**Arbitration CAS 2017/A/5334 Associação Chapecoense de Futebol v. Confederacion Sudamericana de Futbol (CONMEBOL), award of 1 November 2018**

Panel: Mr José María Alonso Puig (Spain), President; Mr João Nogueira da Rocha (Portugal); Mr Jacopo Tognon (Italy)

*Football*
*Disciplinary sanction for the fielding of a suspended player*
*Conditions for CAS' jurisdiction as appeal body*
*CAS' application of the standard of proof of comfortable satisfaction to disciplinary cases*
*Presumption of reception of an email*

1. **According to art. R47 of the CAS Code, CAS jurisdiction is limited to the adjudication of appeals against a decision of a sports body where the following requirements are satisfied cumulatively: (i) the statutes/regulations of such body contain an arbitration clause providing for appeal to the CAS or where the parties have agreed on an arbitration agreement; (ii) said body has issued a decision; and (iii) said decision is final, meaning that the appealing party has exhausted all available internal remedies.**

2. **When dealing with disciplinary cases, CAS panels apply the standard of proof of comfortable satisfaction. To reach this comfortable satisfaction, panels should have in mind the seriousness of the allegation made.**

3. **In the absence of evidence submitted by a party against the reception of an email, the presumption should be that said email was certainly sent and received by the receiver.**

## I. PARTIES

1. Associação Chapecoense de Futebol (the "Appellant" or "Chapecoense") is a sports corporation with its main place of business in the city of Chapecó, State of Santa Catarina, Brazil.

2. The Confederación Sudamericana de Fútbol ("CONMEBOL" or the "Respondent") is a civil association of non-profit private law constituted by the South American soccer national associations (member associations) and members of the Fédération Internationale de Football Association (FIFA). Its place of business is located in the city of Luque (Gran Asunción), República del Paraguay.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties' written and oral submissions and the evidence examined in the course of the present arbitration proceedings. 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 discussion.

4. On 27 April 2017, a game was played between the teams Club Nacional-URU and Chapecoense for the fourth round of the group stage of Copa Bridgestone Libertadores 2017. During the game, the players Luis Otávio da Silva ("Mr Luis Otávio") and Rosiclei da Silva ("Mr Rosiclei") from Chapecoense were expelled from the field after receiving a direct red card.

5. On 1 May 2017, the Disciplinary Unit of CONMEBOL informed the Appellant that a disciplinary proceeding had been opened with regard to the two players. Mr Luis Otávio was charged with a breach of Article 10.1. (b) of the CONMEBOL Disciplinary Regulations ("Disciplinary Regulations"), and Mr Rosiclei was charged pursuant to Article 10.1 (a) of the Disciplinary Regulations. The Disciplinary Unit of CONMEBOL also requested to send the defence by 6.00 p.m. on 5 May 2017.

6. On 5 May 2017, the Appellant sent via e-mail, a letter of defence on behalf of Mr Luis Otávio, to the Disciplinary Unit of CONMEBOL.

7. On 10 May 2017, the Appellant sent a letter via e-mail, to the Disciplinary Unit of CONMEBOL to request the possibility of fielding these players in the match between Club Atletico Nacional and Chapecoense, valid for the Recopa Sudamericana:

> *"The reason for this consultation lies on the fact that the players were given a red card in the club's last match, valid for Copa Libertadores, with a case file also being opened by the Disciplinary Unit* [Luiz Otávio] *and* [Rosiclei da Silva].
>
> *Our understanding is that, according to articles 111 and 112 of Conmebol's Disciplinary Regulations, the suspensions that were given to these athletes must be observed starting from the next match of the same competition, Copa Libertadores, since there are still two fixtures to be played by our team in such competition.*
>
> *Therefore, we ask, for a formal confirmation, as soon as possible, about when the suspensions of the aforementioned athletes must be observed".*

8. On 10 May 2017, the Disciplinary Unit of CONMEBOL issued the following decision in response to Chapecoense's request regarding the fulfilment of the sanctions of the players:

> *"We inform you that both players are suspended for the Recopa Sudamericana's match, which will be played on 10 May 2017, having in mind that the said competence* [sic] *correspond to the same category that CONMEBOL Libertadores according to Article 113.3".*

9. On 10 May 2017, the Disciplinary Unit of CONMEBOL issued the final decision with reference to the disciplinary proceedings concerning the two players, stating as follows:

> *"1. Suspend Luiz da Silva for three matches, including the match that has already been automatically suspended. This sanction shall be carried out pursuant to Article 112 of the Disciplinary Regulations of CONMEBOL.*
>
> *2. Impose a fine of USD 3,000 upon Luiz da Silva, in accordance with Article 10.6 of the Disciplinary Regulations. The value of the file shall be automatically discounted from the amount receivable by Associação Chapecoense de Futebol from CONMEBOL in relation to television or sponsorship rights, or failing that, it shall be paid to the bank account provided by CONMEBOL for this purpose.*
>
> *This decision cannot be appealed".*

10. On 10 May 2017, CONMEBOL sent the above mentioned decision via e-mail to the address carlinhos@chapecoense.com, copying the Brazilian Football Federation ("CBF"). CBF forwarded the Decision to the Santa Catarina Federation and the latter, in turn, sent the Decision to the Appellant.

11. On 17 May 2017, a game was played between the teams Club Atlético Lanús ("Lanús") and Chapecoense, within the Groups Stage of Copa Libertadores Bridgestone 2017, at Ciudad de Lanús-Néstor Díaz Pérez Stadium. Mr Luis Otávio played during that match.

12. On 18 May 2017, Lanús lodged a claim with the Disciplinary Unit of CONMEBOL due to the violation of Article 23 of the Disciplinary Regulations, which states the following:

> *"I heard about the expulsion of the Chapecoense players, Luiz Otávio da Silva Santos and (…). (…) we communicated with your federation* [CONMEBOL] *to request information about the sanctions imposed upon those players.*
>
> *In response, staff from your confederation informed us that the player Luiz Otávio da Silva Santos had been sanctioned with a suspension of three (3) matches.*
>
> *(…)*
>
> *In light of the situation above, it is clear that the player Luiz Otávio was not eligible to play in the match against Club Atlético Lanús yesterday.*
>
> *(…) before the start of the group stage match yesterday for Copa CONMEBOL Libertadores Bridgestone 2017, in the area of the dressing rooms we found out that the player LUIZ Otávio da Silva Santos, jersey No. 21, was listed on the "Match Form" for visiting club players (…).*
>
> *Given the strangeness of the situation, we called CONMEBOL by phone, and staff members confirmed the information sent days earlier regarding the sanctions imposed upon the aforementioned players.*

*For this reason (…) we informed the CONMEBOL official, Michael Sánchez Alvarenga, of this situation, who checked this information and confirmed that the sanction had been imposed upon the player Luiz Otávio da Silva Santos, which was still pending execution, and for this reason he was ineligible to play in the match. The same official approached the dressing room and notified the technical staff of the situation, who at first decided to remove the player Luiz Otávio from the match form and play the game with only six (6) substitutes.*

*However, when the two teams lined up and about to enter the playing field, the president of Club Chapecoense approached the zone and, in a loud and visibly confused tone, shouted "the player is going to play, under my responsibility", clearly referring to Luiz Otávio da Silva Santos".*

13. On 18 May 2017, the Disciplinary Unit of CONMEBOL notified Chapecoense that disciplinary proceedings were opened and gave the Club a deadline for presenting its arguments.

14. On 22 May 2017, the Appellant submitted its written defence in the Opening of the above mentioned Disciplinary File, due to a supposed infraction of Article 23 of Conmebol's Disciplinary Regulations.

15. On 23 May 2017, as requested by Chapecoense, a hearing was held via teleconference between the Club's legal representatives and one Judge from the Disciplinary Tribunal of CONMEBOL.

16. On 23 May 2017, the Disciplinary Tribunal of CONMEBOL issued a decision under Disciplinary Proceedings O/55/17, which ruled the following:

*"1. DECLARE Associação Chapecoense de Futebol the loser of the match played on May 17, 2017 between Club Atlético Lanus and Associação Chapecoense de Futebol within the Group Stage of CONMEBOL Libertadores Bridgestone 2017; and consequently*

*2. DETERMINES the result of the match to be 3-0 in favor of Club Atlético Lanus, pursuant to Article 23 of the Disciplinary Regulations of CONMEBOL.*

*3. WARNS expressly Associação Chapecoense de Futebol that in the event of any further violation of the sporting regulations the same as or similar to the one that gave rise to the current proceedings, the provisions of Article 43 of the Disciplinary Regulations will be applied along with any ensuing consequences".*

17. On 14 June 2017, Chapecoense filed an appeal with the Court of Appeals of CONMEBOL stating the following:

*"modification of the decision of the Disciplinary Tribunal, in the sense of full lifting of the penalties contained in Article 23 of the Disciplinary Regulations of CONMEBOL, since it considered there had been no intentional violation on the part of the Club".*

18. On 24 August 2017, the reasoning of the Court of Appeals decision (hereinafter: the "Appealed Decision") was made available to the Appellant and stated the following:

*"1. REJECT the appeal filed by Associação Chapecoense de Futebol on June 15, 2017 against the decision of the Disciplinary Tribunal of CONMEBOL issued on June 14, 2017, in Case O-55-17; and consequently;*

*2. RATIFY all the terms of the decision of the Disciplinary Tribunal of CONMEBOL issued on June 14, 2017, in Case O-55-17.*

*3. Impose costs in the Order Caused".*

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 14 September 2017, Chapecoense lodged a Statement of Appeal before the Court of Arbitration for Sport ("CAS"), in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). Chapecoense filed its appeal against the Appealed Decision rendered by the Court of Appeals of CONMEBOL.

20. On 25 September 2017, Chapecoense filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This contained a statement of facts and legal arguments giving rise to the challenge of the Appealed Decision, stating the following requests for relief:

*"To reform the appealed decision, declaring the acquitment of the Appellant regarding the sanctions of the Art. 23 of the Conmebol Disciplinary Regulation;*

*To maintain the result of the match occurred on 17 May 2017, between Clube Atlético Lanus and the Appellant, in which the Appellant won the match by the score of 2x1, confirming the achievement of 3 (three) points for the Appellant in the group stage;*

*To recognize the classification of the Appellant in first place in group 7 of Copa Libertadores 2017, obtaining, consequently, the qualification for the next stage of the competition;*

*Alternatively, having in mind that the competition continued, and possibly it will be difficult to retroact all the results of the matches already played, to declare the inclusion of the Appellant in the "round of 16" of Copa Libertadores 2018;*

*Alternatively, having in mind that the competition continued, and possibly it will be difficult to retroact all the results of the matches already played, to declare the inclusion of the Appellant in the Group Stage of Copa Libertadores 2018;*

*Alternatively, to condemn the Respondent to pay an indemnification to the Appellant, in the amount the Appellant could be entitled to, in the event the Appellant had been the Champion of Copa Libertadores 2017;*

*Alternatively, to condemn the Respondent to pay an indemnification to the Appellant, in the amount the Appellant would be entitled to, in the occasion of the qualification for "round of 16" of Copa Libertadores 2017;*

*Alternatively, to condemn the Respondent to pay an indemnification to the Appellant, in the amount between the prize for qualification for "round of 16" and the champion of Copa Libertadores 2017, to be defined by this Tribunal;*

*To condemn the Respondent to pay to the Appellant all the costs related to this proceeding and the legal fees of the Claimant's lawyers".*

21. On 4 October 2017, the CAS Court Office granted CONMEBOL a deadline of twenty days to submit an answer to the Appeal Brief. The CAS Court Office took note that the Appellant had paid the CAS Court Office fee. Furthermore, it duly noted the Appellant's nomination of Mr João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal, as one of the arbitrators. The CAS Court office granted CONMEBOL a deadline of ten days to nominate an arbitrator as well. It also informed the Parties that in the absence of such nomination by the Club, the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed with the appointment of an arbitrator *in lieu* of the Club. Additionally, it was noted that the Appellant had chosen to proceed in English.

22. On 16 October 2017, the CAS Court Office acknowledged receipt of the Respondent's letter of 13 October 2017 in which the Respondent requested an extension until 31 October 2017 to nominate an arbitrator, further to an extension until 10 November 2017 to file the answer. The CAS Court Office invited the Appellant to state whether it accepted both requests for extension of time filed by the Respondent; in the meantime, the deadline for the Respondent to nominate an arbitrator was suspended as of 16 October 2017, until further notice.

23. On 17 October 2017, the CAS Court Office acknowledged receipt of the Appellant's letter of 16 October 2017 in which the Appellant presented its objection to the request for extension of time filed by the Respondent. The CAS Court Office informed that the deadline for the Respondent to nominate an arbitrator remained suspended and that the time to file the answer was running.

24. On 23 October 2017, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division decided, pursuant to Article R32 of the CAS Code, that the Respondent had to nominate an arbitrator on or before 26 October 2017 and to file the answer to the appeal brief on or before 10 November 2017.

25. On 24 October 2017, the CAS Court Office took note of the Respondent's nomination of Mr Jacopo Tognon, Attorney-at-law in Padova, Italy, as an arbitrator.

26. On 2 November 2017, further to the Respondent's indications that some of the exhibits were missing from the copy of the Appellant's appeal brief, the CAS Court Office sent the Respondent a new set of exhibits enclosed with the appeal brief.

27. On 27 November 2017, the CAS Court Office acknowledged receipt of the Parties' respective advance of costs. In accordance with Article R55 of the CAS Code, the CAS Court Office

informed the Respondent that within 20 days from the receipt of the letter dated 27 December 2017 it should submit to the CAS Court Office an answer.

28. On 29 November 2017, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted by:

President: Mr José María Alonso Puig, Attorney-at-Law in Madrid, Spain;

Arbitrators: Mr Joao Nogueira da Rocha, Attorney-at-law, Lisbon, Portugal;

Mr Jacopo Tognon, Attorney-at-law, Padova, Italy.

29. On 19 December 2017, pursuant to Article R57 of the CAS Code, the CAS Court Office informed the Parties that they were not authorized to either supplement or amend their requests or their arguments. They were also informed that they could neither produce new exhibits, nor specify further evidence after the submission of the appeal brief and of the answer.

30. Upon request of the CAS Court Office, on 20 and 27 December 2018, respectively, both Parties stated that they did not find it necessary to hold a hearing.

31. On 4 January 2018, pursuant to Article R57 of the CAS Code, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing and that the Panel was available on 1 March 2018.

32. On 16 January 2018, in view of the Parties' availabilities, the CAS Court Office confirmed the Parties that the hearing was going to be held on 1 March 2018 at the CAS Court Office in Lausanne at 9:30 am.

33. On 17 January 2018, the CAS Court Office informed the parties that Mr José Manuel Maza, Attorney-at-law in Madrid, Spain, was appointed as *ad hoc* Clerk in this matter.

34. On 26 February 2018, the Parties returned the duly signed copies of the Order of Procedure.

35. On 1 March 2018, a hearing was held in Lausanne, Switzerland. The Panel members were present and assisted by Mr José Luis Andrade, Counsel to the CAS, and Mr José Manuel Maza, acting as *ad hoc* Clerk.

36. The following persons attended the hearing:

- The Appellant was represented by its President Mr Plinio David de Nes Filho, assisted by its counsel Mr Marcelo Amoretty Souza.

- The Respondent was represented by its counsels Mr Lukas Stocker and Mrs Mirjam Trunz.

37. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.

38. At the end of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings had been fully respected. After the Parties' final arguments, the President of the Panel closed the hearing and announced that the award would be rendered in due course.

39. The Panel confirmed that it carefully heard and that in its decision it would consider 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

40. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties. However, the Panel has carefully considered all the written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

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

(a) The Appellant maintains that the central issue at stake is that there was no effective notification from CONMEBOL to Chapecoense with reference to the suspension decision of the three matches, dated 10 May 2017. The Appellant argues that Chapecoense was not properly notified about the suspension of the player. Indeed, the communication regarding the suspension was not done through the "conventional channels". Although it is showed in some e-mails that CONMEBOL copies communications sent to the Brazilian Football Confederation to the e-mail carlinhos@chapecoense.com, such communications never reached the Appellant directly through this e-mail address. On the contrary, they were always only received through the chain: CONMEBOL>CBF>FEDERATION>CLUB, and always sent by the Federation to the e-mail jorilde@chapecoense.com. Therefore, there was a mistake on the email sending procedure. The Appellant submits that the conventional and official sending chain was clearly broken in this case.

(b) The Appellant maintains that this communication failure created enormous insecurity leading Chapecoense to err. Therefore, Chapecoense maintains that no disciplinary infraction can be attributed to the Appellant, not even in relation to Article 23 of the CONMEBOL Disciplinary Regulations.

(c) The Appellant submits that its right to be heard was violated throughout the procedure before CONMEBOL. The Appellant alleges that the hearing held via conference call on 23 May 2017 with CONMEBOL Disciplinary Tribunal cannot be considered a hearing, since only one of the judges was present, out of a total of five. In less than 45 minutes after the start of the hearing, the Respondent sent the Appellant the decision

on the file. According to Chapecoense this demonstrates bad faith on the part of the CONMEBOL Disciplinary Tribunal. Indeed, it did not provide time for the record of the hearing to be shown to the other judges. This led the Appellant to think that the decision had already been made.

(d) The Appellant brings up Article 75 (7) of the Disciplinary Regulations which provides that only the Disciplinary Tribunal – and not the match Delegate – can issue an urgent decision without grounds. The Appellant argues that even accepting that the communication was made through the match Delegate on the same day of the match, this communication would only have come into force the following day. Chapecoense also brings up Article 75 (6) of the Disciplinary Regulations which requires notification to be made in order to become legally binding, expressly stating that *"the notification shall be valid and will produce all its effects since it was received"*. The Appellant concludes highlighting Article 84 of the Disciplinary Regulations which declares that a decision that respects legal procedures can only be enforced together with the unequivocal notification of the club about the decision, which did not occur in the case in question.

(e) The Appellant submits that Chapecoense demonstrated absolute good faith. The Appellant maintains that an effort was made to change players at the time of the notification of the match Delegate. Although the Appellant was unduly denied this possibility.

(f) The Appellant requests a revision of the decision of the Court of Appeals, to uphold the result obtained on the playing field, bearing in mind the total absence of prejudice to Club Lanús. The Appellant maintains that even if the Chapecoense had not lost the points of the 17 May 2017 match, Club Lanús, still would have qualified. This is because if the Chapecoense had not been penalized, Club Lanús would have still ranked first in the group with 10 points. Hence, there will be no prejudice to Lanús in the event of Appellant's acquittal.

(g) The Appellant argues that it failed to receive, at least, USD 750,000 considering that it would have qualified for the Round of 16 of Copa Libertadores, without taking into consideration if it had gone further on.

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

- The Respondent submits that CONMEBOL notified in a correct and lawful way the decision regarding the suspension of the player Mr Luis Otávio of Chapecoense for three games. CONMEBOL maintains that from the moment of receipt of the document regarding the opening of the proceedings on 1 May 2017, the Appellant was fully aware of the fact that Mr Luis Otávio violated Article 10.1 (b) of the Disciplinary Regulations, according to which the Player must be sanctioned at least with a suspension of three games. Furthermore, in the communication of 10 May 2017, in which the CONMEBOL clarifies that the two players were not eligible to play in the game of 10 May 2017, it was

communicated that *"in case of non-compliance with this provision, the club shall be liable to sanctions under the Disciplinary Regulations of CONMEBOL (for example: unauthorized participation)"*.

- The Respondent submits that the Appellant received the decision by e-mail to the address which the Appellant itself provided as contact address. The decision was duly communicated to Mr Carlos Miguel Port Almeida to the following e-mail address: carlinhos@chapecoense.com. This person was noted on the Registration Form for the 2017 Copa Libertadores as the club's official contact person and confirmed this information with an authorized signature.

- The Respondent argues that the Appellant cannot seriously assert that its right to be heard was violated. The Respondent brings up Article 50 (1) of the Disciplinary Regulations which states that the Disciplinary Unit is entitled to transfer the case to a Single Judge. Furthermore, according to Article 68 of the Disciplinary Regulations, there is no obligation for the disciplinary bodies to hold a hearing.

- The Respondent concludes that even assuming, simply for the sake of the argument, that the Appellant did not receive the e-mail dated 10 May 2017, at the latest before the beginning of the game on 17 May 2017, the Appellant knew about the suspension of the player, because the match official drew the attention of Appellant's officials to the respective decision. Therefore, it was the Appellant's self-inflicted mistake to send the players on the pitch.

## V. JURISDICTION

43. Pursuant to Article R47 of the Code:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

44. Thus, within the context of appeal arbitration procedures, CAS jurisdiction is limited to the adjudication of appeals against a decision of a sports body, where the following three requirements are satisfied cumulatively: (i) the statutes or regulations of the sports body contain an arbitration clause providing for appeal to the CAS or where the parties have agreed on an arbitration agreement; (ii) the sports body has issued a decision; and (iii) said decision is final, meaning that the appealing party has exhausted all available internal remedies.

45. In light of the above, Article 66 of the CONMEBOL Statutes include the jurisdiction of CAS for reviewing final decisions by CONMEBOL disciplinary bodies. In addition, the Appealed

Decision was rendered by the Court of Appeals of CONMEBOL. Finally, the Appealed Decision by the Court of Appeals of CONMEBOL is final.

46. The jurisdiction of CAS has not been contested by the Parties.

47. Therefore, CAS has jurisdiction over this appeal.

## VI. ADMISSIBILITY

48. The appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes.

49. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

50. Hence, the appeal is admissible.

## VII. APPLICABLE LAW

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

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

52. The applicable law has not been disputed by the Parties.

53. Pursuant to Article R58 of the CAS Code, this dispute shall be adjudicated on the basis of the applicable CONMEBOL regulations and, subsidiarily, on the basis of Paraguayan law, as of Article 74 of CONMEBOL Statutes.

## VIII. MERITS

### A. The unfortunate situation of Chapecoense

54. Although it is not directly related with the present dispute, the Panel wants to begin its findings on the merits by stressing its deepest condolences to the Chapecoense family for the tragedy that occurred on 29 November 2016.

55. This Panel shows its highest recognition to the persons that have made possible that the club is now restored and competing in both national and international competitions.

## B. Notification of the Appealed Decision by CONMEBOL

56. The disputed issue at stake concerns the duly, or not, notification by CONMEBOL of a sanction that was followed by the impossibility to field the Player during the Copa Libertadores match between the Appellant and Club Atlético Lanús.

57. As already described, the position of the Appellant is that there was no effective notification from CONMEBOL to Chapecoense in reference to the three-match suspension and, therefore, no disciplinary infraction can be attributed to the Appellant.

58. On the other hand, CONMEBOL states that the Appealed Decision was duly communicated to Mr Carlos Miguel Port Almeida, to the email address carlinhos@chapecoense.com, which was included in the Registration Form for 2017 Copa Libertadores as the Appellant's official contact person.

59. With reference to the communication of disciplinary decisions, CONMEBOL's regulations state the following:

a) Article 10(1) of the 2017 Disciplinary Regulations states that the Players had to be sanctioned with, at least, three-game suspension.

b) Article 9(3) of the 2017 Disciplinary Regulations states that it is the sole responsibility of a club to ensure that its players comply with the suspensions and it is not necessary for the Disciplinary Unit of CONMEBOL to inform a club or the players of an automatic suspension.

c) Article 113 (b) of the 2017 Disciplinary Regulations states that automatic suspensions as a result of a red card are immediately enforceable, even if the disciplinary body has not communicated the confirmation of the decision.

d) Article 61(1) of the 2017 Disciplinary Regulations establishes that the communications between CONMEBOL and clubs could be done via, *inter alia*, e-mail. Moreover, the competent disciplinary body could order on how to communicate in each individual case based of the concurrent circumstances.

60. Hence, the matter lays on the question of whether the communication containing the Appealed Decision was (i) effectively sent by CONMEBOL, via e-mail, to the address carlinhos@chapecoense.com, (ii) effectively received and, therefore, notified to the Appellant.

61. The Appellant stated in its written submissions that the e-mail containing the relevant notification of the Appealed Decision was made through the chain CONMEBOL-CBF-FEDERATION-CLUB and *"always"* through the regional football federation to the e-mail jorilde@chapeconese.com and not to carlinhos@chapecoense.com, which was the official address included in the registration form for Copa Libertadores.

62. It has been proven during these proceedings that carlinhos@chapecoense.com was the official email address indicated by the Appellant in the registration form for Copa Libertadores 2017.

63. During the hearing, the Appellant recognised that the e-mail was effectively sent from CONMEBOL to the address carlinhos@chapecoense.com, with copy to CBF, but pointed out that such e-mail was never received by Chapecoense. In addition, it has not been contested that CBF forwarded the Appeal Decision to Santa Catarina Federation which, in turn, also forwarded it to the Appellant. Neither proof nor evidence was provided by the Appellant in this regard but generally stated that the e-mail never reached the relevant address.

64. The Panel is aware that it could be a situation in which the e-mail could not properly arrive to the inbox of the recipient. However, this could not be admitted as a general standard and the Appellant had the opportunity to present, for example, an expert report analysing the status of the email and it decided not to do so. It would have been extremely rare that the same email, sent by two different entities to the same address, had not come to the attention of the Appellant.

65. The Panel observes that, when dealing with disciplinary cases, the long-standing CAS jurisprudence refers to the applicable standard of proof as "comfortable satisfaction" (e.g. CAS 2016/A/4558, CAS 2014/A/3625, CAS 2014/A/3628). To reach this comfortable satisfaction, the Panel should have in mind *"the seriousness of the allegation which is made"* (CAS 2014/A/3625 and the references quoted therein).

66. In the case at hand, the Panel acknowledges that there is only circumstantial evidence available to the Appellant to prove the facts it relies upon. This being said, the Appellant did not provide any evidence proving that the Appealed Decision was not received at the address carlinhos@chapecoense.com. Moreover, the Appellant did not provide any expert report supporting the non-reception of the email. In contrast, CONMEBOL has presented evidence (in the form of printed emails) showing that the email was sent on time to the above referenced address.

67. Hence, the presumption, in view of the Panel, cannot be different that the reception of the email occurred. It is the Panel understanding that, if no proof nor evidence has been provided against the reception of an email, the presumption should be that the email was certainly sent and received by the receiver.

### C. Conclusion

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

- The email was sent by CONMEBOL to the email address carlinhos@chapecoense.com.

- No proof has been provided before the Panel evidencing that the email was not received in the inbox of the email address carlinhos@chapecoense.com.

- Therefore, the appeal shall be entirely dismissed.

- Any further claims or requests for relief are dismissed.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 14 September 2017 by Associação Chapecoense de Futebol against the decision issued by the Court of Appeal of CONMEBOL on 24 August 2017 is dismissed.

2. The Decision issued on 24 August 2017 by the Court of Appeals of CONMEMBOL is upheld.

3. (…).

4. (…).

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