**Arbitrations CAS 2020/A/7030 Rúben Tiago Rodrigues Ribeiro v. Sporting Clube De Portugal & CAS 2020/A/7051 Sporting Clube De Portugal v. Rúben Tiago Rodrigues Ribeiro & Al Ain FC & Fédération Internationale de Football Association (FIFA), award of 14 February 2022**

Panel: Mr Cesare Gabasio (Italy), President; Mr Michele Bernasconi (Switzerland); Mr Bernhard Welten (Switzerland)

*Football*
*Termination of the employment contract*
*Financial consequences of termination when both parties equally contribute to it*
*No compensation for damages*
*No sporting sanctions*
*No joint and several liability*

1. **In a case that is not a matter of unilateral breach or wrongful termination, but where both parties equally contributed to it, a CAS panel shall decide in its discretion on the financial consequences of the termination without notice, taking into account all the circumstances of the case, in accordance with Article 337b para. 2 of the Swiss Code of Obligations applying subsidiarily to the FIFA Regulations on the Status and Transfer of Players (RSTP). The provisions set forth by Article 17 of the FIFA RSTP are not of immediate assistance, as they provide for some criteria for the quantification of damages only in the event a contract is terminated because of a breach by one of the parties.**

2. **In a case where both for the player and for the club the "prejudice" deriving from the termination somehow matches the "benefit" it produced to each of them, no payment is to be ordered with respect to the financial consequences of the termination of the contract.**

3. **The lack of a unilateral breach also leads to the dismissal of all requests concerning possible sporting sanctions against the player or the club.**

4. **If (i) termination of a contract has been created by both the player and the club and (ii) there are no financial consequences of the termination of the contract, the new club joined by the player after the termination cannot be held jointly or severally liable in any respect.**

## I. PARTIES

1. Mr. Rúben Tiago Rodrigues Ribeiro (the "Player"), born on 1 August 1987, is a Portuguese professional football player who currently plays for Hatayspor, Turkey.

2. Sporting Clube De Portugal ("Sporting" or the "Club") is a football club whose registered office is in Lisbon, Portugal. Sporting is affiliated with the Portuguese Football Federation (the "Federação Portuguesa de Futebol" or the "FPF"), which itself is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. Al Ain Football Club ("Al Ain") is a football club whose registered seat is in Al Ain, United Arab Emirates. Al Ain is affiliated with the United Arab Emirates Football Association ("UAEFA"), which itself is affiliated with FIFA.

4. FIFA is an association under Swiss law that has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at the world-wide level. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

5. The Player, Sporting, Al Ain and FIFA are referred to together as the "Parties".

## II. INTRODUCTION

6. The Player filed an appeal (*CAS 2020/A/7030*) against the decision issued by the FIFA Dispute Resolution Chamber on 20 February 2020 (the "Appealed Decision"), regarding an employment-related dispute between the Player, Al Ain and Sporting.

7. Sporting also brought an appeal (*CAS 2020/A/7051*) against the Appealed Decision.

8. Given that both cases were an appeal filed against the same decision, they were consolidated, in accordance with Article R52 of the Code of Sports-related Arbitration (the "CAS Code").

## III. FACTUAL BACKGROUND

### A. Background facts

9. The below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file and relevant documentation produced in these two consolidated appeal proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and

evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

10. On 27 December 2017, Sporting and the Player signed an employment contract (the "Contract") valid as from 11 January 2018 until 30 June 2020.

11. According to Article 3 of the Contract, the Player was entitled to the following remuneration:

    a) for season 2017/18: EUR 504,000.00, to be paid in six equal instalments of EUR 84,000.00, as from 11 February 2018;

    b) for season 2018/19: EUR 1,008,000.00, to be paid in twelve equal instalments of EUR 84,000.00, as from 11 August 2018;

    c) for season 2019/20: EUR 1,008,000.00, to be paid in twelve equal instalments of EUR 84,000.00, as from 11 August 2019.

12. According to Article 5 of the Contract, the Player was also entitled to a signing-on fee of EUR 250,000.00 payable in two instalments of EUR 125,000.00 each, on 28 February 2018 and 11 September 2018 respectively.

13. Pursuant to Article 10 of the Contract, the Player has the right to terminate the Contract unilaterally under the following conditions:

    a) the termination occurs during the period from 1 June and 1 July of each sports season, with Sporting to be notified 15 days in advance of the date when the termination shall become effective;

    b) together with such notification, an immediate payment in the amount of EUR 60,000,000.00 is made to Sporting; and

    c) once the conditions under the above subparagraphs a) and b) are fulfilled, Sporting undertakes to release the Player and authorise the FPF to forward the relevant International Transfer Certificate ("ITC") upon request.

14. In accordance with Article 11 of the Contract, Sporting and the Player agree to confer exclusive and final competence to settle any dispute arising out of the Contract or related with the same to the *"Tribunal Arbitral do Desporto (TAD)"*.

15. In addition, Article 12 of the Contract states that, in the event that one party terminates the Contract without just cause, the counterparty shall be compensated for damages caused as follows:

a) if Sporting terminates the Contract without just cause, it undertakes to pay to the Player compensation corresponding to the residual value of the Contract, from which it can deduct remuneration to be received by the Player under a new contract corresponding to the duration of the breached Contract;

b) if the Player terminates the Contract without just cause, notably by violation of Article 10, his transfer to a third club shall depend on the payment to Sporting of EUR 60,000,000.00, without prejudice to Sporting's right to require the Player to pay the compensation set out in the labour legislation.

16. On 15 May 2018, a group of around 50 Sporting supporters illegally entered the Sporting training grounds located in Alcochete, Portugal, when Sporting's first team was training, and attacked some of Sporting employees and players (the "Event").

17. Following the Event, on 13 June 2018, the Player terminated the Contract, invoking just cause.

18. On 3 October 2018, the Player signed an employment contract with Al Ain that was valid until 30 June 2019 and which contained an option for Al Ain to extend such contract until 30 June 2021.

## B. Proceeding before the FIFA Dispute Resolution Chamber

19. On 30 October 2018, Sporting lodged a claim against the Player in front of the FIFA Dispute Resolution Chamber ("FIFA DRC") seeking compensation from the Player for the breach of the Contract in the amount of EUR 62,188,600.00 plus 5% interest p.a., as from 14 June 2018; according to the Claimant, Al Ain was jointly and severally liable for such sum. In addition, Sporting requested the FIFA DRC to impose a six-month ban on the Player and two consecutive registration period bans against Al Ain.

20. On 13 December 2018, in its response submitted before the FIFA DRC, the Player argued – *inter alia* – that the claim was not admissible. Alternatively, the Player deemed that he had just cause to terminate the Contract and lodged a counterclaim, requesting the amount of EUR 2,188,600.00 as compensation for the breach of the Contract plus 5% interest p.a. as from 14 June 2018; in addition, he requested a ban to be imposed on Sporting for two consecutive registration periods.

21. Al Ain also filed a reply to Sporting's claim, asking that Sporting's request be rejected. Alternatively, Al Ain requested that the amount of compensation (if any) due to Sporting should be EUR 599,946 and that such amount must be reduced to nil pursuant to Article 44 paragraph 1 of the Swiss Code of Obligations ("SCO").

22. It is worth noting that the Player contested FIFA's jurisdiction. As already mentioned, the Contract contained an arbitral clause: Article 11 of the Contract stipulates that *"The Parties agree*

*to confer exclusive and final competence to settle any dispute arising out of this Contract or related with same to the Tribunal Arbitral do Desporto (TAD)"*, a forum that none of the Parties resorted to; moreover, the claim concerns a Portuguese player and a Portuguese football club, which excludes any international character of the dispute. Al Ain substantially agreed with the Player, arguing that the competent body to assess the dispute between the Player and Sporting was the relevant Portuguese court in line with the relevant national law of the country. However, Sporting noted that the dispute should be heard by FIFA, in view of the fact that the claim is of an international dimension since an ITC was requested and the Player signed a contract with a non-Portuguese club.

23. On such point, the FIFA DRC found that it had jurisdiction on the grounds of Article 22 lit. a) of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), according to which FIFA is competent to hear *"disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract"*. Since, in the present case, the issuance of the Player's ITC by the FPF in favour of the UAEFA was at the basis of the claim for breach of contract, the FIFA DRC had jurisdiction over the issue at stake.

24. That being said, the FIFA DRC focused on the Parties' submissions on the merits of the case.

25. The Player argued that the violent and illegal attack of Sporting's "fans" of 15 May 2018 was severe and partially caused by Sporting's negligence (i.e., safety and security measures were not sufficient); the Player also suggested that Sporting's president and other officials might have been involved in the Event (on these facts, due to the Player's initiative, criminal proceedings are also pending in Portugal). Apart from the Event, the Player contended that the Club was poorly run, and the President contributed to such bad atmosphere through bullying players publicly.

26. For all these reasons, the Player terminated the Contract for just cause on 13 June 2018 and, on 30 July 2018, he brought a claim before the *"Comisao Arbitral Paritari"* ("CAP"), which granted the Player's requests; in his opinion, such CAP decision recognizing just cause of termination, is final and binding also for *"sport purposes"*.

27. During the summer of 2018, according to the Player, he tried to offer amicable solutions, which all failed.

28. Sporting strongly denied Player's arguments. To sum up, the Event has been described as a thing that might happen to every employer, an accident that could not be avoided in advance. All the possible safety measures required by FIFA were in place. Also, the accusations as to the bad atmosphere in the Club were contested. Most importantly, Sporting highlighted that: (i) the severity of the Event did not amount to a violation of the Player's rights and, in any case, he was not involved in the violence (meaning: he was not hit); (ii) the Player did not send

any formal complaint; and (iii) the termination of the Contract took place over a month after the Event, in breach of the Contract itself. Sporting stressed that after the termination letter, the Parties still negotiated a way out for the Player.

29. As to Al Ain's reasoning and pleadings, it recalled that in October 2018, the Player presented himself as a free agent, also relying on CAP's decision. It denied being jointly liable of any possible penalty and it stressed that the penalty clause agreed upon in the Contract is far from being *"fair"*, given the tremendous disproportion between the value of the Player (at the time in which Sporting bought him) and its figure. At the very least, the penalty must be reduced, following methods of calculation provided in CAS jurisprudence.

30. The FIFA DRC, besides its decision on jurisdiction, which was already touched upon, found that:

- the claim of Sporting is admissible;
- the claim of Sporting is rejected;
- the claim of the Player is partially accepted;
- it is established that the Player terminated the Contract with the Club with just cause;
- the claim of the Player for compensation for breach of contract is rejected.

31. In fact, the FIFA DRC established that the Player, in spite of having had just cause to terminate his Contract with Sporting on 13 June 2018, lost his right to receive any amount of compensation due to the point in time in which the decision to unilaterally terminate the Contract was made (i.e. one month after the Event). Furthermore, the FIFA DRC, noting that no outstanding remuneration was claimed by the Player, rejected the claim of Sporting and partially accepted the claim of the Player.

32. The Appealed Decision, rendered on 20 February 2020, was notified with grounds on 15 April 2020.

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

33. On 4 May 2020, in accordance with Article R47 of the CAS Code (2019 edition), the Player filed a Statement of Appeal against Sporting and FIFA with the Court of Arbitration for Sport ("CAS") challenging the Appealed Decision. In his Statement of Appeal, the Player requested the appointment of Mr. Michele Bernasconi, Attorney-at-law in Zurich, Switzerland, as arbitrator. These proceedings were registered as *CAS 2020/A/7030 Rúben Tiago Rodrigues Ribeiro v. Sporting Clube De Portugal & FIFA*.

34. On 6 May 2020, in accordance with Article R47 of the CAS Code, Sporting filed a Statement of Appeal against the Player, Al Ain and FIFA with the CAS challenging the Appealed Decision. In its Statement of Appeal, Sporting requested the appointment of Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland, as arbitrator. These proceedings were registered as *CAS 2020/A/7051 Sporting Clube De Portugal v. Rúben Tiago Rodrigues Ribeiro & Al Ain FC & FIFA*.

35. On 7 May 2020, FIFA requested to be excluded as a respondent in *CAS 2020/A/7030*.

36. On 11 May 2020, the Player agreed to withdraw its appeal against FIFA in *CAS 2020/A/7030*, and accordingly on the same date, the CAS Court Office confirmed that FIFA was no longer a party to such proceeding and that the new case reference was *CAS 2020/A/7030 Rúben Tiago Rodrigues Ribeiro v. Sporting Clube de Portugal*.

37. On 12 May 2020, Al Ain indicated its wish to appoint Mr. Bernasconi as arbitrator in *CAS 2020/A/7051*.

38. On 13 May 2021, the Player inter alia confirmed that he agreed to the appointment of Mr. Bernasconi as arbitrator in *CAS 2020/A/7051*.

39. On 14 May 2020, FIFA requested to be excluded as a respondent in *CAS 2020/A/7051*.

40. On 26 May 2020, as Sporting had not agreed to exclude FIFA as a respondent in *CAS 2020/A/7051*, the Parties were informed that FIFA was maintained as a respondent in that proceeding.

41. On 28 May 2020, FIFA inter alia confirmed that it agreed to the appointment of Mr. Bernasconi as arbitrator in *CAS 2020/A/7051*.

42. On 29 May 2020, further to all Parties consenting to the consolidation of the two arbitration proceedings, the CAS consolidated the proceedings in accordance with Article R52 of the CAS Code.

43. On 5 June 2020, the Parties were transmitted disclosures made by Mr. Bernasconi and Mr. Welten, further to Article R33 of the CAS Code, which none of the Parties subsequently challenged per Article R34 of the CAS Code.

44. On 15 June 2020, the Player filed his Appeal Brief in *CAS 2020/A/7030* further to Article R51 of the CAS Code.

45. On 22 June 2020, Sporting filed its Appeal Brief in *CAS 2020/A/7051* further to Article R51 of the CAS Code.

46. On 7 July 2020, in accordance with 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 this case was constituted as follows:

President: Mr. Cesare Gabasio, Attorney-at-law in Turin, Italy

Arbitrators: Mr. Michele Bernasconi, Attorney-at-law in Zurich, Switzerland

Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland

47. On 20 July 2020, after an enquiry from the Player in this regard, the Parties were transmitted a disclosure made by Mr. Gabasio, further to Article R33 of the CAS Code, which none of the Parties subsequently challenged per Article R34 of the CAS Code.

48. On 4 August 2020, Sporting confirmed that it had not filed an Answer in *CAS 2020/A/7030*.

49. On 27 July 2020, Al Ain and FIFA filed their respective Answers further to Article R55 of the CAS Code in *CAS 2020/A/7051*.

50. On 30 July 2020, the Player filed his Answer further to Article R55 of the CAS Code in *CAS 2020/A/7051*.

51. On 13 October 2020, the Panel communicated to the Parties that Sporting's request to order the Player and Al Ain to produce certain documents was rejected.

52. On 19 October 2020, the CAS Court Office sent the Order of Procedure to the Parties, which was signed by the Player on 22 October 2021, and the other Parties on 26 October 2021.

53. On 29 October 2020, after they were consulted, the Parties and their witnesses were called to appear at the hearing ("Hearing"), further to Articles R44.2 and R57 of the Code of Sports-related Arbitration (the "Code"), which was held by video-conference (via Cisco Webex).

54. The Panel were present at the Hearing and was assisted by Ms Kendra Magraw, CAS Legal Counsel. Furthermore, the following persons attended the hearing:

- <u>For the Player</u>:
    - Mr. Rúben Ribeiro, the Player;
    - Mr. William Sternheimer, Counsel;
    - Mr. Luis Cassiano Neves, Counsel;
    - Mr. Rodrigo Moreira, Witness;
    - Mr. Luicio Correia, Expert; and
    - Ms. Pauline Pardal, Interpreter.

- For Sporting:

  - Mr. José Carlos Oliveira, Counsel;
  - Mr. Alexandre Zen-Ruffinen, Counsel;
  - Mr. Juan de Dios Crespo Pérez, Counsel;
  - Mr. Alessandro Mosca, Counsel;
  - Mr. Alfonso León Lleó, Counsel;
  - Mr. Ricardo Gonçalves, Security Director, Witness;
  - Mr. Vasco Fernandes, Technical Secretary, Witness;
  - Mr. João Rollin Duarte, Technical Secretary, Witness;
  - Mr. Frederico Varandas, President; and
  - Mr. Francisco Salgado Zenha, Board Member/Chief Financial Officer.

- For Al Ain:

  - Mr. Nezar Ahmed, Counsel.

- For FIFA:

  - Mr. Miguel Liétard Fernández-Palacios, Director of Litigation; and
  - Mr. Alexander Jacobs, Senior Legal Counsel.

55. At the outset of the hearing, the Parties confirmed that they had no objections with regards to the constitution and composition of the Panel. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer all the questions posed by the Panel. The Panel heard witness testimony, as well as the Player's Party statement, and all Parties were given the opportunity to put their questions to the expert and the witnesses. At the end of the hearing, the Parties and their counsel expressly declared that they did not have any objections with respect to the procedure adopted by the Panel and that their right to be heard had been fully respected.

## V. PARTIES' SUBMISSIONS

56. As already pointed out, the FIFA DRC rejected the Player's counterclaim for compensation for breach of contract. Therefore, the Player's submissions in *CAS 2020/A/7030*, in essence, may be summarised as follows:

- According to the Player *"it is axiomatic that a fundamental breach of contract cannot be cured"*.

- Hence, the main request raised by the Player pertains to the reform of the Appealed Decision insofar as it would give relevance to the Player's behaviour after Sporting's alleged the breach of contract, with the result of denying his counterclaim.

- Moreover, the FIFA DRC contradicted Article 17 of the FIFA RSTP, which would grant the Player compensation. In the Player's opinion the FIFA DRC exercised some discretion in interpreting Article 17 of the FIFA RSTP, while its wording was clear: the party breaching the contract shall pay compensation.

- Ultimately, the Player contends that the Appealed Decision violates mandatory provisions of Swiss Labour Law, where the right to compensation is dealt with and where it is stated that the worker cannot lose such right.

57. The Player submitted the following requests for relief in *CAS 2020/A/7030*, requesting that the Panel:

*"(a) upholds the present Appeal;*

*(b) in doing so, amends point III/5 of the Decision so that it reads:*
*5. Sporting Clube de Portugal must pay to the Player compensation for breach of contract in the amount of EUR 1,420,000 plus 5% interest p.a. from 14 June 2018 until the date of effective payment.*

*(c) orders the Club to:*
*(i) bear any and all costs pertaining to this appeal; and*
*(ii) reimburse the Player his legal costs and other expenses pertaining to this appeal in the amount of CHF 40,000".*

58. The Player's submissions in *CAS 2020/A/7051*, in essence, may be summarised as follows:

- the Panel must confirm that the Player had just cause to terminate the Contract.

- Under Portuguese law, harassment and violation to the Player's personal rights, application of an abusive sanction, failure to ensure safe working conditions and offenses to the Player's physical integrity, honour and dignity all constitutes just cause to terminate the Contract.

- Should the Panel consider that mandatory provisions of Portuguese labour law are not to be applied, the Panel must still conclude that the Player has also had just cause to terminate the Contract pursuant to the FIFA RSTP and Swiss law since the Player could not have been expected to continue with the Contract.

- In the unlikely scenario that the Panel would consider that the Player did not have just cause to terminate the Contract, Sporting is not entitled to receive any amount of compensation from the Player.

59. The Player submitted the following requests for relief in *CAS 2020/A/7051*, requesting that the Panel:

*"(a) rejects in full the appeal lodged by Sporting Clube de Portugal;*

*(b) as requested in his Appeal Brief in the matter CAS 2020/A/7030, amends point III/5 of the Decision so that it reads:*
*5. Sporting Clube de Portugal must pay to the Player compensation for breach of contract in the amount of EUR 1,420,000 plus 5% interest p.a. from 14 June 2018 until the date of effective payment.*

*(c) orders Sporting to:*
*(i) bear any and all costs pertaining to its appeal; and*
*(ii) reimburse the Player his legal costs and other expenses pertaining to its appeal in the amount of CHF 40,000".*

60. Sporting's submissions in *CAS 2020/A/7051* may be summarized as follows:

- First and foremost, Sporting argues that more than 30 days passed between the Event and the termination of the Contract communicated by the Player for alleged just cause: hence, according to the Contract, the Player had lost his right to terminate the contract.

- Secondly, the just cause invoked by the Player lacks any merit.

- Thirdly, Sporting's financial claims shall be granted.

- Finally, it shall be ascertained that Al Ain, being the new club that signed the Player, is jointly and severally liable for the compensation requested.

61. Sporting submitted the following requests for relief in *CAS 2020/A/7051* (as it did not submit an Answer Brief in in *CAS 2020/A/7030*):

*"1. To determine that the Player unilaterally terminated his employment contract concluded with the Appellant without just cause.*

*2. To issue an award condemning the Player and the New Club to be jointly and severally liable to pay compensation to the Appellant in the amount of:*

- *EUR 62,188,600.00/- (sixty two million one hundred eighty eight thousand six hundred Euro);*
- *To award an application of five percent (5%) interest rate per annum, starting from 14th of June 2018, when the breach of the Contract was committed, over the amount indicated above.*

*3. To order FIFA to impose over the Player a six-month restriction in participating in official matches or any other sporting sanctions considered appropriate.*

*4. To order FIFA impose over the New Club a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods or any sporting sanctions considerate appropriate.*

*5. To determine any other relief the Panel deems appropriate.*

*6. To fix a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant's legal fees and costs in the amount of CHF 40,000/- (forty thousand Swiss francs); and*

*7. To condemn the Respondents to the payment of the whole CAS administration costs and arbitrators' fees – if any".*

62. Al Ain's submissions in *CAS 2020/A/7051* may be summarized as follows:

- It is Al Ain's contention that, even if the Player is required to pay compensation to Sporting, in any case Article 17 (2) of the FIFA RSTP does not apply to the present case; as a consequence, Al Ain shall not pay anything to Sporting.

- Secondly, the Player had just cause to terminate the Contract signed with Sporting.

- Finally, *"even if the Player is required to pay compensation (quod non), the Appellant is entitled to a compensation amounting to EUR 377'217 and in light of the circumstances of the case, said compensation ought to be diminished to null".*

63. Al Ain submitted the following requests for relief in *CAS 2020/A/7051*:

*"1) Holding that Article 17(2) RSTP does not apply to the present case.*

*2) Alternatively, holding that the Player has a just cause to terminate his contractual relationship with* [Sporting] *and subsequently dismiss the present appeal in its entirety.*

*3) Alternatively, holding that the compensation due to* [Sporting] *would be EUR 377'217 (Three Hundred Seventy-Seven Thousand Two Hundred Seventeen Euro) and diminish said amount to "nothing".*

*4) Diminishing the amount of compensation for its payment* [Al Ain] *is liable to "nothing".*

*5) Condemning* [Sporting] *to pay the cost of the arbitration in its entirety.*

*6) Condemning* [Sporting] *to pay* [Al Ain's] *legal fees and other expenses incurred in connection with the proceedings no less than CHF 30'000.00".*

64. FIFA's submissions in in *CAS 2020/A/7051* may be summarized as follows:

- FIFA does not have any standing to be sued in the horizontal dispute between Sporting, the Player and Al Ain, which find their cause of action purely in the contractual relationship between Sporting and the Player.

- Sporting does not have any legitimate interest in the Player and Al Ain being banned from participating in official matches or from registering players, respectively.as these prerogatives lie solely with the relevant bodies of FIFA.

65. FIFA submitted the following requests for relief in *CAS 2020/A/7051*:

*"(a) Reject the Appellant's appeal in its entirety;*

*(b) Confirm the decision rendered by the Dispute Resolution Chamber on 20 February 2020;*

*(c) To order the Appellant to bear all costs incurred with the present procedure;*

*(d) To order the Appellant to make a contribution to FIFA's legal costs".*

## VI. JURISDICTION

66. 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".*

67. The jurisdiction of CAS derives from Article 58.1 of the FIFA Statutes, which reads:

*"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

68. The Parties do not dispute the jurisdiction of the CAS. Actually, the question of whether the present dispute is "local" (Portuguese) or international has not been brought before this Panel, while it was debated to some extent before the FIFA DRC, which found that it had jurisdiction since the ITC request sent by Al Ain and confirmed by Sporting made the lawsuit international; it seemed irrelevant that such request came at the beginning of January 2019, months after the Event, the termination and the filing before the FIFA DRC, since it was

materially impossible to advance the ITC request before the opening of the football players' market.

69. In any case, as anticipated, the part of the Appealed Decision that found that FIFA has jurisdiction over the issue at stake has not been appealed, and thus is finally settled.

70. Moreover, the Parties signed the Order of Procedure and accepted CAS jurisdiction.

71. In light of the foregoing, Panel holds that the CAS has jurisdiction to hear the present dispute.

## VII. ADMISSIBILITY

72. 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".*

73. 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.

74. The Appealed Decision was notified with grounds to both the Player and Sporting on 15 April 2021. The Player filed his Statement of Appeal on 4 May 2021, and Sporting filed its Statement of Appeal on 6 May 2021, both of which are within the 21-day deadline allotted under the aforementioned provisions.

75. Therefore, the appeals were both timely submitted and are admissible.

## VIII. APPLICABLE LAW

76. In relation with the issue of applicable law, the Panel deeply examined and evaluated the dimension, whether domestic or international, of the case at stake and concluded that the dispute has a strong domestic character; in fact, it is undisputed that: (i) Sporting is a football club affiliated to the FPF and to the Liga Portuguesa de Futebol Profissional ("LPFP"); and (ii) the Player is a professional football player of Portuguese nationality – before joining Sporting he played for several clubs in the LPFP. Furthermore, after the termination of his contract with Al Ain, he actually played for the first division Portuguese club Gil Vicente FC. Even more important: at the time of the termination of the Contract, the Player was in

Portugal. Only several months later did the Player leave Portugal. The Contract then in force between Sporting and the Player was governed by the applicable FPF and LPFP rules and regulations, as well as Portuguese law, even if no explicit reference is made to such rules in the Contract; the Player followed the applicable Portuguese administrative procedure to terminate the Contract, informing both the FPF and the LPFP.

77. However, Article R58 of the CAS Code provides as follows:

*"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".*

78. Article 57.2 of the FIFA Statutes provides:

*"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

79. In this respect, it seems that all the Parties are in agreement. Indeed, the Player, outlined the hierarchy of the sources of law to be applied as follows: FIFA rules and regulations; Swiss Law; and General Principles of Law and *Lex Sportiva* (all these criteria are supposed to be alternative and graduated between each other; in other words, Swiss law fills eventual gaps in FIFA rules and regulations, etc.). The main points of the hierarchy are proposed in the same terms by Sporting and FIFA. Al Ain did not contest such arguments.

80. The Panel has to acknowledge the statements of the Parties. In view of those and of Article R58 of the Code, the Panel is satisfied that the present dispute must be decided primarily in accordance with FIFA rules and regulations, such as in particular the FIFA RSTP and, subsidiarily, with Swiss law.

## IX. MERITS

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

i) Did the Player terminate the Contract with just cause?

ii) If so or if not, what are the financial consequences of the termination?

iii) Is Al Ain liable?

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

**(i) Did the Player Terminate the Contract with Just Cause?**

83. Under a first degree of analysis, the main question that the Panel has to decide seems to be whether the contractual relationship between the Player and Sporting was terminated with just cause or not. The rest will follow.

84. On such issue, as already recalled, in short, the Player claims that his compensation is due after the termination for cause, which was recognized by the FIFA DRC in the Appealed Decision, while Sporting appeals the Appealed Decision also on the part where the just cause has been ascertained.

85. On this point, however, the Panel finds that the question of whether just cause of termination occurred may not be determined. As a matter of fact, both Parties played a role in what can be defined as a joint termination of the Contract.

86. In this respect, with regard to the Event, the Panel observes that there are indeed strong arguments conveyed by the Player to determine that he had just cause to terminate the Contract. In fact, regardless of having suffered any kind of physical violence during the attack during the Event (it is undisputed that the Player was not physically harmed), it was surely a traumatizing event that should never occur in a workplace and can destabilize the person and irreparably damage the relationship of trust between players and club. The Player himself, during the hearing, confirmed that he feared for his life and that, in the aftermath of the Event, he was worried also for the safety his family and he stated that such feeling was shared by his teammates as well.

87. On these facts, during the proceedings reference was made to the decision of the Tribunal Arbitral do Desporto ("TAD") (Case No. 61/2018 – Leao vs Sporting), in a case also examining the Event, where it is stated, among other things, that *"They* [Sporting] *could and should have closed the Academy's main gate; they could and should have closed and locked all the doors of the main wing of the Alcochete Academy, in order to isolate the players of the Sporting first team. If Sporting has a security director at the Academy, it is precisely to avoid this type of event. In other words, if it is not to guarantee the safety of Sporting players, what is a security director for?"*. It follows that Sporting violated *"safety rules"* and *"the provisions of Article 12, paragraph c) of the Collective Bargaining Agreement, the provisions of Article 11, paragraph b) of Law number 54/2017, 14 July, as well as Article 281 (2) of the Employment Code"*, as established by the TAD in that case.

88. Until the procedure before the FIFA DRC, Sporting "limited its reaction" towards the Player to the letter of 22 June 2018 (eight days after the termination of the Contract), according to which the Portuguese Club *"repudiates the contents of the accusation contained in your writing and herein emphasizes that the facts allegedly constituting just cause for termination are, on one side, entirely inconsistent, do not contribute to such purpose, and, on the other side, they are false and, to such extent, they cannot be admitted for the wished purpose, becoming thus obvious that SPORTING SAD has not disrespected any of its duties in its capacity as employer and, for such reason, the allegation of just cause for termination has not a leg to stand on. Taking into account the foregoing and because of the other arguments to be stated at the*

*appropriate place, you shall be held responsible for all damages resulting from the illegitimate termination of your contract of employment within the legal sphere of Sporting, SAD"*. Notwithstanding the content of the said letter of 22 June 2018, Sporting never requested that the Player come back to the club. Sporting even discussed with the Player about possible "transfers", and Sporting also did not object in any manner the release of the ITC nor indicated in the FIFA TMS the reasons for the rejection of the ITC. After months, the first negative reaction from Sporting's side was the claim filed by Sporting before FIFA.

89. As a matter of fact, following the Event, nine players simultaneously terminated their employment contracts with Sporting. It has also been stated and confirmed that Sporting's President contributed to creating a hostile work environment, even though – once again – the Player was not the person mostly affected by the direct attacks (also on social media) made by the President.

90. However, it is persuasive what the TAD established with the regard to the pure facts of the Event.

91. Moreover, the Player pointed out that, by terminating the Contract with Sporting, he lost guaranteed income in the amount of EUR 1,420,000 and the possibility to play in UEFA club competitions. Therefore, the decision of the Player to terminate the Contract was not motivated by financial or sporting gains.

92. There are, though, substantial doubts about the existence of just cause. Most importantly, the Panel took due consideration of the Player's behaviour after the Event, particularly the Player's attitude during the meetings with Sporting representatives: such meetings confirm that the Player, in good faith, approached the discussions with Sporting as a "Sporting player", therefore as a Sporting employee, rather than as a player who has terminated his employment relationship with just cause. In other words, it seems to the Panel that the Player was not fully convinced about his right to terminate the Contract for just cause. Other examples include that the Player never complained against Sporting for the behaviours of the former President Mr. Bruno de Carvalho, until the termination letter sent to the Club on 13 June 2018, which was almost 30 days after the Event. On 20 May 2018, only 5 days after the Event, the Player played the Cup Final without making any complaints to the Club about the events that occurred on 15 May 2018. In the two circumstances in which the Player met Sporting representatives, the first one on 21 August 2018 and the second one on 19 September 2018, he acted as if the Contract were still in force.

93. It is also worth noting that the "Player's silence" lasted almost 30 days before he sent the termination letter to Sporting on 13 June 2018. After the Club challenged the termination letter, then, on 22 June 2018, the Player met Sporting's representatives twice: the first time, on 21 August 2018, the Player met the leaders of Sporting Management Committee. In the Statement of Reply before the FIFA DRC, the Player (at para. 86) stated that *"The player had at the time a proposal from Ligue 1 French team – FC Nantes, which provided for the payment of compensation*

*to the Claimant of 500,000.00 euros, more than the amount that had been paid by the Claimant to the previous club of the Player, about half a year before, as it will be demonstrated ahead"*. The payment of a compensation by FC Nantes to Sporting presumed the Contract between the latter and the Player still being in force and binding.

94. The second time the Player met Sporting was on 19 September 2018, after the election of the new Sporting President Dr. Frederico Varandas: during the meeting (see Player's Statement of Reply before the FIFA DRC at paras. 103, 105 and 106) *"the Player asks the President about the intentions of the Claimant in relation to his future, in view of the proposal that had been put forward by Mr. Sousa Cintra"*, then the Player referred once again to the proposal of FC Nantes and the figures presented, to which Dr. Varandas responds: *"*(…) *If there were 5 million on the table I would might think about it* (…)*"*. The Player had to contain himself, take a deep breath and as the question: *"Mr. President, want to make me an example huh? An example for all players* (…) *I am not to play here and not to play anywhere is that correct?"*. Sporting's President replies *"no Ruben, we don't want to make an example of you, but Crespo says there's a risk of 20%, if we accept to lend you to somebody, this could be considered loan simulation, and we could have a problem with FIFA, so we cannot accept you and loan you to another club"*.

95. The approach of the Player and his behaviour during the abovementioned meetings do not really reflect the position of a player who has terminated his employment contract for just cause, i.e. a player from whom one cannot reasonably expect in good faith to continue the contractual relationship; the situation looks more like the one which occurs when a player feels himself "tied" to a club which, in turn, does not intend to field him nor to transfer him.

96. Sporting, on the one side, challenged the arguments set forth by the Player in the termination letter, and so it refused to negotiate the transfer of the Player, irrespective of the fact that, from a legal point of view, Sporting was not in position to negotiate any transfer agreement of the Player since the latter terminated the Contract. On the other side, Sporting never requested the Player to come back to train with the Club and honour his employment agreement and, when it was entitled to intervene in the process for the release of the ITC to Al Ain for the transfer of the Player to such club, it did not make any objection, neither directly nor through the FPF.

97. At the end, upon due consideration of all the evidence submitted by the Parties, the Panel is satisfied that: (i) in June 2018, the Player terminated the Contract with Sporting, claiming just cause; (ii) Sporting objected more than one week afterwards to several of the statements made by the Player in his termination letter, but at no time did Sporting request the Player to come back, to train with the Club and to honour his employment agreement.

98. In light of the foregoing, the Panel, upon due consideration of all the arguments made and the evidence produced, finds that the termination of the Contract has been created by both the Player and Sporting, i.e. the just cause for terminating the employment relationship does not consist, under the present circumstances, in the breach of contract by one party only.

Rather, such just cause was the result of a situation to which both parties equally contributed, as it is finally not totally uncommon, both in sport and in non-sport contractual relations (see *CAS 2015/A/3955*; *CAS 2014/A/3626*; *CAS 2005/A/865*; *CAS 2003/O/453*).

**(ii) Financial Consequences of Termination of Contract**

99. That being established, the reasoning on the financial consequences of the termination of the Contract, deemed voluntary and reciprocal, are as follows.

100. According to the Player, Sporting's breach of contract would trigger Article 17 of the FIFA RSTP as to compensation. Similarly, Sporting arguments' lead to the automatic application of Article 12 of the Contract and its penalties to the Player. However, as seen, the Panel finds that the present case is not a matter of a unilateral breach or a wrongful termination. That is to say, the Panel shall decide in its discretion on the financial consequences of a termination without notice, taking into account all the circumstances of the case (*CAS 2014/A/3626*).

101. Hence, as a result of the foregoing, the financial consequence of the termination of the contractual relationship between the Parties shall be determined, according to the Panel, with regard to Article 337b para. 2 of the SCO, which – as well known and plainly accepted by the Parties – applies subsidiarily to the FIFA RSTP.

102. The Panel drew the Parties' attention to the possible application of Article 337b para. 2 of the SCO at the hearing, but none of the Parties submitted any argument nor any evidence that would prevent the Panel to apply the rule. In that respect, the provisions set forth by Article 17 of the FIFA RSTP are not of immediate assistance, as they provide for some criteria for the quantification of damages only in the event a contract is terminated because of a breach by one of the parties and, therefore, in a situation which does not correspond to the present case, where there is no unilateral breach.

103. In the exercise of such discretion, the Panel notes the following:

a. with respect to the position of the Player that:

> under Clause 12 of the Contract, the Parties agreed on the calculation of the compensation to be paid to the Player in the event of termination of the Contract for reasons attributable to the Club which corresponds *"to the value of the remunerations falling due until the end of the contract, but it can, however, deduct the compensation awarded* [to] *the values to be received by the Player for the provision of the same activity to another sports entity during the period corresponding to the term of the terminated contract* (…)*"*. As such, the amount of compensation which the Player could have claimed, if the termination had been attributed solely to the Club, corresponds to EUR 1,420,000, which is the difference between the value of the remuneration falling due until the expiration of the Contract

(EUR 2,245,000) and the value of the employment contract with Al Ain (EUR 825,000).

b. with respect to the position of the Club that:

under Clause 12 of the Contract, the Parties agreed that *"In the event the PLAYER illegitimately terminates the contract, notably by violation of clause ten of this contract, his transfer to a third club shall depend on the payment to SPORTING, SAD of the amount of € 60,000,000.00 (sixty million euro), without prejudice to the right assisting SPORTING, SAD to require the PLAYER to pay the compensation set out in the labour legislation. It is presumed that the Club that shall conclude the contract of employment with the PLAYER has induced him to terminate this contract without cause with the consequent damages to SPORTING, SAD and, for such reason, if termination has been promoted by the PLAYER or by SPORTING, SAD, the Parties agree to act pursuant to the specific terms of this clause"*. This is a "penalty" or a "liquidated damages" clause.

104. However, the Panel finds that Clause 12 of the Contract does not apply. Indeed, the applicability of the clause is conditional to, again, a unilateral breach. Therefore, independent of whether the amount under the clause is fair or disproportionate and excessive, it is of little help for the Panel to determine, under the present circumstances, the financial consequences as foreseen in Clause 12 of the Contract.

105. In the case at hand, the following can be noted: Sporting paid an amount of EUR 400,000 to Rio Ave for the transfer of the Player. In addition, during the hearing, Sporting's representatives confirmed that Sporting refused a proposal to receive from FC Nantes about EUR 800,000, which was the only offer Sporting had received for the transfer of the Player.

106. Further, Sporting never treated the Player as if he were an important player and, therefore, an important asset for the Club. As a matter of fact, according to Sporting itself, following the Event, the Player and another player, Mr. Rafael Leao, were the only players of the club that Sporting did not intend to negotiate a new contract with.

107. All in all, the Panel finds that both for the Player and for the Club the "prejudice" deriving from the Contract's termination somehow matches the "benefit" it produced to each of them. As a result, the Panel finds it proper to establish that no payment is to be ordered with respect to the financial consequences of the termination of the Contract. This conclusion, even if based slightly on different arguments than those made in the Appealed Decision, leads to the same financial consequences.

108. Furthermore, the lack of a unilateral breach leads to the dismissal of all the requests concerning possible sanctions.

**(iii) Is Al Ain liable?**

109. In light of the above, the Panel also concludes that Al Ain is not jointly or severally liable in any respect, given (i) the termination of the Contract has been created by both the Player and Sporting and (ii) there are no financial consequences of the termination of the Contract.

**(iv) Conclusions**

110. In light of the foregoing, the Panel holds that both of the appeals brought by the Player and by Sporting against the Appealed Decision are dismissed and the Appealed Decision confirmed. All other prayers for relief are also dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 4 May 2020 by Rúben Tiago Rodrigues Ribeiro with respect to the decision issued on 20 February 2020 by the FIFA Dispute Resolution Chamber is rejected.

2. The appeal filed on 6 May 2020 by Sporting Clube De Portugal with respect to the decision issued on 20 February 2020 by the FIFA Dispute Resolution Chamber is rejected.

3. The decision rendered by the FIFA Dispute Resolution Chamber on 20 February 2020 is confirmed.

4. (…).

5. (…).

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