Arbitrations CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa e Benfica & CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva, award of 16 September 2015

Panel: Mr Stuart McInnes (United Kingdom); Prof. Stephan Breidenbach (Germany); Mr Rui Botica Santos (Portugal)

Football
Termination of employment contract
Competence of FIFA Dispute Resolution Chamber ("FIFA DRC")
Notice of termination
No just cause
Termination as ultima ratio
Compensation for damages
Interest on damage payment

1. **Pursuant to the FIFA Regulations on Status and Transfer of Players ("RSTP"), the general rule is that all employment-related disputes between a club and a player that have an international dimension have to be submitted to the FIFA Dispute Resolution Chamber ("FIFA DRC"). Only if the following conditions are met, a specific employment-related dispute of an international dimension can be settled by an organ other than the FIFA DRC: (i) there is an independent arbitration tribunal established at the national level; (ii) the jurisdiction of this independent arbitration tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.**

2. **An email by a club to a football player evidencing amongst others a clear lack of interest by the club in the services of the player can be viewed as a notice of termination of the employment contract.**

3. **An 8 days' absence of a player cannot be viewed as just cause to terminate the contract, particularly without prior warning by the club. Only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning.**

4. **Only when there are objective criteria which do not reasonably justify the expectation of continuation of the employment relationship between the parties may a contract be terminated prematurely. Hence, if more lenient measures or sanctions can be imposed by an employer to ensure the employee's compliance with his contractual obligations of his contractual duties, such measures should be implemented before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio*.**

5. Art. 17 RSTP provides for a non-exhaustive enumeration of criteria to be taken into account when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body and each request for compensation for contractual breach has to be assessed on a case-by-case basis taking into account all specific circumstances of the respective matter. The principle of 'positive interest' as confirmed by established CAS jurisprudence is to be taken into account when determining the compensation to be awarded in the event of breach of contract. Bonus expectations may only be part of the compensation to be paid if the player in question indeed played an official game for the club. Compensation of damages to the professional career of the player resulting from the termination without just cause requires that the player himself took steps to mitigate his damages.

6. According to article 105.1 of the Swiss Code of Obligations, a debtor in default on payment of interest, annuities or gifts is liable for default interest only as of the day on which enforcement proceedings are initiated or legal action is brought.

I. PARTIES

1. Leandro da Silva (hereinafter the "Player"), is a Brazilian professional football player.

2. Sport Lisboa e Benfica (hereinafter the "Club") is a Portuguese professional football club, with its registered office in Lisbon, Portugal. It is a member of the Portuguese Football Association, which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence at the hearing may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 31 July 2009, the Player and the Club signed an employment contract (hereinafter the "Contract") valid as from 1 August 2009 until 30 June 2014, following which the Player was

entitled to receive a gross monthly salary of EUR 16.670 amongst other benefits and match bonuses.

5. The relevant clauses of the Contract provide as follows:

- Clause 12: *"The Player and SL Benfica-Futebol SAD agree that both parties, in face of any event of failure to comply with this agreement and before any other initiative, to question the other party aiming at the settlement or resolution by mutual agreement of the dispute within 30 (thirty) days counted from this questioning, and the failure to do so shall be deemed an unquestionable reason for termination of the agreement by either party. Both parties accept that this clause is essential for the execution of the agreement and has been created in the mutual interest of the parties".*

- Clause 14: *"In the case the Player decides to unilaterally terminate (and without just cause) the present sporting labour contract or if SL Benfica-Futebol SAD dismisses the Player with just cause, the Player shall pay an indemnification corresponding to the amount of the payments that would be made during the original term of the contract, and also a penal clause in the amount of EUR 20.000.000,00 (twenty million euros), IVA not included, besides any sanctions of international and national sport authorities".*

- Clause 17: *"The cases and situations that are not in this contract are subject to CCT Regulation, signed by the Portuguese Professional Football League and the National Syndicate of Professional Football Players, regardless players are syndicated or not".*

6. On 7 August 2009, the Club, the Player and Vitória Sport Clube (hereinafter "Vitoria") entered into a loan agreement (hereinafter the "Loan Agreement"), under which the Player was temporarily transferred on a loan basis to Vitoria from 1 August 2009 until 30 June 2010.

7. In May 2010, following the end of the Portuguese national championship, the Player left Portugal to take holiday in Brazil.

8. On 7 July 2010, the Player sent an email to the Club seeking information about the exact date he needed to return to the Club, alleging that he had received oral instructions from the Club to await further instructions in this regard.

9. On 9 July 2010, the Club replied to the Player, by email, that such verbal instructions had not been issued by the Club and that the Player should have returned on 28 June 2010, or at least before 1 July 2010, the start of the new sporting season. The Club further stated that he was therefore unjustifiably absent and that this constituted just cause for termination. Finally, the Club notified the Player of *"the express intention of the application of the referred disciplinary sanction, in other words, to proceed with the termination of the identified sporting labour contract".*

10. On 20 July 2010, the Player informed the Club by facsimile that it seemed that the Club had terminated the Contract by means of its email of 9 July 2010, that the Club did not have just cause to terminate the Contract and invited the Club to come to an acceptable agreement.

11. On 27 July 2010, the Club informed the Player by facsimile that the Club did not terminate the Contract by means of its email of 9 July 2010, but that it merely informed the Player that by remaining absent, he was subject to sanction. Further, the Club informed the Player that after a meeting with Mr. Lemos, a business partner of the Player's agent, Mr. Jatoba, a preliminary agreement was reached for the termination of the Contract upon which the Player would be free to sign with a third club.

12. On 30 July 2010, the Player informed the Club by facsimile that Mr. Lemos had no power of attorney and thus no authority to negotiate on his behalf and that he did not accept the Club's proposal. The Club, therefore, would be responsible to indemnify him for unilateral termination of the Contract without just cause.

13. On 2 August 2010, the Club informed the Player by facsimile that the Club did not terminate the Contract, but that the Player was subject to disciplinary proceedings following his unjustified absence and that the aforementioned termination proposal still stood.

14. On 19 August 2010, the Player filed a claim for damages against the Club with the Dispute Resolution Chamber of FIFA maintaining that the Club had terminated the Contract without just cause.

15. On 31 August 2010, the Club notified the Player of the termination of the employment contract invoking just cause due to *"abandonment of work"* without justification.

B. Proceedings before FIFA

16. On 19 August 2010, the Player filed a claim against the Club with FIFA for termination of the Contract without just cause, claiming compensation in the sum of EUR 800.160 plus further sums relating to bonuses and damages. The Club objected to FIFA's jurisdiction, stating that the Portuguese national *Joint Arbitration Committee* is competent to decide on the dispute in accordance with the Portuguese Collective Bargaining Agreement (*i.e. the C.C.T. Regulation*) (hereinafter the "CBA").

17. On 17 January 2014, the FIFA Dispute Resolution Chamber (hereinafter the "FIFA DRC") rendered a decision, in which it decided that it was competent to deal with the matter and that the Club should pay to the Player compensation for breach of contract in the sum of EUR 550.000, on the basis of, *inter alia*, the following grounds:

- FIFA is competent on the basis of art. 22 lit. b FIFA Regulations of the Transfer and Status of Players ("RSTP") as it is an employment-related dispute between a player and a club with an international dimension and no explicit reference to the competence of a national arbitration body was given in the Contract;

- FIFA DRC acknowledged that, in the light of such explicit notice, the Club, by means of its correspondence of 9 July 2010, terminated the pertinent employment contract on the basis of the circumstance that the Player had not taken up his post at the Club on 1 July 2010;

- At the time of the termination of the Contract by the Club, i.e. 9 July 2010, the Player had been absent during a period of 6 days, since according to the Club, the Player had to resume duty by 1 July 2010 at latest, whereas the Player offered his services on 7 July 2010. FIFA DRC emphasized that a 6 days' absence of a Player cannot be considered a just cause to terminate the contract, particularly without any previous warning. Therefore, the Club terminated the Contract without just cause;

- Clause 17 of the Contract operates as a penalty clause which provides an indemnification of EUR 20.000.000 in the event of unilateral termination of the Contract by the Player, such clause is unilateral and for the benefit of the Club only and thus shall not be taken into consideration;

- On the basis of art. 17 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "RSTP"), EUR 800.160, which is the balance of Player's contractual entitlement, will serve as the starting point for the final determination of the amount of compensation payable to the Player. On the basis of new employment contracts, the Player has received income amounting to EUR 35.950, which shall be deducted by way of mitigation of the Player's losses. Finally, on account of all the above-mentioned considerations and the specificities of the case at hand, the Club has to pay to the Player EUR 550.000.

18. On 10 July 2014, the grounds of the decision were duly notified by FIFA to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 30 July 2014, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter the "CAS") against the Club with respect to the decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2014, with reference No. 01143276 (hereinafter the "Appealed Decision"), pursuant to Articles R47 *et seq*. of the Code of Sports–related Arbitration (hereinafter the "Code").

20. On 31 July 2014, the Club filed a Statement of Appeal with CAS against the Player with respect to the Appealed Decision pursuant to articles R47 and R48 of the Code.

21. On 12 August 2014, the CAS Court Office informed the parties that the procedures *CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa e Benfica* and *CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva* were consolidated pursuant to Article R52 of the Code.

22. On 29 August 2014, the Player filed its Appeal Brief with the CAS Court Office pursuant to Article R51 of the Code.

23. On 3 September, the Club filed its Appeal Brief with the CAS Court Office pursuant to Article R51 of the Code.

24. On 2 October 2014, the Player filed its Answer with the CAS Court Office pursuant to Article R55 of the Code.

25. On 13 October 2014, the Club filed an amended version of its Appeal Brief with the CAS Court Office.

26. On 14 October 2014, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the arbitration proceedings. However, FIFA also expressed its view on the CAS Panel's scope of review with regard to the Club's objection to FIFA's jurisdiction and the Club's request for the imposition of sporting sanctions.

27. On 6 November 2014, the CAS Court Office informed the parties that a three-member Panel was constituted as follows:

President:	Mr. Stuart McInnes, attorney-at law, London, United Kingdom
Arbitrators:	Prof. Dr. Stephan Breidenbach, professor-at-law, Berlin, Germany
	Mr. Rui Botica Santos, attorney-at-law, Lisbon, Portugal

28. On 18 November 2014, the Club filed its Answer with the CAS Court Office pursuant to Article R55 of the Code.

29. On 21 November 2014, the Club filed, upon request of the Panel, a redline-tracked version of its amended Appeal Brief submitted on 13 October 2014.

30. On 3 and 4 March 2014, the Player and the Club, respectively, returned duly signed copies of the Order of Procedure.

31. On 10 March 2014, a hearing was held at the CAS headquarters in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the composition of the Panel.

32. At the hearing, the Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS and Mr. Willem-Alexander Devlies, *ad hoc* clerk. In addition, the following persons attended the hearing:

<u>For the Player (Appellant/Counter-Respondent):</u>

- Mr. Leandro da Silva (Player)

- Ms. Gabriella Zicarelli Mendes (Counsel)
- Ms. Dulcinea Zicarelli Rodrigues (Counsel)

For the Club (Respondent/Counter-Appellant):

- Mr. Mario Vigna (Counsel)
- Mr. José Carlos Páez Romero (Counsel)

33. In its opening statement, the Club informed the Panel that it wished to withdraw its claim with regard to the amount of EUR 20.000.000 in relation to clause 14 of the Contract. The remaining requests for relief remained unaltered.

34. At the hearing, the following witnesses were heard:

- Mr. Luís Filipe Vieira, President of the Club (by telephone)
- Mr. Lourenço Pereira Coelho, Head of Football of the Club (by telephone)
- Mr. João Martins, General Manager of Vitoria (by telephone)
- Mr. Carlos Roberto Jatoba, Agent of the Player (by video conference)
- Mr. Norberto Lemos, Associate of the Player's Agent (by video conference)
- Mr. Leandro da Silva, Player (in person)
- Mr. Paulo Gonçalves, Legal Director of the Club (in person)

35. At the end of the hearing, the Panel decided, with agreement of all the parties, that the closing statements be submitted in writing, within 14 days of date of the hearing.

36. Before the hearing was adjourned, the parties expressly stated that they were satisfied with how the hearing was conducted and that their right to be heard had been respected.

37. On 24 March 2015, the Player and the Club filed their closing statements with the CAS Court Office.

38. On 1 April 2015, the Player filed his response to the Club's closing statements with the CAS Court Office.

39. On 3 April 2015, the Club filed its response to the Player's closing statements with the CAS Court Office.

40. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the

Parties, even if they have not been specifically summarised or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

41. The Player's submissions, in essence, may be summarised as follows:

- The Player agrees with the finding in the Appealed Decision that the FIFA DRC was competent to deal with the dispute, that the Club terminated the Contract without just cause and as a consequence is liable to pay compensation to the Player. The Player does not agree, however, with the amount of compensation awarded by the FIFA DRC and believes that the award should be greater.

- The Club terminated the Contract by means of its email of 9 July 2010, as the Club notified the Player of *"the express intention of the application of the referred disciplinary sanction, in other words, to proceed with the termination of the identified sporting labour contract"*. Therefore, the Club violated clause 12 of the Contract, which provides that in the event of a dispute, the parties should aim for a settlement or amicable resolution by mutual agreement, before any other initiative.

- Seven days of absence from work, taking into consideration that the Player had been loaned to a third club, that the Club did not order the Player to return and that the Club did not give any warning before the termination of the Contract on 9 July 2010, cannot constitute just cause for termination of a contract.

- In situations of termination without just cause, full compensation should be rewarded. FIFA DRC erred in its calculation of compensation, by not taking into account the legal criteria as provided by the Contract, Art. 17 RSTP and the applicable legislation.

- Clause 17 of the Contract determines that the CBA is applicable. Art. 48 of the CBA provides that when a club terminates the contract without just cause, the player is entitled to receive compensation in the amount of the remaining salary under the contract.

- Art. 17 RSTP provides for compensation taking into account objective criteria, such as remuneration and other benefits under the contract. FIFA DRC did not take into account possible match bonuses that the Player could have received under clause 3 of the Contract. It also did not take into account the emotional and psychological pain and suffering sustained by the Player, who was unable to find alternative employment for a considerable period of time, and subsequently received a very greatly reduced salary at his new clubs, which consequently had a very negative impact on the Player's career.

- Following Articles 97 and 337c of the Swiss Code of Obligations (SCO), CAS jurisprudence and Articles 338, 389 and 393 of the Portuguese Labour Code (PLC), in the event of an unlawful dismissal, the injured party should be restored to the position he would have been had the contract been properly fulfilled (the so-called 'positive interest' principle), by means of an integral reparation of his damages.

- The Player therefore submits the following requests for relief:

  The Appellant seeks an award increasing the compensation awarded by FIFA DRC made on July 10th 2014, up to EUR 800,160, plus be awarded with an amount to be determined by CAS regarding the expectation of bonuses (prizes) in accordance with clause 3 of the employment contract, besides an amount to be determined by CAS regarding the damages, considering the explicit pain and suffering.

  *Regarding the **salaries**, Leandro pleads that this honorable Court grants him the right to an indemnification correspondent to the amount of the retributions that he would be entitled if the employment contract had ended in its term. Such amount is represented by EUR 800,160. Alternatively, the deductions from such amount of the salaries Leandro earned during the period, that was EUR 35,950 (item 44 of the decision by FIFA's DRC), granting the compensation regarding salaries of EUR 764,210.*

  *Regarding the **bonuses**, clause 3 of the employment contract (**Exhibit 1**) stated that:*

  "Third- 1. SL Benfica-Futebol SAD shall provide monetary match bonuses according to performance, nature and relevance of matches for the team, which will be paid according to the club's monetary availability during the term of the present contract and limited to 60 days after the termination of the present contract, being such payments not considered as salary;

  2. SL Benfica-Futebol SAD will pay to the player the following special bonuses (cumulative) subject to the suspensive clause hereunder:

  2.1 The gross amount of E 100.000,00 (one hundred thousand euros) if the Player, playing for SL Benfica-Futebol SAD, takes part in, at least, 10 (ten) matches, in the starting lineup, in the following competitions: Liga Sagres, Taça de Portugal, UEFA Champions League and Europa League;

  2.2 The gross amount of E 100.000,00 (one hundred thousand euros) if the Player, playing for SL Benfica-Futebol SAD, takes part in, at least, 20 (twenty) matches, in the starting lineup, in the following competitions: Liga Sagres, Taça de Portugal, UEFA Champions League and Europa League;

  2.3 The gross amount of E 100.000,00 (one hundred thousand euros) if the Player, playing for SL Benfica-Futebol SAD, takes part in, at least, 30 (thirty) matches, in the starting lineup, in the following competitions: Liga Sagres, Taça de Portugal, UEFA Champions League and Europa League;

3. If during the term of this contract the Player takes part (in any of the seasons nominated) in 20 (twenty) matches in the starting lineup of SL Benfica-Futebol SAD's main team, in the same conditions mentioned above, the gross amount of E 200.000,00 (two hundred thousand euros) will be added to the his annual payment. The alteration of any annual payment hereunder will take place in the first season right after the fact and will not have retroactive effects. In such event the bonuses listed in the last number of this clause will no longer be applicable."

- Leandro pleads that this honorable Court grants him, leastwise, a part of the bonuses expectation, being the minimum the amount of EUR 200,000, once it is plausible that Leandro would have played the minimum of 20 matches in 4 (four) years (adding the values stated on item 2.1 and 2.2 of clause 3 of the employment contract).

*Regarding the **damages**, Leandro pleads that this honorable Court grants him with an amount sufficient to restore the pain and suffering he has faced and dealt with and sufficient to refrain the club Benfica from future practice of such unlawful acts towards other players. Leandro pleads that the amount to be granted takes into consideration the powerful entity that is Benfica and the uneven relation between the parties and how Benfica simply breached legislation and FIFA Regulations in order to dismiss a player which the club had lost interest, instead of correctly paying him his rights!!*

*Regarding **interest**, Leandro pleads that this honorable Court summons Benfica to pay the minimum of 5% interest per year, beginning in the day after Benfica unilaterally terminated the employment contract without cause. The interest to the award should then be applied since July 10th 2010 (one day after Benfica' email terminating the contract).*

*Summon Benfica to pay **all costs related to this Appeal,** including, but not, limited, to the legal fees, fees of CAS, as well as other costs incurred to be imposed to Benfica. As to the reimbursement of all and any costs Leandro shall bear during this Appeal, not limited to fees of CAS.*

Summon Benfica to pay such further or consequential orders or relief as to this honorable Court sees fit".

42. The Club's submissions, in essence, may be summarised as follows:

- FIFA DRC did not have jurisdiction to hear any claims or disputes arising out of the Contract for the following reasons:
  - (i) Clause 17 of the Contract refers to the application of the CBA for matters not arranged in the Contract and Art. 54 of the CBA provides for jurisdiction of the Joint Arbitration Committee (JAC), which in turn is an independent national arbitration tribunal that fulfills the criteria of Art. 22, lit b RSTP;
  - (ii) The CBA does not require a direct expressed arbitration clause in the Contract;

  - (iii) FIFA DRC recognised in its decision that the CBA forms an integral part of the Contract and therefore, Art. 54 CBA has to be regarded as the arbitration clause by implication, a practice that is also adopted by FIFA with regard to its own jurisdiction based on reference to the RSTP.

- The Player contacted the Club for the first time on 7 July 2010, when he was already in breach of the Contract due to his unjustified absence. The Club's email of 9 July 2010 was not a termination notice, but only a warning following a breach of contract as set out in Art. 42.g of the CBA (unjustified absence). Only later on 31 August 2010, after the Player was still being absent and no settlement could be concluded, the Club notified the Player of the termination of the Contract by means of a termination notice.

- The Player bears the burden of proof with regard to his unjustified absence and thus far, the Player did not provide such valid proof. The Player could not prove that any verbal instructions were given by the Club to stay in Brazil and wait for further information. The Player did not discharge the burden of proof in relation to the SMS texts adduced in evidence, which assumed that the Club was no longer interested in the Player's services. The Player never mentioned these SMS texts in his email of 7 July 2010 and he failed to prove that these messages had been sent by representatives of the Club.

- FIFA DRC wrongly established that the Club lacked genuine interest in the Player's services. At the time, the Club was interested in the Player given his age, experience and potential. The following factors prove this:

  - (i) the Player showed his skills at the 2009 South American Youth Championship;

  - (ii) the parties entered into a 5-year term contract;

  - (iii) the Contract was not subject to a probation period;

  - (iv) the Club paid EUR 237.000 on training compensation and offered the Player a competitive salary;

  - (v) the Player was immediately loaned to gain more experience.

- In the alternative, the Club's view is that it is the Player who expressed a lack interest in returning to the Club by deliberately staying in Brazil after the end of the loan. The underlying reason was probably that the transfer window in Brazil was running from 20 June until 20 August and that the Player felt that his prospects of finding a new club were greater in Brazil. It was asserted to be an orchestrated strategy that in the event the Player did not find a new club in Brazil, he could still claim compensation from the Club for breach of contract.

- The email of 9 July 2010, from a formal perspective, falls short of a valid termination notice. The Club is a listed company and therefore a decision of the Board of Directors was necessary to issue a termination notice. Furthermore, the Player himself questioned the power of Mr. Gonçalves (the Club's legal advisor) to act on behalf of the Club in this regard and the Club mentioned in its facsimile of 20 July 2010 again that the Contract was not terminated.

- By issuing a warning and putting the Player in default by means of its email of 9 July 2010, the Club actively took part in the amicable settlement procedure of Clause 12 of the Contract. After issue of this default notice, the Club tried to resolve the dispute during a 30-day period, as provided for by clause 12 of the Contract. The parties exchanged correspondence, spoke on the phone and even held a meeting with a person appointed for this purpose by the Player's agent. Only on 31 August 2010, after a decision of the Board of Directors of the Club and when the Player's unjustified absence had already exceeded two months, the Club terminated the Contract by a formal termination notice.

- The Player continued to be absent after the first exchange of correspondence between the parties, during which the obligations under the Contract remained in force. Moreover, it is FIFA DRC's jurisprudence that when a loan agreement expires, it is the player's duty to return to his club and there is no obligation on the club to send a formal request to the player to resume his activities with the club. Furthermore, the club where the player is on loan is obligated to ensure that the player returns to his club of origin.

- The Club terminated the Contract with just cause on 31 August 2010 due the excessive unjustified absence of the Player without authorisation and without just cause. By his abandonment of work, the Player was in breach of the Contract and Art. 53 of the CBA, and therefore financial and sporting sanctions should be applied in accordance with Clause 14 of the Contract, rt. 50 of the CBA and Art. 17 RSTP.

- The Club therefore submits the following requests for relief:

  "1. Declare the lack of jurisdiction of FIFA and annul the Appealed decision.

  2. In the alternative to 1,

  2.1 rule that

  (a) the Appellant did not terminate the Employment Contract by means of the email 9/7/2010;
  (b) the Appellant did not breach clause 12 of the Employment Contract; and
  (c) the Appellant terminated the Employment Contract with just cause based on the Respondent's abandonment of work on 31/8/2010, which constituted a termination without just cause on the part of the Respondent;

2.2 order the Respondent to pay the Appellant compensation in the amount of

(a) €800,160 plus €20,000,000 plus €273,000;
(b) in the alternative to (a) €800,160 plus € 16,000,000 plus €218,400;
(c) in the alternative to (b) €800,160 plus loss of a possible transfer fee as calculated in detail in the present Appeal Brief plus €273,000;
(d) in the alternative to (c) €800,160 plus €218,400 plus loss of a possible transfer fee on ex aequo et bono basis;
(e) in the alternative to (d) €800,160 plus €273,000; and
(f) In the alternative to (e) €800,160 plus €218,400;

2.3 order the Respondent to pay the Appellant interest at a rate of 5% per year accrued on the amounts set out in 2.2

(a) from the moment the respondent was put in default, i.e. 9/7/2010;
(b) in the alternative to (a) from the date of termination of the contract, i.e. 31/8/2010;

2.4 impose disciplinary sanctions on the Respondent for breach of contract during the protected period in accordance with Article 17(3) RSTP; and

2.5 order the Respondent to

(a) pay the entire costs of the present appeal arbitration proceedings; and
(b) pay the legal fees and expenses of the Appellant in relation to the present appeal arbitration proceedings, to be determined at a later stage.

3. In the alternative to 2,

3.1 should the Panel regard the email of 9/7/2010 as a notice of termination, rule that the Appellant withdrew it and that the Respondent accepted such withdrawal; and

3.2 the same requests as those set out in 2, namely 2.1(b) to (c) and 2.2 to 2.5.

4. In the alternative to 3,

4.1 if the Panel rules that the Appellant terminated the Employment Contract without just cause on 9/7/2010,

(a) declare that the remuneration to be paid under the Employment Contract is net; that the Respondent failed to mitigate the damages during a total of 19 months and 22 days; and the Appellant was justified in not paying the salaries of July and August 2010;
(b) set the compensation to be paid by the Appellant to the Respondent at no more than €229,725;

4.2 in the alternative to 4.1, if the Panel rules that the Appellant terminated the Employment Contract without just cause on 31/8/2010,

(a) declare that the remuneration to be paid under the Employment Contract is net; that the Respondent failed to mitigate the damages during a total of 18; and the Appellant was justified in not paying the salaries of July and August 2010;
(b) set the compensation to be paid by the Appellant to the Respondent at no more than €229,725;

4.3 Order the Respondent to

(a) pay the entire costs of the present appeal arbitration proceedings;
(b) pay the legal fees and expenses of the Appellant in relation to the present appeal arbitration proceedings, to be determined at a later stage".

- At the hearing, the Club withdrew its claim of EUR 20.000.000,00 but the other requests for relief remain unaltered.

V. JURISDICTION

43. Article R47 of the Code provides as follows:

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

44. The jurisdiction of CAS derives from Articles 66 and 67 of the FIFA Statutes and is undisputed by the parties.

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

VI. ADMISSIBILITY

46. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

47. The Player filed its appeal on 30 July 2014 and the Club filed its appeal on 31 July 2014. Therefore, both appeals were filed within 21 days of the notification of the grounds of the Appealed Decision, *i.e.* 10 July 2014, in accordance with Article 67 (1) of the FIFA Statutes. The appeals complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fees.

48. It follows that the appeals are admissible.

VII. APPLICABLE LAW

49. Article R58 of the Code provides as follows:

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

50. The Panel notes that Clause 13 of the Contract provides that the parties recognise, for the interpretation and execution of the Contract, the FIFA Regulations on Status and Transfer of Players ("RSTP").

51. The Panel notes that Clause 17 of the Contract provides that *"cases and situations that are not in this contract are subject to CCT Regulation"*.

52. The Panel notes that both parties in their submissions rely on FIFA Regulations, the CBA, Portuguese Labour law and, subsidiarily, Swiss law.

53. On the basis of the foregoing, the Panel will apply, primarily, FIFA Regulations, the CBA and Portuguese Labour law and, subsidiarily, Swiss law.

VIII. PRELIMINARY ISSUES

A. Jurisdiction of FIFA DRC

54. In the proceedings before FIFA DRC, the Club contested FIFA's competence to deal with the case at hand, in preference to the Portuguese Joint Arbitration Committee (hereinafter the "JAC"). Nevertheless, FIFA DRC decided it was competent to deal with the dispute on the basis of Art. 22, lit. b RSTP due to lack of an express arbitration clause in the Contract in favour of the JAC.

55. The Player is of the opinion that FIFA DRC was competent to decide on the dispute and fully agrees with FIFA's legal reasoning on this point, the main argument being the lack of an explicit arbitration clause in the Contract.

56. The Club is of the opinion the JAC had exclusive jurisdiction to deal with the dispute, on the basis of the following reasons:

- Reference to the CBA in Clause 17 of the Contract renders applicable Art. 54 CBA, which stipulates *"in case of a dispute arising from this contract of employment, it shall be submitted to the Joint Arbitration Committee* (…)*"*.

- The JAC is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs (confirmed by former FIFA jurisprudence) and therefore, it is competent to deal with the issue at hand in compliance with Art. 22, lit. b RSTP.

- FIFA DRC gave more weight to Art. 9 of Annex II of the CBA, which stipulates that *"for the purpose of art. 3 lit. c of Annex II* (which provides that the JAC is competent to hear sports employment-related disputes)*, the competence of the JAC depends on the arbitration cause"*. Firstly, this article is merely a procedural rule while Art. 54 CBA is a substantive provision and, secondly, this article neither speaks of nor requires an explicit arbitration clause in the Contract.

- While it is undisputed that the Contract does not contain a specific jurisdiction clause, FIFA DRC accepted that, following Clause 17 of the Contract, the CBA constitutes an integral part of the contractual relationship between the parties. Therefore, it applies to any aspects of the parties' contractual employment relationship not governed by the Contract. Consequently, Art. 54 CBA must be regarded as the applicable arbitration clause "by reference", a legal practice which is used similarly by FIFA DRC when there is no explicit jurisdiction clause in the contract, but reference is made to the FIFA RSTP as applicable regulations.

57. At the hearing, the Club further established that it is common practice of the Club that in the event the player's native language is Portuguese (e.g. a Portuguese or Brazilian player), reference is made to the JAC for the resolution of disputes. However, if Portuguese is not the first language of the player, disputes can be referred to FIFA.

58. Initially, the Panel examined Art. 22, lit b RSTP, which deals with FIFA's jurisdiction. and states:

"FIFA is competent for: (…) Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or a collective bargaining agreement (…)".

59. Furthermore, the Panel considered the interpretation of Art. 22, lit b RSTP given in the FIFA RSTP Commentary, which provides:

"FIFA is competent for: (…)

Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal has been established at national level. The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned. (…)

if the association where both the player and club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes ([Footnote 101]: A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body.)".

60. Consequently, the Panel finds that, pursuant to Art. 22, lit b RSTP, the general rule is that all employment-related disputes between a club and a player that have an international dimension have to be submitted to FIFA DRC. Only if the following conditions are met, a specific employment-related dispute of an international dimension can be settled by an organ other than the FIFA DRC:

- there is an independent arbitration tribunal established at the national level;
- the jurisdiction of this independent arbitration tribunal derives from a clear reference in the employment contract; and
- this independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.

(*cf. CAS 2008/A/1518, par. 29-31*).

61. The Panel acknowledges that according to the FIFA jurisprudence referred to by the Club, the JAC meets the minimum procedural standards for national independent arbitration tribunals as laid down in Art. 22, lit b RSTP and in FIFA Circular no. 1010, however, it notes in the specific decision of FIFA DRC (no. 381130), FIFA DRC established that the relevant employment contract under review contained an arbitration clause with explicit reference to the arbitration body and the applicable articles of the CBA.

62. The Panel further notes that Art. 9 of Annex II of the CBA, which stipulates that *"for the purpose of art. 3 lit. c of Annex II* (which provides that the JAC is competent to hear sports employment-related disputes)*, the competence of the JAC depends on the arbitration cause".*

63. The Panel is of the opinion that Clause 17 of the Contract (*"The cases and situations that are not in this contract are subject to CCT Regulation (…)"*) is no such arbitration clause with explicit reference to the competence of the JAC.

64. Therefore, the Panel concludes that FIFA DRC was competent to deal with the matter at hand and the arguments of the Club in this regard are dismissed.

IX. MERITS

A. The Panel's scope of review

65. Pursuant to art. R57 of the Code, the Panel has full power to review the facts and the law on appeal.

B. Main issues

66. The main issues to be resolved by the Panel are:

i. When did the Club terminate the Contract?

ii. Did the Club terminate the Contract with or without just cause?

iii. What are the consequences of the termination of the Contract?

(i) When did the Club terminate the Contract?

67. It is undisputed between the parties that the Club terminated the Contract. It is, however, disputed between the parties as to when the Club terminated the Contract.

68. According to the Player, the Club terminated the Contract by means of its email dated 9 July 2010. The Player argues that the Club never requested him to return to the Club, due to its lack of interest in the services of the Player and that the email of 9 July 2010 was clearly drafted in a way to terminate the Contract.

69. According to the Club, it terminated the Contract by means of its email dated 31 August 2010, due to the Player's abandonment of work for two months, as the Player did not return to the Club on 1 July 2010, when the new sporting season started. The Club argues that its email of 9 July 2010 was merely a warning that further disciplinary action (*in casu* termination of the Contract) would be taken.

70. Firstly, the Panel notes that the Player duly rendered his services to Vitoria, following the Loan Agreement as from 10 August 2009 until 30 June 2010, until 10 May 2010 and that he subsequently returned to Brazil on holiday. In this context, the Panel observes that the Club did not appear to have objected to the Player's return to Brazil at that time, but merely indicated that the Player was aware that he should have returned to the Club by 1 July 2010 at the latest. The Panel also notes that in the period before 1 July 2010, the Club did not request the Player to return to the Club.

71. Secondly, the Panel notes that the Player contacted the Club on 7 July 2010 to inquire about the date on which he was to resume duty at the Club, while pointing out he was instructed to stay in Brazil to await further instructions. In that email, the Player also explicitly offered his services to the Club.

72. Subsequently, the Club's response by email dated 9 July 2010, stated, *inter alia*, the following:

"(…) there were no verbal instructions transmitted by any responsible person from SL Benfica SAD (…), it is obvious that you have been unjustifiably absent to work (…) as of 28 June last – the date, wide publicly known, for the restart of the work of professional football players (…)

at the conclusion of the Sagres League on 9 May last, you have travelled to Brazil without having left any contact (…)

no doubts could persist that the new sporting season would start on 1 July 2010 (…)

The facts herein contained inexorably consubstantiate just cause for termination of your sporting labour contract (…)

Taking into account the behavior of which you are herein accused which, due to its seriousness and guilty nature, questions the maintenance of the sporting labour contract entered into with SL Benfica SAD, constituting just cause for termination of the same, as already hereinabove referred, you are herein notified of the express intention of the application of the referred disciplinary sanction, in other words, to proceed with the termination of the identified sporting labour contract".

73. The Panel is of the opinion that the argument of the Club that the Player left without leaving any contact details, cannot be accepted. Firstly, it is the Club's duty to have contact details for its players and secondly, the Club had the contact details of the Player's agent, Mr. Jatoba but failed to make contact with him to require the Player's return to Portugal.

74. Moreover, the Panel notes that instead of summoning the Player to resume duty on a specific date, the Club merely informed the Player that it considered him to be absent without just cause, which the Club considered to be just cause for termination of the Contract. Again, the Panel observes that at no earlier time had the Club put the Player on notice of the alleged default of his obligations or communicated any sort of warning or request that the Player return to the Club.

75. Finally, the Panel has regard to the manner in which the email of 9 July 2010 is drafted, particularly the final paragraph, which puts into question the maintenance of the Contract and by which the Player is *"notified of the express intention of the application of the referred disciplinary sanction, in other words, to proceed with the termination of the identified sporting labour contract"*. The Panel is of the view that such wording evidences a clear lack of interest by the Club in the services of the Player and that such explicit wording should be viewed in the circumstances

as a notice of termination of the Contract, which entitled the Player to lodge a claim with FIFA.

76. Therefore, taking into account all circumstances, the Panel concludes that the Club unilaterally terminated the Contract by means of its email of 9 July 2010.

(ii) Did the Club terminate the Contract with or without just cause?

77. According to the Player, the Club terminated the Contract without just cause, as the Player was absent for only 6 days as at the date of the termination of the Contract. The Player further argues that the Club was no longer interested in his services as evidenced by receipt of text messages to this effect by his agent, Mr. Jatoba, from agents/members of the Club. Furthermore, the Club immediately commenced disciplinary proceedings before requesting that the Player return to the Club.

78. According to the Club, the Club terminated the Contract with just cause due to the abandonment of work by the Player. The Club argues that the Player should have returned on 1 July 2010 at the latest and that the Player did not return even after the receipt of the Club's email on 9 July 2010 or the Club's subsequent correspondence. According to the Club, it was the Player who lacked interest in returning to the Club and remained in Brazil during the transfer window for the sole purpose of finding a new club.

79. The Panel notes that at the time of the termination of the Contract by the Club, *i.e.* on 9 July 2010, the Player had been absent only for a period of 8 days.

80. The Panel agrees with the reasoning of FIFA DRC that 8 days' absence of a player cannot be viewed as just cause to terminate the contract, particularly without prior warning by the Club and accepts that only breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. Further, only when there are objective criteria which do not reasonably justify the expectation of continuation of the employment relationship between the parties may a contract be terminated prematurely. Hence, if more lenient measures or sanctions can be imposed by an employer to ensure the employee's compliance with his contractual obligations of his contractual duties, such measures should be implemented before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio*.

81. The Panel also believes that for the following reasons it was clear that the Club was not genuinely interested in retaining the Player's services. Firstly, the Player did not perform convincingly during the period of his loan to Vitoria, as he only made limited appearances at the end of the season. Secondly, and most importantly, the Club never asked or summoned the Player to return to the Club, neither before or after 1 July 2010, but instead, terminated the Contract in its first communication dated 9 July 2010. The Club's attitude after terminating the contract seemed to have been aimed at justifying and/or remedying the

termination, effectively coercing the Player to settle the matter and entering into negotiations with the Player at the same time.

82. The Panel thus concludes that the Club terminated the Contract without just cause.

(iii) What are the consequences of the termination of the Contract?

83. Having established that the Club terminated the Contract without just cause by means of its email of 9 July 2010, the Panel will proceed to assess the consequences of the unilateral termination of the Contract by the Club.

84. The Panel observes that FIFA DRC awarded to the Player the amount of EUR 550.000 as compensation for the breach of contract by the Club. The Player does not agree with this amount and seeks compensation in the sum of EUR 800.160 relating to the remaining salaries under the Contract as well as an amount in respect of bonuses and damages.

85. The Panel observes that in the event of premature termination of a contract without just cause, Art. 17 RSTP is applicable, which determines the consequences of such termination.

86. The Panel observes that Art. 17 (1) RSTP stipulates as follows:

"The following provisions apply if a contract is terminated without just cause:

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

87. Firstly, the Panel notes that in Clause 14 of the Contract, an amount of EUR 20.000.000 is set as compensation and penalty payable by the Player in the event of a termination without just cause by the Player or a termination with just cause by the Club. The Panel agrees with the FIFA DRC's reasoning that such clause is clearly unilateral and to the benefit of the Club only and thus shall not be taken into consideration in the determining appropriate quantum of compensation in the matter at hand. Furthermore, the Panel acknowledges that the Player did not request the amount provided by this clause and also the Club withdrew its request for application of the relevant clause during the hearing.

88. As a consequence, the Panel will determine the amount of compensation by application of the other parameters provided by Art. 17 (1) RSTP. The Panel recalls that the provision provides for a non-exhaustive enumeration of criteria to be taken into account when calculating the amount of compensation payable. Therefore, other objective criteria may be

taken into account at the discretion of the deciding body and each request for compensation for contractual breach has to be assessed on a case-by-case basis taking into account all specific circumstances of the respective matter.

89. The Panel acknowledges the principle of 'positive interest' as confirmed by established CAS jurisprudence to determine the compensation to be awarded in the event of breach of contract:

"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof. As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have [had] if no breach had occurred. The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2012/A/3033, N. 75; CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f)".

90. Furthermore, the Panel also takes into account the provisions of the CBA referred to by the parties in the Contract and their submissions, in particular Art. 48 (1) and 49 of the CBA which provide as follows:

"Art. 48: Responsibility of the sports club or society in the event of termination with just cause by the player

(1) Termination of contract (…) entitles the player to compensation in an amount equal to the value of the remuneration which would have been payable to the player had the employment contract run until the original expiry, minus any income obtained from the performance of the same activity from the immediate following season until the original expiry of the employment contract early terminated.

Art. 49: Liability of the club in the event of dismissal without just cause

The employer that has unduly dismissed a player, because of failure to institute disciplinary proceedings or lack of just cause, shall compensate the player pursuant to article 48 above".

91. The Panel notes that in accordance with the Contract, which was to run until 30 June 2014, after the breach of contract occurred, the Player was to receive remuneration amounting to EUR 800.160.

92. The Panel further notes that it was established by FIFA DRC and the parties that on the basis of new employment contracts, the Player received income amounting to approximately EUR 35.950 in the period between 9 July 2010 and 30 June 2014.

93. Consequently, after deducting the amount of remuneration earned under the new employment contracts from the amount the player was to receive under the existing contract, the Panel concludes that EUR 764.210 will be the amount that serves as basis for the final determination of the appropriate quantum of compensation.

94. The Panel observes that the Player further requests a part of the bonuses expectation, *"being the minimum the amount of EUR 200,000, once it is plausible that Leandro would have played the minimum of 20 matches in 4 years (adding the values stated on item 2.1 and 2.2 of clause 3 of the employment contract)".*

95. The Panel notes that the Player never played an official game for the Club, as he was immediately loaned to Vitoria in his first season and that at Vitoria, the Player was not fielded in the starting lineup at Vitoria for the majority of the season. The Panel therefore concludes that it is unlikely that his performance would have merited payment of bonuses.

96. The Player further requests compensation for damage to his professional career, *"sufficient to restore the pain and suffering he has faced and dealt with and sufficient to refrain the Club from future practice of such unlawful acts towards other players".*

97. The Panel notes that the Player did not ask for a specific sum to be awarded in respect of this alleged claim and considers this to be a factor that should properly be taken into account in assessing whether the total amount of compensation based on the objective damage incurred by the Player should be amended in light of the Panel's discretion under the specificity of sport referred to in Article 17 RSTP.

98. Finally, the Panel assessed whether it considered that the objective amount of damages of EUR 764.210, is just and fair or whether this amount should be reduced or increased in light of the "specificity of sport". The Panel adheres to the following views expressed in CAS jurisprudence:

> *"(…) the specific circumstances of a case may lead a Panel to increase or decrease the amount of compensation, by letting itself inspire, mutatis mutandis, by the concept of fair and just indemnity foreseen in the art. 337c para. 3 and art. 337d para. 1 Swiss Code of Obligations, without applying the strict quantitative limits foreseen in such rules. (…)"* (CAS 2008/A/1519-1520, § 156). *"(…) The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of the parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football"* (CAS 2007/A/1358, § 40 of abstract published by CAS).

99. The Panel thus considers that the Player's claim in respect to damages to his professional career is not objectively quantifiable, but is an aggravating factor that could be taken into account in increasing the amount of compensation to be awarded. The Panel observes that the Player indeed did not find alternative employment with a new club for 8 months and that his salary under his new employment was decreased significantly.

100. However, the Panel also notes that it is the general obligation of the Player to duly mitigate his damages. In this regard, the Panel is of the opinion that the Player could have taken steps to return to the Club, as he remained under contract with the Club for 4 more seasons. The Player took no positive steps to ask the Club if and when he should return and merely relied on indirect information provided by his agent. Furthermore, the Player purported to accept the termination of the Contract without question and took no positive steps to return to the Club.

101. Taking into consideration all circumstances, the Panel finds it is both fair and to confirm the decision of FIFA DRC and to award to the Player compensation in the amount of EUR 550.000.

102. The Panel further notes the Player's request for interest of 5% per year starting from 10 July 2010, being the day after the termination of the Contract by the Club, whereas before FIFA DRC the Player requested merely for an interest to be applied, without specifying any starting date, and whereas FIFA DRC decided that an interest rate of 5% per year was due if no payment was made by the Club within 30 days of notification of the Decision.

103. The Panel wishes to emphasise that by adding a specific starting date for the interest of 5% per year, the Player did not amend his prayers for relief, because he is still requesting for interest like he did before FIFA, and the change of a date or the adding of a date is merely a technical issue which does not represent an expansion of the scope of the claim.

104. That clarified, the Panel notes that the Player did not rely on any legal provisions with regard to the issue of interest. According to Swiss law, article 105.1 of the Swiss Code of Obligations stipulated that *"A debtor in default on payment of interest, annuities or gifts is liable for default interest only as of the day on which enforcement proceedings are initiated or legal action is brought"*. Therefore, the Panel is of the opinion that interest shall only be payable from the day when the Player filed its claim with FIFA, *i.e.* 19 August 2010, as it is the first time the interest is claimed.

C. Conclusion

105. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that:

1) The Club terminated the Contract by means of its email of 9 July 2010;

2) The Club terminated the Contract without just cause;

3) The Club has to pay compensation to the Player in the amount of EUR 550.000;

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Leandro da Silva on 30 July 2014 against the decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2014, with reference No. 01143276 is partially upheld.

2. The appeal filed by Sport Lisboa e Benfica on 31 July 2014 against the decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2014, with reference No. 01143276 is dismissed.

3. The Decision of the FIFA Dispute Resolution Chamber is partially modified and Sport Lisboa e Benfica is ordered to pay Leandro da Silva compensation for breach of contract in the amount of EUR 550.000, with interest of 5% per annum as of 19 August 2010.

(…).

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