciliación y Resolución de Controversias* of the Mexican Football Federation Association (*“Federación Mexicana de Fútbol Asociación AC”*) concluded that it lacked jurisdiction to hear the claims brought by all members of the technical team. Thus, in accordance with the above mentioned contractual clause, the Appellant should (have) revert(ed) to the civil labour courts of the State of Nuevo León, and not to FIFA.
51. Based on these considerations as well, it clearly appears that the Appellant does not fall within the scope of jurisdiction of FIFA’s deciding bodies. The civil jurisdiction remains the only way left for the Appellant to proceed in the matter at stake.

F. *The position of the appellant as an “official”*

52. In his Appeal Brief, the Appellant argues that as an “official” as defined by FIFA Statutes, he must fall within the scope of jurisdiction of FIFA, based on articles 4 and 64 of FIFA Statutes.
53. Based on the definition of the term “official” given by FIFA Statutes, a trainer is an official. But, nonetheless, the arguments provided by the Appellant to demonstrate that he falls within the scope of jurisdiction of FIFA are wrong:
54. First of all, the aforementioned articles of FIFA Statutes do not entail that FIFA’s deciding bodies are the competent authorities to hear all football-related disputes involving officials. Indeed, pursuant to article 64 § 2 of FIFA Statutes, “*recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations*”. Yet, that is precisely the case for employment-related disputes for instance, according to article 22 § 1 of (FIFA) Regulations on the Status and Transfer of Players, applied by analogy to an official.
55. Secondly, article 4 of FIFA Statutes regarding the promotion of friendly relations between the members, confederations, clubs, officials and players only states one of FIFA’s missions: it is a FIFA goal. Thus, such provision is not self executing anyway and cannot, therefore, be directly invoked by the Appellant in the matter at stake. The same applies to article 64 § 3 of FIFA Statutes, which is not self executing either.
56. Thus, while the Sole Arbitrator cannot hide a certain understanding for the wish of the Appellant to be treated by FIFA in the same way as his fellows of the technical team, the Respondent is right when it says that “[...] *there is no provision in any of FIFA’s Statutes or regulations that would specifically found FIFA’s competence to hear a dispute involving a physical trainer [...]*”.

G. *Conclusion*

57. Based on the above mentioned grounds, the Appellant’s appeal requesting CAS to declare (FIFA’s) Players’ Status Committee has jurisdiction to hear his employment-related claim against the Mexican football club “*Tigres de la UANL*” is without merit. Therefore, the appeal must be dismissed.
58. Against the above background, the other arguments raised by the parties are irrelevant and any further claim or prayers for relief shall be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Eduardo Julio Urtasun with regard to the letter of FIFA dated October 26, 2009 is admissible.
2. The appeal filed by Eduardo Julio Urtasun with regard to the letter of FIFA dated October 26, 2009 is dismissed.
3. (...)