Arbitration CAS 2020/A/6854 Wuhan Zall FC v. Jorge Sammir Cruz Campos & CAS 2020/A/6887 Jorge Sammir Cruz Campos v. Wuhan Zall Professional FC, award of 26 April 2022

Panel: Mr Mark Hovell (United Kingdom), President; Mr Jan Räker (Germany); Prof. Massimo Coccia (Italy)

Football
Termination of the employment contract without just cause by the club
Consequences of the filing of a belated answer
Ne bis in idem

1. **There is no rule of the CAS Code providing that a respondent loses its right to be a party altogether and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a belated answer. Article R55 of the CAS Code, which deals with a belated answer, only indicates that if the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award. This is particularly telling when compared to other provisions of the CAS Code that do require the withdrawal or termination of a case for a belated filing. Moreover, Article R56 of the CAS Code does not preclude the Respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings, or from submitting post-hearing briefs strictly limited to commenting on the evidence presented at the hearing. In principle and in practice, parties are permitted to expand on their written submissions at a hearing provided that they remain within the scope of their case, as established in prior submissions (including those presented during the first instance proceedings). Indeed, it is not unusual in CAS hearings that, before the parties' oral pleadings, the panel expressly advises the parties' attorneys not to merely repeat orally what they have already stated in their written briefs.**

2. **If a disciplinary sanction has already been imposed by a club against a player for an offence such as late arrival for pre-season, and the player has accepted and served this sanction, there is no ability for the club to reopen this matter and to apply an additional, harsher sanction upon the player, such as termination of contract, in violation of the *ne bis in idem* principle. In such a case, termination of contract is without just cause.**

I. PARTIES

1. Wuhan Zall FC (also referred to as Wuhan Zall Professional FC) (the "Club"), is a professional football club registered with the Chinese Football Association (the "CFA") which currently

competes in China's first division, the Chinese Super League (the "CSL"). The Club is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Jorge Sammir Cruz Campos (the "Player") is a professional football player born on 23 April 1987 in Itabuna, Brazil. He currently plays for NK Lokomotiva Zagreb and is registered with the Croatian Football Federation, which, in turn, is affiliated with FIFA.

II. FACTUAL BACKGROUND

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

A. The Employment Agreement and the Club's Internal Regulations

4. On 13 July 2017, while the Club was in the Second Division of the Chinese Football League, the Player and the Club concluded an employment agreement for the period of 13 July 2017 to 31 December 2018 (the "Employment Agreement"). Prior to the conclusion of the Employment Agreement, the Player was a free agent.

5. The Employment Agreement contained the following material provisions:

> *"**ARTICLE 2 WORK ARRANGEMENT*** […]
>
> *1.* [The Club] *arranges* [the Player] *to engage in training, matches and other activities in the 1st Senior Team of the Club,* […].
>
> ***ARTICLE 3 LIVING AND WORKING CONDITIONS & HEALTH PROTECTION*** […]
>
> *1.* [The Club] *shall provide* [the Player] *with clean, healthy, comfortable and club convenient accommodation in the training base and nutritious meals, of which, the using cost of telephone and other communication facilities shall be borne by* [the Player]. […]
>
> *3.* [The Club] *shall provide* [the Player] *with treatment arrangement and expenses and other related expenses arising from* [the Player's] *working injuries and diseases.* […].

ARTICLE 4 SALARY AND BONUSES […]

1. [The Player's] *salary in season 2017 is 900,000 (Euros/net of any Chinese taxes). The salary will be paid in 6 instalments at a monthly basis on average and the payment of monthly salary will be effected on the 10th day of the following month.* […]

2. [The Player's] *annual salary in season 2018 is 2,200,000 (Euros/net of any Chinese taxes). The salary will be paid in 12 instalments at a monthly basis on average and the payment of monthly salary will be effected on the 10th day of the following month.* […]

4. *If* [the Player] *acquires FREE AGENT status,* [the Club] *will pay* [the Player] *the signing fee of 500,000 (Euros/net of any Chinese taxes). The signing fee will be paid after* [the Player] *acquires FREE AGENT status, finishes registration and acquires qualification of league match according to requirements of CFA. The payment will be effected on or before the August 15th, 2017.* […].

ARTICLE 5 WELFARE […]

1. [The Club] *shall provide* [the Player] *2 round trip business class tickets (Brazil-Wuhan-Croatia),* [the Player] *should inform* [the Club] *15 days in advance.* […].

ARTICLE 6 OBLIGATIONS AND DISCIPLINE […]

1. [The Player] *must fulfil the following obligations:* […]

(3) *Observe all regulations of* [the Club] *and obey* [the Club's] *management.* […]

(4) *Participate in* [the Club's] *all training, matches and related activities and make effort to complete specified training and matches.* […]

2. [The Player] *must observe the following disciplines:* […]

(6) *Respect teammate, respect counterpart, respect referee, respect audience, respect working staff and comply with match discipline and obey all judges and penalties of referee.* […].

3. *Penalty for breaking of discipline* […]

(1) *In the case of* [the Player] *breaking of above discipline,* [the Club] *shall have the right to impose a punishment on* [the Player]…*within a range of 50% of* [the Player's] *monthly salary;* […]

(3) *In case of* [the Player's] *serious breach of this* [Employment Agreement], *regulations and discipline of* [the Club], [the Club] *shall have the right to terminate this* [Employment Agreement]. […].

ARTICLE 7 CANCELLATION OF THE CONTRACT […]

2. [The Club] *shall have the right to terminate this* [Employment Agreement] *under the following circumstance (any or all of the following circumstances will constitute just cause for* [the Club] *to terminate this* [Employment Agreement]*):*

(3) If [the Player] *seriously or repeatedly violates regulations or match disciplines of* [the Club]. […].

ARTICLE 8 TERMINATION OF THE CONTRACT […]

1. *Termination of the contract includes:* […]

(2) The [Employment Agreement] *is cancelled during the contract term for reasons stated aforesaid.* […].

ARTICLE 10 SETTLEMENT OF DISPUTE […]

2. In case no settlement can be reached through consultation, the dispute shall be submitted to the Proceeding Commission of the FIFA and Court of Arbitrations for Sports in appeal and the award of CAS is final and binding.

ARTICLE 11 MISCELLANEOUS […]

2. The issues not covered in the contract will be executed in accordance with related provisions of Labor Law, Contract Law and related regulations of CFA…or handled by supplementary agreement. The supplementary agreement must be submitted with the contract to China Football Association China League Committee for record during [the Player's] *registration, otherwise the supplementary agreement will not be acknowledged.* […]

3. The supplementary agreement shall not be added with any payment clauses beyond the contract. […]*".*

6. On 9 September 2017, the Club issued its *"Regulations and Penalties"* (the "Internal Regulations"). The relevant parts of the Internal Regulations read as follows:

"1.5(1)C

[…] *The following performance shall be deemed to constitute a negative training or negative gaming:* […] *Faking excuses of injury, illness deliberately not to participate in training or game.* […]

1.5(2) A player refuses to go to a training or game venue when coach or team manager explicitly requires, or if he is at the venue, not training and gaming seriously as required by the coaching staff, depending on the seriousness of the situation, [the Club] *has the right to suspend the player from training, games, salary, or even to give a dismissal.* […]

2.1 Being late, leaving early, laziness or absence for training are not allowed. Without the approval of the coach, a player is not allowed to leave the team. During training, all players must assemble on time to the place appointed by the coaching staff. The player cannot train because of injury or sickness must be diagnosed by the team doctor and the team doctor need report to the coach at least one hour before the training. After the coach agrees, the player does not have to go to the training venue. Anyone who violates this rule will be considered as a deliberate violation of regulation. The penalty for each occurrence is 5,000 U.S Dollars. In the mean time, [the Club] *has the right to suspend the player from training, games, salary, or even to give a dismissal.* […]

2.5 Not returning from holiday is not allowed. Refusing to participate in social welfare activities, fans activities, media publicity, sponsorship services organized by [the Club] *is not allowed. Violation of this regulation is defined as an absence for training.* […]

3.2 Doping, Expelled. All players must be accompanied by a team doctor for medical examination, body monitoring, vaccination, preventive measures, etc., and should promptly report to the team doctor their injuries and rehabilitation status. Do not take illicit drugs or violate doping rules stipulated by FIFA, Chinese Football Association or International Anti-Doping Agency. Smoking, and alcoholism are strictly prohibited during the league. depending on the seriousness of the situation, the club has the right to suspend the player from training, games, salary, or even to give a dismissal. […]

5.4 Respect the hard work of the team, club staff and logistics personnel, except for the games and special circumstances, the night treatment in principle, ended at 22:30. […]

6. If a Player Violates These Regulations Three Times or More, or if the Circumstances are Particularly Serious, it will Constitute a Deliberate Breach of the [Employment Agreement]. *The* [Club] *may Require a one-time Compensation of 5 Million U.S Dollars for Breach of Contract and If the loss of the* [Club] *is more than the Compensation, the* [Club] *is Entitled to Continue Pursuing of Recovery (including but not limited to transfer income, all remuneration paid to the* [Player]*, cost of finding a replacement player, agent fee, attorney fee, etc.).* […]

11. These [Internal] *Regulations are one of the Annexes to the Employment* [Agreement]… *All the Clauses Shall be Taken as part of the Employment* [Agreement] *and Shall be Strictly Followed".*

B. Events before the termination of the Employment Agreement

7. In January 2017, the CFA reduced the number of foreign players allowed to play for a club in the CSL.

8. On or before 15 August 2017, the Player's signing fee was due to be paid by the Club.

9. On 28 October 2017, the CSL season ended. At the end of the season, the players at the Club were permitted to spend their holidays as they wished and the Player stated the Club initially granted him a vacation period up until 5 January 2018.

10. In October 2017, the Club's Manager and Head Coach were replaced.

11. At the end of October 2017, the Club contacted the Player's agent, Mr Andy Bara (the "Agent"), and promised payment of the signing fee and suggested that *"… GM told me, next year, only 2 foreign players can be on the pitch …. I think it is time for us to find another team for* [the Player] *now"*. The Club, according to the Player, also offered the Player the equivalent of two instalments of his monthly salary as compensation for the early termination of his Employment Agreement.

12. On 8 November 2017, the Club stated that it wrote an email to the Player and the Agent confirming that the 2018 pre-season would take place between 1 and 10 December 2017. The Player suggested that the Club intentionally sent this communication, together with other similar correspondence, to an incorrect email address.

13. On 15 November 2017, the Player attended the Clinic for Psychological Medicine of the University Hospital Centre Zagreb, which issued the following diagnosis:

> *"The* [Player] *reported to the Clinic for the first time due to difficulties connected to adjustment disorders to stressful life situations…the* [Player] *was recommended to rest and avoid any stressful situations and longer trips"*.

14. On 24 November 2017 and 4 December 2017, the Club informed the Player that the 2018 pre-season would commence on 11 December 2017.

15. On 10 December 2017, the Player sent the following message to the Club:

> *"I am in a very poor psychic state. I feel cheated and betrayed from your side. I have even visited a psychiatrist who has strongly advised me to not travel back to China. Because of all the above reasons I'm not in psychophysical condition to travel to China"*.

16. The Club requested the Player's return to Wuhan again on 19 December 2017 and 21 December 2017.

17. On 21 December 2017, the Player stated that he could not join the team due to a *"… very bad physical moment of my life with many problems that was caused because I didn't receive money from my contract …"*.

18. On 22 December 2017, the Club paid the Player his signing fee of EUR 500,000.

19. On 23 December 2017, the Club informed the Player that if he did not join the Club on or before 27 December 2017, it would consider that the Player had breached the Employment Agreement without just cause.

20. On 4 January 2017, the Club informed the Player that he would need to purchase his own flight ticket to Wuhan.

21. On 5 January 2018, the Club sent the following letter to the Player:

"You have recently advised the Club that you will return the 9 January 2018. In this sense you have already missed training the 10th December 2017 to 9th January 2018. This too is unacceptable and we consider that you have breached [the Employment Agreement] *without just cause. In this sense the Club once again requests your presence with the Club to honour the terms of the Employment* [Agreement] *immediately".*

22. The other foreign players in the team returned to Wuhan on 5 January 2018 to join pre-season training.

23. On 8 January 2018, the Club initiated a claim against the Player before the Arbitration Committee of the CFA, which it requested *"to cancel* [the Employment Agreement] *with the* [Player] *and condemns the default behavior of the* [Player]*".*

24. On 10 January 2018, the Player returned to Wuhan.

25. On 11 January 2018, the Club sanctioned the Player by imposing a fine and suspending the Player from the Club's training and games until further notice. It also requested the Player to submit a written *"self-criticism no less than 1500 words to the coaching staff".*

26. On 12 January 2018, the Player addressed a letter to the Club with the following contents:

"Dear Sir/Madame,

I want to apologize to president, director of the [Club]*, to the Board of the* [Club] *all coach staff, to all players that are in the Wuhan, and to all people that work in Wuhan football club for my actions. l'm sorry because I was late, and I did not come on time to the club.*

[…]

We had a bad start but we can join our efforts in the name of the [Club]*, and we can do big things together.*

[…]

You know that l was born in Brasil, in poor family, we did not have comfort like I have now in China. You know that I'm gratefull that I can play for Wuhan and in perfect conditions for a football player.

[…]

I want only play football, I want to do what I like, I want that you accept my excuse, I don't want that anybody is hurt in our relationship. I'm sorry,

I'm sorry, I'm sorry […]*".*

27. The Player was not permitted to train with the Club's first team. The Club travelled to Brisbane, Australia, for a pre-season training camp between 14 January 2018 and 13 February 2018. The Club explained that the Player could not attend the training camp because the Player arrived back to Wuhan one month late and due to the requirement to apply for and receive a *"Temporary Work (subclass 400) visa"* further to Australian immigration law.

28. On 17 January 2018, the Club provided the Player with a personal coach.

29. On the same date, the Japanese club Urawa Red Diamonds officially announced that it and the Brazilian footballer, Mr Rafael Silva, had reached an agreement for the transfer of said player to the Club subject to medical recognition.

30. On 19 January 2018, the Player wrote to the Club as follows:

"[…] *I would like to thank you for giving me a personal coach and do trainings with me in the* [Club's] *facilities also want to thank you for programme for all this week".*

31. On 22 January 2018, the Player complained that the Club did not provide him with the necessary equipment for the training sessions.

32. On 25 January 2018, the Player's lawyers wrote to the Club to, *inter alia*, request that the Club duly comply with the Employment Agreement and for his reintegration with the Club's first team.

33. Between 25 January 2018 and 27 January 2018, the Player left Wuhan to travel to Shanghai. The Player stated that this was because the Club gave the Player two days off training so that he could see a doctor (relating to discomfort in the back of his Achilles, which he had been experiencing since 24 January 2018) and rest appropriately. The Player stated that he arranged an appointment with a doctor based in Shanghai.

34. On 26 January 2018, at 23:00pm, the Club requested that the Player attend a training session the following day.

35. On 27 January 2018, the Club again informed the Player that his absence had not been authorised.

36. On 27 January 2018, the Player responded to the Club stating as follows:

"As [the Club] *is fully aware, I asked for permission to be absent for two (2) days during the weekend in order to be physiotherapeutically treated in Shanghai* […]*".*

C. Termination of the Employment Agreement

37. On 29 January 2018, the Club notified the Player of its decision to terminate the Employment Agreement. The termination notice read as follows:

"[…] *After your late arrival to China and thus your failure to reach on time the team travelling to the pre-season training camp, you were suspended until further notice on 11 January 2018.*

[…] *It has been decided that you have breached the* [Employment Agreement] *in a very important manner and you have failed to comply with one of the most essential duties of your contract* […]*".*

38. On 8 February 2018, the Player sent a *"Writ for Lack of Jurisdiction of the Arbitration Committee of the China Football Association"*. It was argued that only the Dispute Resolution Chamber of FIFA (the "FIFA DRC") was competent to hear the dispute. The Panel understands that either the Club withdrew its legal action brought before the Arbitration Committee of the CFA or said Committee did not accept jurisdiction of the dispute between the parties.

D. Subsequent interest from Santos FC

39. On 31 August 2018, following interest in the Player from Santos FC in Brazil ("Santos"), the Club rejected Santos' request for an International Transfer Certificate ("ITC"), stating that:

"The [Player] *unilaterally terminated his contract, but that* [the Club] *has a FIFA claim against him, as* [the Club] *understands that he did it without just cause. The case is still in the process of FIFA(Ref.18-0046/pam)".*

40. This caused Santos to withdraw their interest in the Player, who then remained unemployed for the remainder of the duration of the Employment Agreement.

E. Proceedings before FIFA

41. On 28 February 2018, the Club filed a claim against the Player before the FIFA DRC requesting that the Player be held liable on the following basis: (i) USD 5,000,000 as determined by the Club's Internal Regulations, or in the alternative; (ii) EUR 2,200,000 for the residual value of the Employment Agreement.

42. On 15 April 2018, the Player filed a counterclaim against the Club before the FIFA DRC, requesting that the Club be held liable on the following basis: (i) EUR 2,200,000 net, as compensation for breach of contract without just cause, plus 5% interest per annum as from 29 January 2019; (ii) EUR 8,904.11 in relation to default interest for the delay in the payment

of the Player's signing fee; and (iii) USD 5,024 with respect to a round trip flight ticket as stipulated in Article 5.1 of the Employment Agreement.

43. On 28 February 2020, the FIFA DRC rendered its decision as follows (the "Appealed Decision"):

> *"1. The claim of* [the Club]*, is admissible.*
>
> *2. The claim of* [the Club]*, is rejected.*
>
> *3. The counterclaim of* [the Player]*, is admissible.*
>
> *4. The counterclaim of* [the Player]*, is partially accepted.*
>
> *5.* [The Club]*, has to pay* [the Player]*, within 40 days as from the date of notification of this decision, compensation for breach of contract without just cause in the amount of EUR 1,988,890, plus 5% interest p.a. as from 15 April 2018 until the date of effective payment.*
>
> *6.* [The Club]*, has to pay* [the Player]*, within 30 days as from the date of notification of this decision, the additional outstanding amount of USD 5,024".*

44. The grounds of the Appealed Decision were notified to the parties on 5 March 2020, as requested by the Club.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 16 March 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"), the Club filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") challenging the Appealed Decision. In its Statement of Appeal, the Club requested the appointment of Dr Jan Räker, Attorney-at-law in Stuttgart, Germany, as arbitrator. These proceedings were registered as *CAS 2020/A/6854 Wuhan Zall FC v. Jorge Sammir Cruz Campos*.

46. On 26 March 2020, in accordance with Article R47 of the CAS Code, the Player filed a Statement of Appeal with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Player requested the appointment of Professor Massimo Coccia, Attorney-at-law and Professor, Rome, Italy, as arbitrator. These proceedings were registered as *CAS 2020/A/6887 Jorge Sammir Cruz Campos v. Wuhan Zall Professional FC*.

47. On 7 April 2020, further to both Parties consenting to the consolidation of the two arbitration proceedings, the CAS consolidated the proceedings in accordance with Article R52 of the CAS Code.

48. On 15 April 2020, in accordance with Article R51 of the CAS Code, the Club filed its Appeal Brief in *CAS 2020/A/6854* with the CAS Court Office.

49. On 27 April 2020, in accordance with Article R51 of the CAS Code, the Player filed his Appeal Brief in *CAS 2020/A/6887* with the CAS Court Office.

50. On 10 July 2020, the Parties were transmitted a disclosure made by the arbitrator whom the President of the CAS Appeals Division had appointed as President of the Panel, Mr Mark Hovell, Attorney-at-law in Manchester, United Kingdom, further to Article R33 of the CAS Code, which none of the Parties subsequently challenged per Article R34 of the CAS Code.

51. On 20 August 2020, after being granted several extensions and having had the Answer deadline reset in accordance with Article R55 of the CAS Code, the Player filed his Answer in *CAS 2020/A/6887* with the CAS Court Office.

52. On 2 September 2020, after previous correspondence concerning the Club's deadline to file its Answer in *CAS 2020/A/6854*, the Club wrote to the CAS Court Office stating inter alia, as follows:

"With respect to court file number CAS 2020/A/6887, the CAS' letter of 2 September 2020 indicates, verbatim, the following:

"I write with reference to CAS' letter of 29 April 2020 in which Wuhan Zall FC was granted a deadline of twenty (20) days upon receipt of said letter to file its Answer. To date, the CAS Court Office has not received Wuhan Zall FC's Answer, or any communication from Wuhan Zall FC in this regard".

The Respondent Club in CAS 2020/A/6887 has repetitively asked that the deadline to file its answer to the appeal brief be suspended until the Respondent Player pay the entirety of the costs of arbitration. As noted in a CAS letter of 23 July 2020 (attached) "Wuhan Zall FC requests that the time limit to file it Answer be suspended until the totality of the advance of costs has been paid by Mr Cruz". In that same letter, it was determined that "since Mr Cruz has paid his share of the advance of costs, Wuhan Zall FC's requests is denied".

This suspension of the deadline to file the answer ought to have been granted as, to the Club's knowledge, the costs of the arbitration have yet to have been paid.

The parties have most recently received a letter dated 18 August 2020 (attached) from the Finance department stating that the Player has not paid the entirety of the advance of cost and that he has a final deadline of 27 August 2020 to do so. We have yet to have received notification that the remaining costs for CAS 2020/A/6887 have been paid. The Club submits that the deadline to file the answer to the appeal brief in CAS 2020/A/6887 should continue to have been suspended. Alternatively, if the Player has not paid the remaining costs by 27 August 2020 appeal bearing number CAS 2020/A/6887 ought to be dismissed".

53. On 3 September 2020, the CAS Court Office wrote to the Parties, stating as follows:

"I further understand that Wuhan Zall FC confirms that it has not filed an Answer in CAS 2020/A/6887 for the reasons stated in its 2 September 2020 email, namely that it requested the application of Article R55 of the Code of Sports-related Arbitration (the "Code"), which was denied by CAS on 23 July 2020 in light of the fact that the CAS Court Office had confirmed on 16 July 2020 that Mr Jorge Sammir Cruz Campos had paid his share of the advance of costs in CAS 2020/A/6887, but that nevertheless Wuhan Zall FC maintains that its Answer deadline should have been suspended since the totality of the advance of costs had not been paid. I also note that Wuhan Zall FC states that if the totality of the advance of costs has not been paid within the relevant deadline, CAS 2020/A/6887 should be terminated.

In this regard, it is recalled that Article R55 of the Code provides that "the Respondent may request that the time limit for the filing of the answer be fixed after the payment by the Appellant of ***its*** *share of the advance of costs in accordance with Article R64.2". (emphasis added) Therefore, Article R55 of the Code does not apply to the totality of the advance of costs, but rather only an appellant's payment of its share of the advance of costs, which does not include the respondent's share, even if the respondent ultimately declines to pay its share and the appellant substitutes payment as permitted by Article R64 of the Code. In other words, once an appellant has paid its share of the advance of costs, Article R55 of the Code is no longer available to a respondent to suspend its answer deadline.*

Further to the above, it is again noted that on 16 July 2020, the CAS Court Office confirmed that the Appellant had paid his share of the advance of costs in CAS 2020/A/6887, and set the initial deadline for the Appellant to pay the Respondent's share of the advance of costs. As noted by Wuhan Zall FC in its 2 September 2020 email, the CAS Court Office further informed Wuhan Zall on 23 July 2020 that Mr Jorge Sammir Cruz Campos had paid his share of the advance of costs and that therefore Wuhan Zall FC was not able to invoke the application of Article R55 of the Code. As a result, the deadline set in CAS' letter dated 16 July 2020 (not the letter of 29 April 2020 as stated in CAS' letter dated 2 September 2020) for Wuhan Zall FC to file its Answer in CAS 2020/A/6887 kept running and eventually lapsed without an Answer being filed.

It is once again noted that, in accordance with Article R55 of the Code, if a respondent fails to submit its Answer by the deadline, the Panel may nevertheless proceed with the arbitration and deliver an award.

In addition, I confirm that Mr Jorge Sammir Cruz Campos paid Wuhan Zall FC's share of the advance of costs in CAS 2020/A/6887 on 27 August 2020, i.e. within the final deadline set in the CAS Finance Director's letter dated 18 August 2020. […]*".*

54. Further, in the same correspondence of 3 September 2020, in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom

Arbitrators: Dr Jan Räker, Attorney-at-law in Stuttgart, Germany

Professor Massimo Coccia, Attorney-at-law and Law Professor, Rome, Italy

55. On 14 September 2020, the Club transmitted its Answer in *CAS 2020/A/6854* to the CAS Court Office.

56. On 15 September 2020, the CAS Court Office wrote to the Parties, stating as follows:

"I recall in this regard e.g. CAS' letters of 2 and 3 September 2020 noting that Wuhan Zall FC had not timely filed its Answer further to Article R55 of the Code of Sports-related Arbitration. Wuhan Zall nonetheless has requested that the Panel admit its Answer e.g. "given the extraordinary circumstances where the Player was given several extensions of time, on consent, where it would be an inefficient use of the Club's resources to prepare an answer to the appeal brief before the costs were entirely paid" and "given the long timeline that the player was afforded to pay the advance of costs, from the request of legal aid to the ultimate deadline of 27 August 2020".

The CAS Court Office therefore invited the Player to submit any comments he had regarding the issue of admissibility of the Club's Answer.

57. On 22 September 2020, the Player wrote to the CAS Court Office stating that for a variety of reasons, he objected to the admissibility of the Club's Answer.

58. On 23 October 2020, the Parties were informed by the CAS Court Office on behalf of the Panel that the Club's Answer was deemed inadmissible further to Article R55 of the CAS Code, and that the reasons for the Panel's decision would be set out in this final Award. In the same correspondence, the CAS Court Office confirmed that the Panel had, after consulting the Parties, decided to hold a hearing in the matter by videoconference further to Articles R44.2 and R57 of the CAS Code.

59. On 6 January 2021, the Parties were transmitted another disclosure made by the President of the Panel, Mr Mark Hovell, further to Article R33 of the CAS Code, which none of the Parties subsequently challenged per Article R34 of the CAS Code.

60. On 1 February 2021, the Club submitted a signed copy of the Order of Procedure.

61. On 3 February 2021, the Player submitted a signed copy of the Order of Procedure.

62. On 25 February 2021, i.e. the day prior to the hearing, the Player announced that he and his Agent would not personally participate in the hearing scheduled for the following day.

63. On 26 February 2021, a hearing was held by videoconference, further to Articles R44.2 and R57 of the CAS Code. The Parties did not raise any objection as to the composition of the Panel. The Panel were present and was assisted by Ms Kendra Magraw, Legal Counsel at the

CAS. Furthermore, the following persons attended the hearing:

i. The Club: Mr Paolo Torchetti, external counsel; Mr Xiaochuan Xiong, Deputy CEO of the Club; and Mr Li You, Club Administrator; and

ii. The Player: Mr Alfredo Garzón Vicente and Mr Juan Alfonso Prieto Huang, external counsel.

64. The Club brought Mr Li You, a club administrator, to the hearing; however, as he had not been announced in the written submissions, the Player objected to this witness being heard. The Panel agreed and only heard from Mr Xiaochuan, who in his capacity as party representative, answered questions from the Parties and the Panel. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.

65. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and to be treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

IV. THE PARTIES' SUBMISSIONS

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

A. The Club's submissions

67. In its Statement of Appeal and Appeal Brief, the Club requested the following prayers for relief:

"The [Club] *requests that the Panel issue an award as follows:*

1. To allow the appeal vacating the [Appealed Decision].

2. To adopt an award stating that:

a. the Player violated and breached the terms of his [Employment Agreement]*;*

b. the Club unilaterally terminated the Employment [Agreement] *with just cause.*

3. The Player must pay the Club compensation in the amount of:

a. $5,000,000;

b. or in the alternative €2,200,000; and

c. in either to award the application of 5% interest per, starting from 27 January 2018.

4. In the alternative, should the Panel determine that the [Club] *terminated the* [Employment Agreement] *without just cause that the amount of compensation is mitigated where no compensation shall be payable to the* [Player]*…".*

68. The submissions of the Club, in essence, may be summarised as follows:

A. The obligations of the Club

- The Club stated that its obligations under the Employment Agreement are as follows: (a) to pay the Player; and (b) to ensure that the work arrangement reflected the obligations in the Employment Agreement.

- On point (a) above, the Club noted that the Player's salary was paid for the months of December 2017 and January 2018. Upon receiving the Player's email on 21 December 2017, the Club reviewed its internal accounting documents and determined that the Player's monthly salary and performance bonuses had been paid to the Player in accordance with the Employment Agreement. The day after the Player made the request, the Club paid the Player's signing fee.

- On point (b) above, the Club stated that it complied with its obligations under the Employment Agreement as it, on a number of occasions, notified the Player (and the Agent) that it was going to commence training in early December. The Player did not provide any support, such as medical evidence or a diagnosis from a psychiatrist, which demonstrated that the Player could not travel back to China. The Club also considered it noteworthy that the Player only provided his reasoning for not travelling back to China on 10 December 2017, i.e. the date the Club expected him to arrive back in China.

- Notwithstanding the payment of the Player's signing fee, the Player did not attend training until he arrived in China in January 2018. The Club suspended the Player from training and playing in matches until further notice due to this alleged misconduct; that said, the Club put the Player in his personalised training camp, while the rest of the team were in Australia. The Club further contends that the Player was unable to travel with the Club to Australia as his unauthorised absence meant that the Club could not obtain a visa for the Player.

B. The obligations of the Player

- The Club relied on the principle of *pacta sunt servanda* in respect of the Employment Agreement and the Club's Internal Regulations. In turn, it relied upon provisions of the Swiss Code of Obligations (the "SCO"), namely:

  "Article 1

  1. The conclusion of a contract requires mutual expression of intent by the parties.

  2. The expression of intent may be express or implied. […].

  Article 18

  1. When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement. […]*".*

- The argument of the Club was that the common intention of the parties was clear and, in particular, the Club relied on Article 6.1.3 of the Employment Agreement and Provision 11 of the Internal Regulations, as justification for the proposition that the Player was bound by the terms of both the Employment Agreement and Internal Regulations.

- To that end, the Club stated that the Player repeatedly breached the Employment Agreement (Articles 6.1.4 and 6.2.6 of the Employment Agreement) and Internal Regulations (Provisions 1.5(1)C, 1.5(2), 2.1, 2.5, 3.2 and 5.4), in light of the events which occurred between the months of December 2017 and January 2018.

C. The suspension of the Player

- The Club's central argument in this regard was that the primary obligation of a football player is his participation in training and matches. Being absent and unreachable from 10 December 2017 and 11 January 2018, the Player did not fulfil his primary obligation and therefore was in breach of the Employment Agreement.

- The Player's arrival at the Club on 11 January 2018, in the Club's view, justified his suspension. This is particularly important to the Club because 48 members of the Club were in Australia while he was suspended, as this was a situation entirely of the Player's own doing.

- The Club stated that the suspension decision was made in accordance with Article 6.3.1 of the Employment Agreement and Provision 6 of the Internal Regulations. Accordingly, due to the alleged seriousness of the Player's misconduct, the Club

delegated the final decision to the Club's Board of Directors – the first meeting of said Board was not until 26 January 2018.

D. The termination of the Employment Agreement

- On 26 January 2018, the Board of Directors of the Club met and decided to terminate the Employment Agreement. The Club contends that it had the right to terminate the Employment Agreement and such was with just cause.

- In support of that argument, the Club relied on Articles 6.3.3, 7.2.3 and 8.1.2 of the Employment Agreement, as well as Provision 6 of the Internal Regulations.

- The Club also cited Articles 337(1) and (2) of the SCO in support of the position that the termination was consistent with Swiss law.

- As the Club pointed out, it was undisputed that the Player was absent from the Club without authorisation for the period of time referred to above. The Club further submitted that the relevant factors, established by FIFA DRC jurisprudence in determining whether there is *"just cause for a club to terminate the contract"*, are: (a) duration of the absence; (b) reason for the absence; and (c) notice of termination sent by the Club.

- On factor (a), the Club stated that the Player was absent without authorisation for one month which, on the basis of FIFA DRC jurisprudence, means that condition (a) above is met.

- On factor (b), the Player's justification for the absence, provided by the Player on 10 December 2017, was not justified from the Club's point of view because the Player did not provide any medical documentation. In response to the Player's correspondence of 21 December 2017, the Club noted that it paid the Player on 22 December 2017, and therefore the Player failed to provide a valid reason for his absence.

- The Club argued that factor (c) above was complied with as it clearly and unequivocally requested that the Player must return to Wuhan, on four separate occasions.

- The Club further emphasised the following facts in support of its termination decision: (a) the Player's late return to China which precluded him from travelling to Australia; and (b) the Player subsequent departure for Shanghai which, in turn, resulted in missed training sessions.

E. The "cure" of the Player's breach of the Employment Agreement

- The Club states that the FIFA DRC erred in its decision-making when it found that the Player, in returning to the Club on 10 January 2018 and apologising on 12 January 2018, *"cured"* the Player's initial breach of the Employment Agreement, precluding the Club from terminating the Employment Agreement due to the delay of time between the breach, the *"cure"* and the termination.

- First, the Player's apology letter to the Club appeared to be sarcastic rather than sincere.

- Secondly, the Club argued that there was no *"cure"* of the breach because the Player's conduct made it impossible for him to join the first team in Australia.

- Thirdly, the Player's trip to Shanghai prevented a *"cure"* of the breach and was, in fact, a further ground of termination for the Club.

F. The calculation of the compensation

- As acknowledged by the Club, the Employment Agreement does not set out the compensation payment required to be paid in the event of breach. The Club therefore relied upon Provision 6 of the Internal Regulations, which states the following: *"*[…] *The* [Club] *may Require a one-time Compensation of 5 Million U.S Dollars for Breach of Contract* […]*"*.

- In the alternative, in reliance on Article 17 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), the Club argued that the compensation should equate to the residual value of the Employment Agreement, i.e. EUR 2,200,000, due to the following factors: (a) the Player's behaviour; (b) the Club's commitment to the Player's sign-on fee; and (c) the genuine requests by the Club for the Player's return to Wuhan.

G. Alternative argument

- Should the Panel decide that the Club terminated the Employment Agreement without just cause, the compensation awarded to the Player ought to be nil.

- The Club noted that there were no outstanding payments to be made to the Player and the only amount at issue is the compensation calculated as the residual value of the Employment Agreement. Simply put, from the Club's perspective, the Player did not make himself available, effectively for the entirety of the pre-season training camp in Australia, and he failed to adhere to his personalised training sessions, especially due to his trip to Shanghai.

- The Club argued that, in that context, the appropriate amount of compensation for the Player should be nil.

B. The Player's submissions

69. In his Statement of Appeal, the Player requested the following prayers for relief:

"[…] *an Award under which the* [Appealed] *Decision* […] *is partially amended as follows:*

i. The compensation for breach of contract to be paid to [the Player] *is not subject to any deductions and therefore* [the Club] *is condemned to pay the Player the total compensation of TWO MILLION TWO HUNDRED THOUSAND EUROS (€ 2,200,000) NET.*

ii. [The Club] *is condemned to pay* [the Player] *the default interest which amounts to EIGHT THOUSAND NINE HUNDRED FOUR EUROS WITH ELEVEN CENTS (€ 8,904.11) NET corresponding to the delay in the payment of the signing fee provided in clause 4.4 of the Employment* [Agreement].

iii. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point i) above.*

iv. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from December 23rd, 2017 to be applied to the amount stipulated in point ii) above.*

As an alternative prayer of relief for those stipulated in point i) and iii) above:

v. Should the Hon. Panel consider that the total compensation to be paid to [the Player] *should be subject to a deduction, said deducted amount may not exceed at least the sum of one hundred sixty-one thousand one hundred ten euros (€ 161,110) to be deducted from the total compensation of TWO MILLION TWO HUNDRED THOUSAND EUROS (€ 2,200,000) NET.*

vi. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point v) above.*

In all cases:

vii. [The Club] *is ordered to bear all procedural costs and other arbitration expenses of this procedure.*

viii. [The Club] *is also ordered to pay the legal fees and other expenses incurred by* [the Player] *in an amount to be determined at the discretion of this Hon. Panel*".

70. In his Appeal Brief, the Player requested the following prayers of relief:

"[…] *an Award under which the* [Appealed] *Decision* […] *is partially amended as follows:*

i. *The compensation for breach of contract to be paid to* [the Player] *is not subject to any deductions and therefore* [the Club] *is condemned to pay the Player the total compensation of TWO MILLION TWO HUNDRED THOUSAND EUROS (€ 2,200,000) NET.*

ii. [The Club] *is condemned to pay* [the Player] *the default interest which amounts to EIGHT THOUSAND NINE HUNDRED FOUR EUROS WITH ELEVEN CENTS (€ 8,904.11) NET corresponding to the delay in the payment of the signing fee provided in clause 4.4 of the Employment* [Agreement].

iii. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point i) above.*

iv. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from December 23rd, 2017 to be applied to the amount stipulated in point ii) above.*

v. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 5th, 2018 to be applied to the amount of five thousand twenty-four Dollars (USD 5,024) which corresponds to the flight ticket (recognised by the* [Appealed] *Decision).*

As an alternative prayer of relief for those stipulated in point i) and iii) above:

vi. *Should the Hon. Panel consider that the total compensation to be paid to* [the Player] *should be subject to a deduction:*

a. *said deducted amount may not exceed the sum of thirty thousand five hundred fifty-five euros and fifty-five cents (€ 30,555.55) and therefore* [the Club] *should pay* [the Player] *the compensation of TWO MILLION ONE HUNDRED SIXTY-NINE THOUSAND AND FOUR HUNDRED FORTY-FOUR EUROS AND FORTY-FIVE CENTS (€ 2,169,444.45) NET; or*

b. *In the alternative, said deducted amount may not exceed the sum of fifty thousand euros (€ 50,000) and therefore* [the Club] *should pay* [the Player] *the compensation of TWO MILLION THIRTY-EIGHT THOUSAND AND EIGHT HUNDRED NINETY EUROS (€ 2,038,890) NET.*

vii. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point v) above.*

In all cases:

viii. *The rest of the* [Appealed] *Decision adopted by the Dispute Resolution Chamber of FIFA of February 20th, 2020 (Ref.- No 18-00461) which is not being appealed under the present procedure is confirmed.*

ix. [The Club] *is ordered to bear all procedural costs and other arbitration expenses of these procedures.*

x. [The Club] *is also ordered to pay the legal fees and other expenses incurred by* [the Player] *in an amount to be determined at the discretion of this Hon. Panel".*

71. In his Answer, the Player requested the following prayers of relief:

"A. The appeal filed by [the Club] *is fully dismissed:*

i. since the Player has not breached the [Employment Agreement]*;*

ii. as an alternative prayer of relief, the termination of the [Employment Agreement] *constitutes a violation of the fundamental principle ne bis in idem;*

iii. as a second alternative prayer of relief, in subsidiary basis, the Player's conduct do NOT justify the Club's unilateral termination of the [Employment Agreement].

B. The appeal filed by [the Player] *under the procedure CAS 2020/A/6887 is fully considered and therefore the* [Appealed Decision][…] *is partially amended as follows:*

i. The compensation for breach of contract to be paid to [the Player] *is not subject to any deductions and therefore* [the Club] *is condemned to pay the Player the total compensation of TWO MILLION TWO HUNDRED THOUSAND EUROS (€ 2,200,000) NET.*

ii. [The Club] *is condemned to pay* [the Player] *the default interest which amounts to EIGHT THOUSAND NINE HUNDRED FOUR EUROS WITH ELEVEN CENTS (€ 8,904.11) NET corresponding to the delay in the payment of the signing fee provided in clause 4.4 of the Employment* [Agreement].

iii. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point i) above.*

iv. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from December 23rd, 2017 to be applied to the amount stipulated in point ii) above.*

v. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 5th, 2018 to be applied to the amount of five thousand twenty-four Dollars (USD 5,024) which corresponds to the flight ticket (recognised by the* [Appealed] *Decision).*

As an alternative prayer of relief for those stipulated in point i) and iii) above:

vi. Should the Hon. Panel consider that the total compensation to be paid to [the Player] *should be subject to a deduction:*

a. said deducted amount may not exceed the sum of thirty thousand five hundred fifty-five euros and fifty-five cents (€ 30,555.55) and therefore [the Club] *should pay* [the Player] *the compensation of TWO MILLION ONE HUNDRED SIXTY-NINE THOUSAND AND FOUR HUNDRED FORTY-FOUR EUROS AND FORTY-FIVE CENTS (€ 2,169,444.45) NET; or*

b. In the alternative, said deducted amount may not exceed the sum of fifty thousand euros (€ 50,000) and therefore [the Club] *should pay* [the Player] *the compensation of TWO MILLION THIRTY-EIGHT THOUSAND AND EIGHT HUNDRED NINETY EUROS (€ 2,038,890) NET.*

vii. [The Club] *is condemned to pay* [the Player] *a five per cent (5%) interest from January 29th, 2018 to be applied to the amount stipulated in point vi) above.*

In all cases:

viii. [The Club] *is ordered to bear all procedural costs and other arbitration expenses of these procedures.*

ix. [The Club] *is also ordered to pay the legal fees and other expenses incurred by* [the Player] *in an amount to be determined at the discretion of this Hon. Panel".*

72. The submissions of the Player, in essence, may be summarised as follows:

A. Deduction applied to the compensation

- The Player sought to make the case that the FIFA DRC, in its Appealed Decision, erred in applying a deduction to the compensation requested by the Player, and that it was incorrect to find that the Player committed a contractual breach in the month of December 2017. The FIFA DRC deduction equalled the Player's entire salary for the month of December 2017 and the first 10 days of January 2018.

- First, the Player argued that he had not been duly summoned by the Club, as the Club purposely and in bad faith sent its communications to an incorrect email address. The Player put forward the contention that the Club deliberately tried to provoke a contractual breach of the Employment Agreement by the Player.

- Secondly, even if the Player had been duly summoned, the Player contends that he had not breached the terms of the Employment Agreement. On the contrary, the Player points out that it was the Club who wished to terminate the contract early (so that it could sign Mr Rafael Silva, who played in the same position as the Player) and, in that context, promoted the early and unjustified termination of the Employment Agreement by, *inter alia,* requiring the Player to re-join the Club at an earlier date (when other foreign players were permitted to return on 5 January 2018). The Player

considered that the Club had designed a strategy of *"mobbing"* against him, after he returned to China in January 2018, such as by not permitting the Player to join the first team in Australia.

- Thirdly, the Player maintained that he had a justified cause and medical reasons for not returning to China which, as the Player stated, arose due to the infringements of the Club (such as the late payment of the signing fee).

- Fourthly, as the Player had already been sanctioned by the Club with a disciplinary fine, a deduction to the compensation would lead to a violation of the *ne bis in idem* principle. The Player invited the Panel to invoke the *ne bis in idem* principle, as the alleged infringement of the Employment Agreement / Internal Regulations had already been sanctioned by the Club on 11 January 2018 for the same facts and reasons. Indeed, the Player's penalty amounted to a deduction of EUR 75,000 from his December 2017 and January 2018 salary, together with a demand that the Player submit a written *"self-criticism no less than 1500 words to the coaching staff"*.

- Fifthly, the Player noted that his other foreign teammates returned to China on 5 January 2018. Therefore, in the alternative, should the Player have returned to China on 5 January 2018, then it would be reasonable and proportionate to apply a deduction consisting in 5 days of the monthly salary of January 2018.

- Sixthly, alternatively, the Player pointed out that the FIFA DRC applied a deduction for the whole of December 2017, when the Club in fact only requested the Player's return from 10 December 2017. The first 10 days of the month of December 2017 constituted holiday days of the Player and there it would be incorrect to apply a deduction for those days.

B. Default interest of the compensation

- In the Appealed Decision, the FIFA DRC awarded interest at a rate of 5% from 15 April 2018.

- The Player submitted that the interest date should, however, on the basis of Article 104.1 of the SCO, run from the termination of the Employment Agreement, namely 29 January 2018.

C. Default interest of the late payment of the signing fee

- The Player noted that the Appealed Decision was silent on the issue of late payment of the signing fee, despite the fact that the Player requested the FIFA DRC to make a decision on this point.

- In accordance with Article 104.1 of the SCO, the Player submitted that the Panel should apply a 5% interest on the sum of EUR 8,904.11 from 23 December 2017 until the effective date of payment. Similarly, with regards to the Player's flight ticket, it was put forward that the Panel should apply the 5% interest from 5 January 2018 until the effective date of payment.

D. Prefabricated Internal Regulations

- The Player did not accept that the Internal Regulations applied to this dispute. In fact, from his perspective, the Internal Regulations were prefabricated by the Club with the intent of creating an artificial and unfounded claim against the Player. The Player notes that the Internal Regulations were not: (a) provided to the Player; and (b) were not signed by the Player, as the document came into existence after the date of the Employment Agreement.

- It was also stated that: (a) the Internal Regulations were not provided to the Player before the Arbitration Committee of the CFA; (b) the content of the Internal Regulations was inconsistent with Articles 11.2 and 11.3 of the Employment Agreement; (c) the Club did not apply the Internal Regulations when it sanctioned the Player on 11 January 2018; and (d) the Internal Regulations had been adjusted to the present dispute.

- The Player concluded that the Internal Regulations did not apply to the Player. Not only were the Internal Regulations produced in bad faith, from his perspective, the Internal Regulations were not negotiated with, or accepted by, the Player which was contrary to Articles 1.1 and 18.1 of the SCO.

- The Player also referred the Panel to Articles 12 and 13 of the SCO, which respectively state as follows: *"where the law requires that a contract be done in writing, the requirement also applies to any amendment to the contract"* and *"a contract required by law to be in writing must be signed by all persons on whom it imposes obligations"*. Article 2 of the FIFA RSTP required the Player's contract to be in writing.

- The Player, therefore, requested that the Panel disregard the Internal Regulations.

E. The Player did not breach the Employment Agreement

- The FIFA Regulations do not define what constitutes "just cause" for the purposes of termination as that is a matter which must be established on a case-by-case basis. The Club has the burden of proof to establish that there was a material breach of the Employment Agreement.

- In any case, the Player stated that he was justified in not returning to Wuhan for medical reasons, which arose due to the Club's breaches of the Employment Agreement.

- Additionally, while the Club relied on the Player's trip to Shanghai as further justification for the termination of the Employment Agreement, the Player asserts that he was in fact authorised to visit Shanghai to see a doctor.

- The Club materially breached the Employment Agreement in the following manner: (a) it did not pay the signing fee on time (Article 4.4 of the Employment Agreement); (b) the Club terminated the Employment Agreement prior to its natural expiration on 31 December 2018 (Article 1.1 of the Employment Agreement); (c) the "mobbing" strategy (e.g. not allowing the Player to train with the Club's first team or travel to Australia, and inventing an alleged breach of contract due to the Player's authorised trip to Shanghai) breached the contractual working conditions clause (Article 3 of the Employment Agreement); (d) the Club did not provide the Player with the required flight ticket to travel to Wuhan (Article 5.1 of the Employment Agreement); and (e) the Club initiated proceedings against the Player before the CFA Arbitration Committee (Article 10.2 of the Employment Agreement).

F. Unjustified termination of the Employment Agreement

- Alternatively, in any event, the Player further submitted that the Player's conduct would not have justified the unilateral termination of the Employment Agreement by the Club.

- The Player relied upon the principle of *exceptio non adimpleti contractus*, which permits that the performance of an obligation be withheld, if the other party has failed to perform the same or a related obligation. The Player directed the Panel to Article 82 of the SCO. The Player pointed to the Club's failure to pay the signing fee of EUR 500,000, as it allegedly gave rise to the Player needing to seek medical therapy.

- Equally, the Player also emphasised that the termination of the Employment Agreement is to be applied as *ultima ratio,* i.e. the last resort if the breach has reached an extent that the injured party can no longer, and in good faith, be expected to continue the contractual relationship. The Player argued that his absence from Wuhan was justified on medical grounds (as medically it was recommended that he *"rest and avoid any stressful situations and longer trips"*) and, in any event, was provoked by the actions of the Club.

- Furthermore: (a) the Club waited almost 3 weeks to terminate the contract (rather than doing do immediately); (b) the Player demonstrated his intention to comply with the Employment Agreement; (c) mere absence does not constitute misconduct that would

justify the termination of the Employment Agreement; and (d) no official matches were missed by the Player.

V. JURISDICTION

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

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

74. Both Parties also rely on Articles 57 and 58 of the FIFA Statutes, as well as Article R48 of the CAS Code. The jurisdiction of CAS was not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by both Parties.

75. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

76. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

77. Article 58 of the FIFA Statutes provides a time limit of 21 days after notification to lodge an appeal against a decision adopted by one of FIFA's legal bodies, such as the FIFA DRC.

78. The Statements of Appeal, which were filed on 16 March 2020 (for *CAS 2020/A/6854*) and 26 March 2020 (for *CAS 2018/A/6887*), complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee. Both Appeal Briefs were filed within the relevant deadlines.

79. It follows that the Appeals are admissible.

VII. APPLICABLE LAW

80. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

> *"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

81. Both Parties in this dispute agreed that the rules and regulations of FIFA and Swiss law were applicable in accordance with Article R58 of the CAS Code.

82. The Panel agreed with this position and will apply the various regulations of FIFA, with Swiss law on a subsidiary basis.

VIII. MERITS

A. Preliminary Issue: Admissibility of the Club's Answer in *CAS 2020/A/6887*

83. Before turning to the mertis of the dispute, the Panel will address as a preliminary issue the admissibility of the Club's Answer in *CAS 2020/A/6887*.

84. The Answer filed by the Player in *CAS 2018/A/6854* was filed pursuant to the deadline provided by the CAS Court Office. However, the Answer filed by the Club in *CAS 2020/A/6887* was filed late, and declared inadmissible by the Panel. The reasons and consequences for this decision are set out below.

85. The Panel notes that the Club's 20-day deadline to file its Answer ran from 16 July 2020. The Answer was filed on 14 September 2020, some considerable time after the deadline had expired. There was no meaningful excuse from the Club; only that it could have asked for an extension. That is clearly not the same as actually asking for an extension and being granted one.

86. The Player did not consent to this late filing, so the Panel has determined to reject the Answer in its entirety, but, in accordance with Article R55 of the CAS Code, it may nevertheless proceed with the arbitration and deliver an award. Deadlines are deadlines.

87. The consequences of this decision are perhaps less obvious in a consolidated case, where the Club has already filed its Statement of Appeal and Appeal Brief in *CAS 2018/A/6854*, including 37 exhibits.

88. The Panel notes that even without its Answer on the CAS file, the Club is able to plead orally in response to the Player's Appeal and to contest evidence put forward by the Player in

support of his Appeal. The Panel refers to and adopts the analysis in *CAS 2019/A/6463 & 6464*, which stated as follows:

"104. First of all, the Panel observes that there is no rule of the CAS Code providing that a respondent loses its right to be a party altogether and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a belated answer. Article R55 of the CAS Code, which deals with a belated answer, only indicates that "[i]f the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award". This is particularly telling when compared to other provisions of the CAS Code that do require the withdrawal or termination of a case for a belated filing. In particular, the Panel refers to:

- *Article R49 of the CAS Code, which states that the "Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late"; and*

- *Article R51 of the CAS Code, which provides that if the appellant fails to submit its appeal brief within the set time limit, "the appeal shall be deemed to have been withdrawn".*

105. Second, in the Panel's view, Article R56 of the CAS Code does not preclude the Respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings before the DRC (and which were reported in the Appealed Decision), or from submitting post-hearing briefs strictly limited to commenting on the evidence presented at the hearing (as was ordered by the Panel). In the Panel's view, Article R56 of the CAS Code cannot be interpreted in such a restrictive manner as the Appellants propose; the clear rationale behind this provision is to prevent a party from ambushing the other party at the hearing. Therefore, it is not contravened by referencing the FIFA case file and, in particular, SD Huesca's position before the FIFA DRC as evidenced in that file and in the Appealed Decision. Article R56 of the CAS Code is also not violated by SD Huesca pleading orally and challenging the evidence put forward at the hearing. To hold otherwise would mean that, under Article R56 of the CAS Code, all parties to CAS appeals proceedings would always be restricted in their oral statements to repeating exactly what they have already written in their briefs prior to the hearing; this would essentially make all oral pleadings at hearings meaningless and unnecessary. In principle and in practice, parties are permitted to expand on their written submissions at a hearing provided that they remain within the scope of their case, as established in prior submissions (including those presented during the first instance proceedings). Indeed, it is not unusual in CAS hearings that, before the parties' oral pleadings, the panel expressly advises the parties' attorneys not to merely repeat orally what they have already stated in their written briefs".

B. The Main Issues

89. The Panel observes that the main issues to be resolved are:

a) Did the Club terminate the Employment Agreement with just cause?

b) If so, what are the financial consequences of the termination?

90. The Panel will consider each of these in turn.

a) Did the Club terminate the Employment Agreement with just cause?

91. The Club directed the Panel to the Internal Regulations and, in particular, Articles 2.1 and 6, which made it clear to players that missing training and absenteeism could result in suspension and dismissal. Further, the Employment Agreement contained the right to terminate if there were serious breaches of that agreement and/or the Internal Regulations, at Article 3.3. The Club submitted that the Player failed to return to the Club when directed to and ultimately missed the pre-season training in Australia. He then went on a further unauthorised trip to Shanghai, and the Club terminated the Employment Agreement with just cause and in accordance with its terms.

92. On the other hand, the Panel notes that the Player alleged that the Club had approached his agent to see if he would accept a mutual termination of the Employment Agreement. Further, it had been late with payments to him, which had caused him to seek medical assistance, and over the closed season, it had brought in a new foreign player. It was treating him differently from the other foreign players by looking to force him to return early from his holiday. When he did return, he had to buy his own flight ticket and was then excluded from the pre-season training in Australia and left to train alone before he was dismissed without just cause. The Player also submitted that he never signed or agreed to the Internal Regulations.

93. It is unclear to the Panel as to whether the Player had ever accepted the Internal Regulations. They were referred to in the Employment Agreement, but seemed to be produced to the Player some 2 months after the Employment Agreement had commenced. There was little evidence to support the claims that the Club had sought to mutually terminate the Employment Agreement earlier. Even if it had, it appears that the Agent had declined and the Employment Agreement continued. The Panel notes that whilst the Player was away between the seasons, the Club did finally pay the EUR 500,000 signing-on bonus to the Player. However, it did appear to the Panel that another overseas player had been brought in, but that in itself would not be the Player's problem. If the Club then had too many overseas players, it would have to decide what to do with them all. It did seem to be treating the Player differently from the other overseas players as regards the length of holiday allowed. There was no clear explanation as to why the Player was required back for pre-season training in mid-December 2017, when the other overseas players only had to return on 5 January 2018.

94. The Panel notes that the Player did not arrive back in China until 10 January 2018, so he was still later than the other overseas players were. There had been some correspondence between the Parties prior to this and the Player had explained that he was not in the right psychological condition to attend training, yet he failed to send a copy of the medical note he had been given by his doctor. When he did return, he was sanctioned by the Club. He accepted a significant fine, was suspended and issued a bizarre letter of apology, after being given the equally bizarre instruction to write a "self-criticism" essay.

95. At this stage, the Employment Agreement was in force, the breaches of the Player had been dealt with by these sanctions, and the breaches by the Club (mainly the non-payment of the signing on fee) had been remedied. What the Panel would have expected to happen next would be for the Player to have been reintegrated with the team and to join them on the pre-season training trip to Australia, on 14 January 2018.

96. The Club submitted that it was impossible to get a visa for the Player in time. The Panel noted that the Club's other overseas players had returned 5 days before the Player and they had visas to travel on 14 January. At the very worst, the Player could have got a visa and followed on a few days after the rest of the team. The Player submitted that the Club could have used the copy of his passport to get the visa too. Instead, the Club left the Player behind, facing weeks of training alone. In either case, the Panel notes, that also following the residual team's departure to Australia, the employment relationship between the Parties was consensually continued for the time being.

97. The Panel notes that the Player did then take a two-day trip some 2 weeks later to Shanghai. The Club labelled the trip as a holiday and it demanded he return for training. The Player submitted that this trip was to see a medical specialist.

98. It was not clear to the Panel that the Player had authority from the Club to make the trip, but there were some messages to suggest that his coach was aware of it and that he was struggling with his Achilles. The Panel did note, however, that the Club made its demand at 23:00 on 26 January 2018, demanding that the Player return for training at 11:00 the next morning. The demand seemed unreasonable in the circumstances.

99. All that noted, ultimately, the Player returned and was then dismissed by the Club on 27 January 2018.

100. On reviewing the Termination Letter, the Panel notes the reasons provided for the dismissal (emphasis added by the Panel):

> *"After your late arrival to China and thus your failure to reach on time the team travelling to the pre-season training camp, you were suspended until further notice on the 11th January 2018".*
>
> *Once the Board has met, It has been decided that you have breached the contract in a very important manner and you have failed to comply with one of the most essential duties of your contract. As well, you have betrayed our and your teammates confidence with your inexplicable behaviour and inconsistent excuses.*
>
> *Thus, it has been decided that this behaviour could only have one legal consequence which is to terminate your contract with immediate effect".*

101. The Panel notes that there is no reference to the Shanghai trip. The dismissal was based solely on the Player's late arrival for pre-season on 10 January 2018. The Club had already sanctioned the Player for this offence and he had accepted this. There was no ability for the Club to

reopen this matter and to apply an additional, harsher sanction upon the Player in violation of the *ne bis in idem* principle.

102. In conclusion, the Club terminated the Employment Agreement without just cause.

b) What are the financial consequences of the termination?

103. The Panel notes Article 17.1 of the FIFA RSTP states as follows:

> *"17.1 In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 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".*

104. There was no agreement between the parties as the financial consequences of the Club's termination without just cause in the Employment Agreement. As such, the Panel determined to consider if there were any arrears due to the Player at the termination date and what compensation should be due too. The Panel considered what sums remained due until the normal expiration of the Employment Agreement and considered what mitigation the Player had achieved by playing for any other clubs during that period and/or whether any sum should be deducted as a result of his contributory behaviour.

105. It appeared to be undisputed that, save for the January 2018 salary, there were no arrears of salary due to the Player as at the termination date. However, the Player did claim the reimbursement of his flight ticket (in the sum of USD 5,024) and interest on the signing on fee of EUR 500,000 that was due on 15 August 2017, but finally paid on 22 December 2017 (which he calculated as being EUR 8,904.11, based on the rate of 5% per annum). It did appear to the Panel that the December 2017 salary was not paid in full, due to the deduction of a fine for his late return to pre-season training. This aggregated to EUR 75,000 (50% of his December 2017 salary). However, the Player accepted this sanction.

106. The Panel considered these two claims after reviewing the Employment Agreement. The Panel notes that the Club had agreed to provide the Player with flight tickets pursuant to Article 5 of the Employment Agreement. The Player submitted that he bought his own ticket when he returned in January 2018 and there was no evidence from the Club to show that either the Club paid for the ticket or that it reimbursed him for the same. As such, the Panel accepts this claim, as the FIFA DRC had.

107. The Panel notes that there is no express clause or article within the Employment Agreement that deals with the payment of interest in the event of a late payment by one party to the other. Instead, the Player relied upon Article 104.1 of the SCO as the basis upon which he claimed

this default interest. It was not clear why the FIFA DRC denied this claim (which was also made before it) as there is no mention of this in the Appealed Decision; however, the Panel sees no reason not to award this sum. The signing on fee was paid nearly 4 months late and was a significant sum.

108. The Panel notes that it was undisputed that the balance of salaries due from the termination date until the normal expiry of the Employment Agreement totalled EUR 2,200,000; however, it appeared that the second part of the fine in the sum of EUR 75,000 was never deducted from this balance, as the January 2018 salary was not paid before the Employment Agreement was terminated.

109. Additionally, the Panel notes that the FIFA DRC determined to award EUR 2,200,000 as compensation for the breach of contract without just cause, but then looked to reduce this by deducting the Player's salary for the whole of December 2017 and for the first 10 days of January 2018, due to his "unjustified absences", in the sum of EUR 211,110. Finally, there was no further sum deducted by the FIFA DRC by way of mitigation, as the Player did not work again until 2019, after the Employment Agreement would have expired.

110. The Panel can understand the principle of making this additional deduction, as the Player was notified to return on 5 December 2017, yet returned on 10 January 2018. The Panel accepts that if the Player chose to effectively extend his holiday by this period, the Club should not be expected to pay his salary for that period, as well as it being able to sanction him for this behaviour with the fine. However, the Panel notes that he was not absent for the whole of December 2017, so should not lose the entire month's salary, rather 26/31 days (so 26/31 x EUR 150,000 = EUR 125,806) and the 10 days in January 2018 (10/31 x EUR 183,333 = EUR 59,140) being a total of EUR 184,946.

111. The Panel also notes that there was no mitigation in this case and that this was solely due to the behaviour of the Club. The Player had an opportunity to join Santos; however, the Club objected to the release of the ITC and cited a dispute, so Santos backed off and did not register the Player. Had the ITC been issued, then the Player could have earnt salaries with Santos before 31 December 2018, which could have reduced the compensation the Club will pay to the Player.

112. Finally, the Player claimed that the 5% interest the FIFA DRC had awarded him on the compensation due from the Club should run from the date of the termination without just cause, as opposed to from the date of the Appealed Decision. The Panel notes the consistent practice of FIFA is to award interest from the date it determines whether there was just cause or not (i.e. the date of its decisions), as opposed to then going back to any termination date. The Panel sees no reason to deviate from this. The Player additionally claimed such interest to run on both the flight ticket and the default interest sum. The Panel determines to award this too, to run until the date of actual payment.

113. In summary, the Panel determines to award the Player the EUR 2,200,000 for the Club's breach of contract without just cause, less the second half of the fine in the sum of EUR 75,000 and the deduction for the days the Player stayed away from the Club from December 2017 to January 2018 in the sum of EUR 184,946; giving a final sum of EUR 1,940,054 along with his flight ticket and the default interest on the late signing on fee, all with interest at the rate of 5% per annum until the date of effective payment

C. Conclusion

114. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel determines to:

- dismiss the Appeal by the Club; and
- partially allow the Appeal by the Player.

115. Any further claims or requests for relief in either procedure are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Wuhan Zall FC on 16 March 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 5 March 2020 is dismissed.

2. The appeal filed by Jorge Sammir Cruz Campos on 26 March 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 5 March 2020 is partially allowed.

3. The decision rendered by the FIFA Dispute Resolution Chamber on 5 March 2020 is amended as follows:

> *"5.* [Wuhan Zall FC]*, has to pay* [Jorge Sammir Cruz Campos]*, within 40 days as from the date of notification of this decision, compensation for breach of contract without just cause in the amount of EUR 1,940,054 net, plus 5% interest p.a. as from 15 April 2018 until the date of effective payment.*

6. [Wuhan Zall FC], *has to pay* [Jorge Sammir Cruz Campos], *within 30 days as from the date of notification of this decision, the additional outstanding amount of USD 5,024 and the default interest on the late signing on fee in the sum of* EUR *8,904.11, plus 5% interest p.a. as from 15 April 2018 until the date of effective payment on both sums".*

4. (…).

5. (…).

6. (…).

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