Arbitration CAS 2017/A/4940 FC Lokomotiv Moscow v. Desportivo Brasil Participações Ltda., award of 14 July 2017

Panel: Prof. Martin Schimke (Germany), President; Prof. Luigi Fumagalli (Italy); Mr Manfred Nan (The Netherlands)

Football
Transfer with compensation to be paid to the former club in case of extension or prolongation of the employment contract with the new club
Interruption or continuation of an employment contract
Deduction of the solidarity contribution from the compensation to be paid

1. **Pursuant to the principle of imputability/accountability of periods of employment, an employment contract is considered as not interrupted if there is a close material and temporal connection. Both the material as well as the temporal connection are complied with if the work of the player remained the same, and if only a period of 15 days has elapsed since the expiration of the initial employment contract. The conclusion of a new employment contract a mere two weeks following the expiration of an initial employment contract shall therefore be considered as a prolongation or extension.**

2. **If the parties, in derogation to the principle that 5% of any compensation is to be deducted in order for this amount to be distributed by the new club as solidarity contribution to the clubs that were involved in the player's training, have agreed that the transfer fee will already be inclusive of any amount due in connection of the solidarity contribution, any amount found to be part of that transfer fee, even if becoming due at a later stage as a result of the extension of the employment contract, is to be considered as a "net" amount over which no solidarity contribution is to be withheld.**

I. PARTIES

1. CJSC Football Club Lokomotiv (the "Appellant" or "Lokomotiv") is a football club with its registered office in Moscow, Russian Federation. Lokomotiv is registered with the Russian Football Union ("RFU"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Desportivo Brasil Participações Ltda. (the "Respondent" or "Desportivo Brasil") is a football club with its registered office in Porto Feliz, Brazil. Desportivo Brasil is registered with the Brazilian Football Confederation ("CBF"), which in turn is also affiliated to FIFA.

II. BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration proceeding. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

4. On 8 March 2010, Desportivo Brasil and Lokomotiv concluded a transfer agreement (the "Transfer Agreement") for the transfer of M. (the "Player"), a professional football player of Brazilian nationality, from Desportivo Brasil to Lokomotiv for a transfer fee of EUR 4,000,000.

5. Also on 8 March 2010, Desportivo Brasil and Lokomotiv concluded an amendment to the Transfer Agreement (the "Amendment"), determining, *inter alia*, the following:

> *"1. The Parties agree to change Section 3.1 of the Transfer Agreement as follows:*
>
> *Transfer Fee: For the definitive transfer of Player (including transfer of 100% federative and economic rights of the Player), Lokomotiv agrees to pay a Transfer Fee in the total net amount of 4,000,000.00€ (four million Euros).*
>
> *In addition, Lokomotiv undertakes to pay to Desportivo Brasil 20% (twenty percent) of any amount received in the future from any third party (whether a club or an investor) for the permanent transfer of the Player to any third football club (the 20% share of Desportivo Brasil is hereinafter referred to as "Further Transfer Fee"). Such Further Transfer Fee is to be paid to Desportivo Brasil within 15 (fifteen) days from the receipt of the amount, owed by such third party. In case of contingent payments, Desportivo Brasil shall be entitled to receive its 20% (twenty percent) share, within 05 (five) days from each payment by the third-party.*
>
> *In case Lokomotiv need to have an additional agreement in order to effect payment of the Further Transfer Fee (if required by the Russian laws), the Parties shall conclude the relevant agreement as soon as possible.*
>
> *2. Further Rights and Obligations of the Parties:*
>
> […]
>
> *If Lokomotiv and Player at any time decide upon the prolongation or extension of the employment contract or to the termination and subsequent execution of a new employment contract, Desportivo Brasil shall have the right to transfer its 20% (twenty percent) Further Transfer Fee to Lokomotiv, which shall be obliged to acquire it for the amount of 1,500,000.00€ (one million and five hundred thousand Euros). After that, Lokomotiv becomes the sole holder of 100% (one hundred percent) of any Transfer Fee (i.e. no Further Transfer Fee will be to be paid to Desportivo Brasil in connection*

with transfer of the Player in the future).

In case Lokomotiv needs to have an additional agreement in order to effect any payment stated above, whether the Further Transfer Fee or any indemnification, the Parties shall conclude the relevant agreement as soon as possible".

6. On 11 March 2010, Lokomotiv and the Player concluded an employment contract (the "First Employment Contract"), valid as from the date of signing until 30 June 2014.

7. On 15 July 2014, Lokomotiv and the Player concluded a second employment contract (the "Second Employment Contract"), valid as from the date of signing until 30 June 2017.

B. Proceedings before the Single Judge of FIFA's Players' Status Committee

8. On 9 March 2016, Desportivo Brasil filed a claim against Lokomotiv before the Players' Status Committee of FIFA (the "FIFA PSC"), requesting the payment of EUR 1,500,000, plus interest at a rate of 10% *per annum* as from the date on which the prolongation / extension / execution of the Second Employment Contract with the Player took place until the date of effective payment.

9. Lokomotiv contested Desportivo Brasil's assertions in respect of its claim.

10. On 11 October 2016, the Single Judge of the FIFA PSC rendered his decision (the "Appealed Decision"), with, *inter alia*, the following operative part:

> *1. "The claim of* [Desportivo Brasil] *is partially accepted.*
>
> *2.* [Lokomotiv] *has to pay to* [Desportivo Brasil]*, within 30 days as from the date of notification of this decision, the total amount of EUR 1,500,000 as well as 5% interest per year on the said amount from 16 July 2014 until the date of effective payment.*
>
> *3. If the aforementioned sum, plus interest, is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further claims lodged by* [Desportivo Brasil] *are rejected.*
>
> *5. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by* [Lokomotiv] *within 30 days as from the date of notification of the present decision, as follows:*
>
> *5.1 The amount of CHF 15,000 has to be paid to FIFA* […]
>
> *5.2 The amount of CHF 5,000 has to be paid directly to* [Desportivo Brasil]*".*

11. On 21 December 2016, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- *"[…] [T]he Single Judge also acknowledged that the parties concluded an amendment which, inter alia, provided that* [Desportivo Brasil] *was entitled to receive from* [Lokomotiv] *the amount of EUR 1,500,000, if the latter and the player, at any time decided upon the prolongation or extension of the employment contract or to the termination and subsequent execution of a new employment contract (cf. clause 2.4 of the* [Amendment]*).*

- *In this respect,* [Desportivo Brasil] *maintained that, since the first employment contract between the player and* [Lokomotiv] *has expired and the player is nonetheless still registered and playing for* [Lokomotiv]*, such employment contract must have been extended or a new contract must have been executed. Therefore,* [Desportivo Brasil] *referred to clause 2.4 of the* [Amendment] *and requested an amount of EUR 1,500,000 from* [Lokomotiv].

- *Equally, the Single Judge observed that, in its reply, on* [the] *one hand,* [Lokomotiv] *acknowledged having concluded two employment contracts with the player, a first one valid as of 11 March 2010 until 30 June 2014, and a second one, as of 15 July 2014 until 30 June 2017. On the other hand,* [Lokomotiv] *disputed* [Desportivo Brasil's] *entitlement to* [the] *amount at stake, arguing that during the two weeks period in between the two aforementioned contracts, the player was a free agent without registration period.*

- *Having duly examined the argumentation and documentation put forward by both parties, the Single Judge emphasised that it remained undisputed that the player and* [Lokomotiv] *concluded two employment contracts, the first of which ended on 30 June 2014 and the second of which started on 15 July 2014. Hence, the respective execution of the contracts was only separated by a period of 15 days.*

- *Turning his attention to clause 2.4 of the* [Amendment]*, the Single Judge was eager to emphasise that, taking into account the circumstances of the termination and subsequent execution of the second employment contract, such clause was applicable in the matter at hand. For the sake of good order, the Single Judge deemed appropriate to state that, in view of the short period between the two employment contracts, the execution of the second employment contract may also qualify as an extension in accordance with clause 2.4 of the* [Amendment].

- *Having said that, the Single Judge concluded that, in accordance with the pertinent and concrete character of such provision and, considering the termination of the first employment contract concluded with the player on 30 June 2014 and the subsequent execution of the second employment contract as of 15 July 2014,* [Lokomotiv] *had breached its contractual obligations towards* [Desportivo Brasil] *and should, as a consequence, be liable to pay the outstanding amount of EUR 1,500,000 in accordance with clause 2.4 of the* [Amendment].

- *Bearing in mind the aforementioned and the basic legal principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith as well as bearing in mind the content of the* [Amendment] *and the fact that the conditions for the payment of the amount of EUR 1,500,000 had in casu been met, the Single Judge decided that* [Lokomotiv] *must pay* [Desportivo Brasil] *the outstanding amount of EUR 1,500,000 according to clause 2.4 of the* [Amendment].

- *In continuation, the Single Judge further observed that* [Desportivo Brasil] *claimed an interest at a rate of 10% p.a. on the amount in dispute from the date on which the prolongation/extension/execution of a new contract with the player took place until the date of effective payment. In this respect, the Single Judge referred to the content of clause 4.5 of the* [Transfer Agreement] *and highlighted that an interest rate of 10% p.a. is solely applicable in connection with penalty fees and cannot be applied in the present dispute.*

- *Consequently, the Single Judge ruled that the relevant request of* [Desportivo Brasil] *had to be rejected and, taking into account the constant practice of the Players' Status Committee, decided to grant interest at a rate of 5% p.a. over the outstanding amount of EUR 1,500,000 as from 16 July 2014 until the date of effective payment".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 10 January 2017, Lokomotiv lodged a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the "CAS Code"). In this submission, Lokomotiv requested a sole arbitrator to be appointed.

13. On 20 January 2017, Lokomotiv filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. Lokomotiv challenged the Appealed Decision, submitting the following requests for relief:

> *"FIRST – To dismiss the Appealed decision;*
>
> *SECOND – To condemn the Respondent to the payment of the legal expenses incurred by the Appellant; and*
>
> *THIRD – To establish that the costs of the ongoing arbitration will be born [sic] by the Respondent".*

14. On 23 January 2017, Desportivo Brasil requested an arbitration panel of three arbitrators to be appointed.

15. On 24 January 2017, the CAS Court Office informed the parties that, in light of Desportivo Brasil's objection to a sole arbitrator being appointed, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue.

16. On 26 January 2017, FIFA renounced its right to request its possible intervention in the present arbitration.

17. On 1 February 2017, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a Panel composed of three arbitrators.

18. On 7 February 2017, Lokomotiv nominated Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy, as arbitrator.

19. On 8 February 2017, Desportivo Brasil nominated Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as arbitrator.

20. On 13 February 2017, Desportivo Brasil filed its Answer, pursuant to Article R55 of the CAS Code. It submitted the following requests for relief:

> *"a) To fully reject the appeal lodged by the Appellant;*
>
> *b) To uphold the decision passed by the Single Judge of the Players' Status Committee and confirm the enforceability of said decision, determining the Appellant to immediately pay to the Respondent (i) the net amount of €1,500,000.00 (one million and five hundred thousand Euros); (ii) interest on default at the rate of 5% (five percent) per year counted from 16 July 2014 until effective payment; and (iii) CHF5,000.00 (five thousand Swiss Francs) as reimbursement of the procedural costs before FIFA;*
>
> *c) Condemn the Appellant to bear all the costs associated with the present procedure; and*
>
> *d) Condemn the Appellant to pay 45,000.00€ (forty-five thousand Euros) – corresponding to 3% (three percent) of the original amount in default –, to contribute towards the Respondent's legal costs in these proceedings".*

21. On 21 February and 1 March 2017 respectively, upon being invited by the CAS Court Office to express their views in this respect, Lokomotiv indicated that it preferred the Panel to issue an award on the basis of the parties' written submissions, whereas Desportivo Brasil indicated that it believed that a hearing could help the Panel to understand the lack of foundation in Lokomotiv's requests for relief but that, if the Panel considered the written information to be sufficient, it would respect the decision not to hold a hearing.

22. On 7 March 2017, Lokomotiv informed the CAS Court Office that, bearing in mind that Desportivo Brasil does not strongly object to no hearing being held, it insisted on the Panel issuing an award on the basis of the parties' written submissions.

23. On 8 March 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

- Prof Dr Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President;
- Prof Luigi Fumagalli, Attorney-at-Law in Milan, Italy; and
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as arbitrators

24. On 3 April 2017, the CAS Court Office informed the parties that the Panel had decided to issue an award based solely on the parties' written submissions without the holding of a hearing.

25. On 3 and 7 April 2017 respectively, Desportivo Brasil and Lokomotiv returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming, *inter alia*, their

agreement to the Panel deciding this matter based solely on the parties' written submissions and that their right to be heard had been respected.

26. The Panel confirms that it carefully heard and took into account in its discussions 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

27. Lokomotiv's submissions, in essence, may be summarised as follows:

- The Transfer Agreement as well as the Amendment have been signed by a legal entity with its headquarters in São Paulo, with the Corporate Taxpayers' Registry Number 07695/3000002-62, while the claim to the FIFA PSC was filed by another legal entity with its headquarters in Porto Feliz, with the Corporate Taxpayers' Registry Number 07695/3000001-81. Pursuant to clause 7(4) of the Transfer Agreement any assignment of any rights and obligations to a third party without prior written consent of the other party is prohibited. As a consequence, the Appealed Decision is illegal and not enforceable.

- During the two weeks in between the two employment contracts, the Player was a free agent without registration period, thus neither a prolongation nor an extension of the first employment contract took place. As a consequence, Desportivo Brasil was not entitled to receive an additional transfer fee in the amount of EUR 1,500,000.

- In accordance with Article 22 of the Swiss Code of Obligations (the "SCO"), clause 2 of the Amendment should be regarded as a preliminary contract, but not as an unconditional right to the amount of EUR 1,500,000. Desportivo Brasil had an obligation to make an offer in order to sell its 20% Further Transfer Fee, but no offer was made. As a consequence, Desportivo Brasil is not entitled to receive an additional transfer fee in the amount of EUR 1,500,000.

- The starting date of the interest awarded over the amount of EUR 1,500,000 is incorrect, which is contrary to the Transfer Agreement and Article 102 SCO, since the Amendment does not specify when Lokomotiv had to proceed with the payment. As such, Lokomotiv had to be placed in default before the interest would start to accrue.

- Subsidiarily, the FIFA PSC failed to deduct 5% of the amount of EUR 1,500,000 awarded to Desportivo Brasil in the Appealed Decision as it should have done pursuant to the provisions on solidarity contribution set out in Annexe 5 FIFA RSTP. The FIFA PSC thus awarded Desportivo Brasil a higher amount than it was entitled to.

28. Desportivo Brasil's submissions, in essence, may be summarised as follows:

- From the wording of the Amendment, it is undisputed that upon prolongation, extension or execution of a new employment agreement between Lokomotiv and the Player, Desportivo Brasil became entitled to lift a "put option" and transfer its Further Transfer Fee to Lokomotiv, which became immediately liable for the payment of the net amount of EUR 1,500,000 to Desportivo Brasil. It is important to attain to the ratio and the spirit of the wording of the Amendment. The idea behind its execution and the wording employed to it was to establish that Desportivo Brasil would receive a further compensation in case the Player succeeded following his transfer to Lokomotiv.

- The arguments submitted by Lokomotiv in order to attempt to overturn the Appealed Decision are preposterous and disingenuous.

- As to Lokomotiv's argument that the claim before the FIFA PSC was filed by an "improper claimant", Desportivo Brasil argues that Lokomotiv failed to observe thoroughly the piece of evidence it presented to CAS. It is clearly mentioned in the *"extract from the record of the National Survey Cadastre of Legal Entities of Brazil"*, right below the inscription number, that the "liquidated" registration belonged to a "filial", or a branch. The original place of business is Porto Feliz, but at that time, Desportivo Brasil had its administrative office physically located within the confinements of its mother company, with place of business in São Paulo. There are no two different entities. Even if this argument / evidence made any sense, it should not be accepted by CAS, as they were available to Lokomotiv before the Appealed Decision was rendered, but was never brought up in the proceedings before the Single Judge of the FIFA PSC.

- As to the alleged misinterpretation of the Amendment, it is argued that the definition of "termination" means both the "act of early terminating" and the "expiry by its term". In any event, there was a "subsequent execution of a new employment contract".

- The intention of clause 2(5) of the Amendment is to establish the parties' commitment to sign any relevant document necessary to authorise the performance of any payment obligation. This is plain and simple an administrative / procedural provision to guarantee that Lokomotiv would be able to perform the payment obligations under the Amendment, not any indication that the Amendment was a preliminary agreement or that a further agreement to grant any right to Desportivo Brasil should exist.

- As to Lokomotiv's argument that the Appealed Decision is in breach of article 21 and Annexe 5 FIFA RSTP, there is absolutely nothing tying the Amendment, the Appealed Decision or anything under debate in this case with the provisions of the solidarity mechanism. In addition, it is to be remarked that the Transfer Agreement states that all payments due by Lokomotiv to Desportivo Brasil are net of solidarity mechanism: therefore, the Transfer Agreement does not authorize Lokomotiv to deduct the 5% solidarity from the Further Transfer Fee.

- The bad faith of Lokomotiv towards Desportivo Brasil became clear when it

attempted to fraud the second employment contract with the Player when creating facts and allegations to mislead and deceive the jurisdictional entities. According to the information gathered with the Player and his agent, the second employment contract was negotiated in mid-2013, even though the document was post-dated to after the original employment contract termination date. Unfortunately, since the Player remains employed by Lokomotiv, he will not be able to testify on this matter before the Panel. The Player however made declarations in this respect to the Brazilian media. This is however not relevant to the case at hand – the timing of the execution of the second employment contract does not affect Desportivo Brasil's rights – and the Player declined to testify in these proceedings, these remarks are left as a mere statement to Lokomotiv's bad faith.

- As to the starting date of the interest, Lokomotiv fails to observe its own evidence. Pursuant to Article 102(2) SCO and clause 2(4) of the Amendment, the obligation of Lokomotiv to acquire Desportivo Brasil's Further Transfer Fee arose immediately after the execution of the second employment contract. The deadline for payment, thus, was the date on which the second employment agreement was signed.

V. JURISDICTION

29. The jurisdiction of the CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition), providing that *"[a]ppeals 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"* and Article R47 of the CAS Code.

30. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by both parties.

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

VI. ADMISSIBILITY

32. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

33. It follows that the appeal is admissible.

VII. APPLICABLE LAW

34. Neither of the parties made any specific submissions in respect of the applicable law.

35. Article R58 of the CAS Code provides the following:

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

36. Article 57(2) of the FIFA Statutes stipulates the following:

"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".

37. Article 8(1) of the Transfer Agreement determines the following:

"This Transfer Agreement shall be governed by and construed in accordance with FIFA Regulations, as well as the complementary rules enacted by FIFA from time to time".

38. Article 3 of the Amendment determines as follows:

"This 1st Amendment shall be governed by and construed in accordance with FIFA Regulations, as well as the complementary rules enacted by FIFA from time to time".

39. The Panel is satisfied that primarily the various regulations of FIFA are applicable, in particular the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

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

i. Is the Appealed Decision illegal and unenforceable because the claim before FIFA was filed by an entity that was not bound by the Transfer Agreement and the Amendment?

ii. Was Section 3.1 of the Transfer Agreement, as amended by the Amendment, complied with?

iii. If so, should any solidarity contribution be deducted from the amount of EUR 1,500,000 to be paid?

iv. As from which date shall interest accrue?

i. Is the Appealed Decision illegal and unenforceable because the claim before FIFA was filed by an entity that was not bound by the Transfer Agreement and the Amendment?

41. In relation to this argument, the Respondent appears to have requested that the argument be considered inadmissible on the basis of Article R57.3 of the CAS Code (see para. 31 of its answer). The Panel notes that Article R57.3 of the CAS Code refers to the discretion a CAS panel has to exclude evidence, in the circumstances therein described, not arguments. Nevertheless, this question of admissibility needs not be answered in the end, if the Panel is convinced that the claim before FIFA was filed by an entity that was bound by the Transfer Agreement and the Amendment. Therefore the Panel will first review this issue within the following considerations.

42. Whereas Lokomotiv argues that the entity based in São Paulo that concluded the Transfer Agreement and the Amendment and the entity based in Porto Feliz that filed the claim before FIFA on the basis of such contracts were different, submitted evidence of the fact that the Corporate Taxpayer's Registry numbers of the two entities differ, and argued that the former entity was closed on 11 November 2010, Desportivo Brasil argues that the Transfer Agreement and the Amendment were signed by a "filial" or "branch" of the entity that filed the claim before FIFA and that this "branch" was closed/liquidated when the administrative office slowly moved from São Paulo to Porto Feliz.

43. The Panel observes that the record of the "National Survey Cadastre of Legal Entities of Brazil" determines, *inter alia*, the following in respect of the entity that concluded the Transfer Agreement and the Amendment in a translation provided by Lokomotiv:

> *"Record Number*
>
> *07.965.300/0002-62*
>
> *FILIAL*
>
> *Company name*
>
> *Desportivo Brazil Participacoes LTDA*
>
> […]
>
> *Cadastral situation reason*
>
> *EXTINCAO P/ENC LIQ VOLUNTARY".*

44. Having examined the record cited above in detail, the Panel finds that the entity that concluded the Transfer Agreement and the Amendment was indeed a "branch". Although the record of the "branch" does not specifically indicate the principal entity, the Panel observes that the name coincides with the entity that filed the claim with FIFA, *i.e.* Desportivo Brasil Participações Ltda. This leads the Panel to the conclusion that the entity based in Porto Feliz

is the principal entity.

45. In any event, on the basis of the evidence provided to it, the Panel is not convinced that the claim before FIFA was filed by an entity different than the one that concluded the Transfer Agreement and the Amendment. The fact that the "branch" was liquidated or closed on or before 11 November 2010 does not prevent the principal entity from lodging a claim before FIFA on the basis of contracts concluded by its "branch".

46. Consequently, notwithstanding the above mentioned question of admissibility, the Panel finds that the Appealed Decision is not illegal or otherwise unenforceable.

ii. Was Section 3.1 of the Transfer Agreement, as amended by the Amendment, complied with?

47. The Panel observes that the relevant part of the Transfer Agreement, as amended by the Amendment, determines as follows:

> *"If Lokomotiv and Player at any time decide upon the prolongation or extension of the employment contract or to the termination and subsequent execution of a new employment contract, Desportivo Brasil shall have the right to transfer its 20% (twenty percent) Further Transfer Fee to Lokomotiv, which shall be obliged to acquire it for the amount of 1,500,000.00€ (one million and five hundred thousand Euros). After that, Lokomotiv becomes the sole holder of 100% (one hundred percent) of any Transfer Fee (i.e. no Further Transfer Fee will be to be paid to Desportivo Brasil in connection with transfer of the Player in the future)".*

48. The Panel observes that two potential situations are contemplated in this paragraph enabling Desportivo Brasil to exercise its right to transfer its 20% of Further Transfer Fee to Lokomotiv, in case of which the amount of EUR 1,500,000 is due to be paid by Lokomotiv to Desportivo Brasil:

- If Lokomotiv and the Player decide upon the prolongation or extension of the employment contract;
- If Lokomotiv and the Player decide upon the termination and subsequent execution of a new employment contract.

49. In the matter at hand it remained undisputed that the First Employment Contract expired.

50. It also remained undisputed that Lokomotiv and the Player concluded the Second Employment Contract 15 days after expiration of the First Employment Contract.

51. The Panel finds that this situation is clearly provided for in Section 3.1 of the Transfer Agreement.

52. First of all, the Panel finds that the conclusion of a new employment contract a mere two weeks following the expiration of an initial employment contract shall indeed be perceived as

a prolongation or extension.

53. Of course, if the period between expiration and the conclusion of the new contract would be significantly longer this could possibly be different, however, pursuant to the principle of imputability/accountability of periods of employment, an employment contract is considered as not interrupted if there is a close material and temporal connection.

54. Both the material as well as the temporal connection are complied with as the work of the Player remained the same, or at least Lokomotiv failed to prove the contrary, and because the Panel considers a period of 15 days to constitute a close temporal connection.

55. The Panel however notes that Section 3.1 of the Transfer Agreement, as amended by the Amendment, is not automatically triggered, but rather that it is an option (*"Desportivo Brasil shall have the right"*) that could be unilaterally exercised by Desportivo Brasil.

56. Accordingly, the Panel finds that article 22(1) SCO (*"Parties may reach a binding agreement to enter into a contract at a later date"*.) is not applicable as it applies to a "binding agreement", whereas the relevant clause in the Amendment is an "option".

57. The Panel finds that this option was only exercised when Desportivo Brasil informed Lokomotiv of its decision to do so, as Desportivo Brasil could also opt to maintain 20% of the economic rights deriving from the Players' federative rights. The exercising of the option is not to be mistaken with an offer, as argued by Lokomotiv, for the consent of Lokomotiv was not required in exercising the option (*"Lokomotiv, which shall be obliged to acquire it for the amount of 1,500,000.00€"*).

58. In the absence of any evidence being provided by Desportivo Brasil that it informed Lokomotiv of its decision to exercise the unilateral option prior to commencing proceedings before FIFA, the Panel finds that the option was only exercised when Lokomotiv was provided with the claim filed before FIFA by Desportivo Brasil.

59. The exercise of the option entails that Lokomotiv acquired the full 100% of the economic rights steaming from the Players' federative rights, that Lokomotiv is in principle held to pay an amount of EUR 1,500,000 to Desportivo Brasil for the final 20% of said Player's economic rights, and that Desportivo Brasil forfeited its right to claim a 20% share of any possible future transfer fee received for the Player by Lokomotiv.

60. Consequently, the Panel finds that Section 3.1 of the Transfer Agreement, as amended by the Amendment, is complied with and that Desportivo Brasil is in principle entitled to receive an amount of EUR 1,500,000 from Lokomotiv.

iii. If so, should any solidarity contribution be deducted from the amount of EUR 1,500,000 to be paid?

61. Article 21 FIFA RSTP determines the following:

"If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations".

62. Article 1 of Annexe 5 FIFA RSTP determines the following:

"If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. […]*".*

63. From the above regulatory framework, the Panel understands that in principle 5% of any compensation is to be deducted in order for this amount to be distributed by the new club (*i.e.* Lokomotiv) as solidarity contribution to the clubs that were involved in the Player's training.

64. It however does not derive from the FIFA RSTP that parties cannot deviate from this provision, which is in accordance with consistent CAS jurisprudence:

"The Panel considers that the wording of the Agreement is clear and cannot be misinterpreted. Article 2 para. 3 defines the meaning of the agreed transfer fee as "net" being the amount after all legal deductions, including but not limited to solidarity contributions. The Panel therefore recognizes, that the parties actually agreed on a net transfer fee of EUR 3,200000, which corresponds to a gross amount of EUR 3,368,421, inclusive of the amount to be distributed as solidarity contribution.

With respect to the question whether the parties may agree on a "net" transfer fee, the Panel adopts the decision rendered in the case CAS 2012/A/2707, which holds that there is no legal obstacle preventing clubs from agreeing that the new club shall bear the solidarity contribution in addition to the transfer fee. As long as the new club remains responsible for paying the solidarity contribution, an internal agreement such as that in the case at hand is not prohibited by the RSTP (also see CAS 2013/A/3403-3404 & 3405, para. 7.3; CAS 2008/A/1544, para. 71 and 72; CAS/2009/A/1773 & 1774 para. 7.3)" (CAS 2015/A/4139, para. 43 and 44 of the abstract published on the CAS website).

65. The Panel observes that Section 3.1.2 and 3.1.2.1 of the Transfer Agreement determine as follows:

"Desportivo Brasil and Fluminense agree and acknowledge waiving any right to claim Training Compensation and Solidarity Mechanism, provided by article 20 and 21 and Annexes 4 and 5 of FIFA Regulations in connection with the transfer of the Player to Lokomotiv. In such respect, Desportivo Brasil and Fluminense hereby acknowledge that the Transfer Fee is already inclusive of any amount that would be due to either Desportivo Brasil and/or Fluminense in connection thereto. Desportivo Brasil shall be responsible for payment in case Fluminense presents a valid claim for distribution of the Solidarity levy. If Lokomotiv pays relevant amount of Solidarity Contribution to Fluminense according to competent FIFA body's decision, Desportivo Brasil shall immediately reimburse such amount to Lokomotiv".

"In case any club (except Desportivo Brasil and Fluminense) or the CBF present a valid claim for the

> *distribution of the solidarity contribution in connection with the present transfer of Player, as provided by article 21 and Annex 5 of FIFA Regulations, Lokomotiv commits to effectuate the payment to such third party directly, without any deduction from the net amount agreed under Section 3.1 hereinabove".*

66. These provisions apply to the Transfer Fee and clearly exclude the possibility that a percentage of solidarity contribution would have to be withheld.

67. However, in the Amendment, where the concept of a Further Transfer Fee was introduced, it is not determined that Section 3.1.2 and 3.1.2.1 of the Transfer Agreement also apply to such possible future amount of compensation. In fact, unlike in respect of the Transfer Fee, the Amendment does not determine that the Further Transfer Fee is a net amount.

68. The Panel therefore finds that in respect of the Further Transfer Fee, the parties have not contractually deviated from the general rule that 5% solidarity contribution shall be deducted from "any compensation".

69. However, no Further Transfer Fee was paid in the matter at hand.

70. Rather, in the Amendment the parties contemplated the possibility that no further transfer would take place and granted Desportivo Brasil the opportunity to cash EUR 1,500,000 in exchange for waiving its entitlement to a Further Transfer Fee (*i.e.* 20% of any possible future transfer fee received by Lokomotiv), which indeed occurred.

71. The Panel finds that Desportivo Brasil thus opted out of the Further Transfer Fee, with the consequence that the payment received is to be considered part of the net Transfer Fee, over which no solidarity contribution is to be withheld.

72. This is corroborated by Section 2 of the Amendment, as it determines the following:

> *"*[…] *After that* [*i.e.* after Desportivo Brasil exercises its right to transfer its 20% (twenty percent) Further Transfer Fee to Lokomotiv for EUR 1,500,000]*, Lokomotiv becomes the sole holder of 100% (one hundred percent) of any* ***Transfer Fee*** *(i.e.* ***no Further Transfer Fee will be to be paid*** *to Desportivo Brasil in connection with transfer of the Player in the future)"* [emphasis added by the Panel].

73. Consequently, the Panel finds that no solidarity contribution is to be deducted from the amount of EUR 1,500,000.

iv. As from which date shall interest accrue?

74. As a consequence of the fact that the Panel finds that the option in the Amendment was only triggered when Lokomotiv was provided with the claim lodged by Desportivo Brasil before FIFA, the Panel finds that interest can only start to accrue after such date.

75. The Panel observes that the Amendment does not refer to a deadline for payment in case of an extension of the employment relationship between the Player and Lokomotiv.

76. Article 102 SCO determines the following:

> *"1 Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee.*
>
> *2 Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline".*

77. In the absence of any letter being sent by Desportivo Brasil informing Lokomotiv of its decision to exercise the unilateral option, the Panel finds that the interest shall only start to accrue as from the date after the day on which Lokomotiv was provided with the claim lodged by Desportivo Brasil, *i.e.* as from 13 April 2016.

78. Consequently, the Panel finds that Lokomotiv shall pay an amount of EUR 1,500,000 to Desportivo Brasil, with interest at a rate of 5% *per annum* accruing as from 13 April 2016 (see page 7 of the Appeal Brief, the uncontested date of 12 April 2016 when the Appellant was notified about the Respondent's claim by FIFA) until the date of effective payment.

B. Conclusion

79. Based on the foregoing, the Panel holds that:

i. The Appealed Decision is not illegal or otherwise unenforceable.

ii. Section 3.1 of the Transfer Agreement, as amended by the Amendment, is complied with and Desportivo Brasil is in principle entitled to receive an amount of EUR 1,500,000 from Lokomotiv.

iii. No solidarity contribution is to be deducted from the amount of EUR 1,500,000.

iv. Lokomotiv shall pay an amount of EUR 1,500,000 to Desportivo Brasil, with interest at a rate of 5% *per annum* accruing as from 13 April 2016 until the date of effective payment.

80. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 January 2017 by FC Lokomotiv Moscow against the decision issued on 11 October 2016 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 11 October 2016 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed, save for the following amendment:

    a. FC Lokomotiv Moscow has to pay to Desportivo Brasil Participações Ltda., within 30 days as from the date of notification of this decision, the total amount of EUR 1,500,000 (one million five hundred thousand Euro) as well as 5% (five per cent) interest per year on the said amount as from 13 April 2016 until the date of effective payment.

3. (…).

4. (…).

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