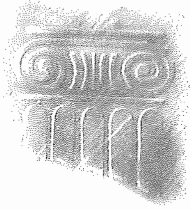

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2018/A/6002 Club Atlético Banfield v. Juan Ramón Cazares Sevillano, Clube Atlético Mineiro, Club de Alto Rendimiento Especializado Independiente del Valle & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Ricardo **de Buen Rodríguez**, Attorney-at-law, México City, México

Arbitrators: Mr Diego María **Lennon**, Attorney-at-law, Buenos Aires, Argentina
Mr Efraim **Barak**, Attorney-at-law, Tel Aviv, Israel

between

Club Atlético Banfield, Buenos Aires, Argentina
Represented by Mr Rafael Trevisán and Mr Mariano Clariá, Attorneys-at-law, Buenos Aires, Argentina

- as Appellant -

and

Mr Juan Ramón Cazares Sevillano, Ecuador
Represented by Mr Daniel Crespo, Attorney-at-law, Buenos Aires, Argentina

- as First Respondent –

&

Clube Atlético Mineiro, Belo Horizonte, Brazil
Represented by Mr Breno Tannuri, Attorney-at-law, São Paulo, Brazil

- as Second Respondent -

&

Club de Alto Rendimiento Especializado Independiente del Valle, Amaguaña, Ecuador
Represented by Mr Andrés Holguín, Attorney-at-law, Guayaquil, Ecuador

- as Third Respondent -

&

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Emilio García, Mr Jaime Cambreleng and Ms Marta Ruiz-Ayucar, Attorneys-at-law, Zurich, Switzerland

- as Fourth Respondent –

* * * * * * * * * *

I. THE PARTIES

1. Club Atlético Banfield (hereinafter referred to as the "Appellant" or "Banfield") is a professional football club from Buenos Aires, Argentina, affiliated to the Argentinian Football Association (hereinafter referred to as the "AFA").

2. Juan Ramón Cazares Sevillano (hereinafter referred to as the "First Respondent" or the "Player") is an Ecuadorian professional football player.

3. Clube Atlético Mineiro (hereinafter referred to as the "Second Respondent" or "Mineiro"), is a football club from Belo Horizonte, Brazil, affiliated to the Brazilian Football Conferederation.

4. Club de Alto Rendimiento Especializado Independiente del Valle (hereinafter referred to as the "Third Respondent" or "Independiente"), is a professional football club from Amaguaña, Ecuador, affiliated the Ecuadorian Football Federation (hereinafter referred to as the "EFF").

5. The Fédération Internationale de Football Association (hereinafter referred to as the " Fourth Respondent" or "FIFA") is the football governing body worldwide.

II. FACTS OF THE CASE

6. The following is a summary of the relevant facts based on the Parties′ written submissions. Although the Panel has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

7. On 1 July 2013, the Player and Independiente concluded a labor agreement (hereinafter referred to as the "First Labor Agreement"), valid from the mentioned date until 30 June 2017.

8. On 31 July 2013 Independiente, the Player and Banfield, concluded a loan agreement (hereinafter referred to as the "First Loan Agreement"), for the loan of the Player from Independiente to Banfield, valid for the season 2013/2014, this is until 30 June 2014.

9. In addition, on 31 July 2013, the Appellant and the First Respondent signed an employment contract (hereinafter referred to as the "Second Labor Agreement"), valid for the season 2013/2014, this is until 30 June 2014.

10. On 1 July 2014, Banfield and the Player signed an employment contract (hereinafter referred to as the "Third Labor Agreement"), valid from the date of signature until the end of 2015 season.

11. On 28 July 2014, Banfield, the Player and Independiente, concluded a second loan agreement (hereinafter referred to as the "Second Loan Agreement"), for the loan of the Player from

Independiente to Banfield, valid as from the date of signature and "*until the end of the 2015 Primera División "A" championship organized by AFA*", and the Player was expected to return to Independiente no later than 1 January 2016. The amount to be paid for the loan was USD 50,000, on 30 July 2015.

12. The relevant clauses of the Second Loan Agreement were the following:

"5.1 Independiente establece a favor de BANFIELD una opción de compra definitiva del cien por ciento (100%) de los derechos federativos y del cincuenta por ciento (50%) de los derechos económicos derivados de los federativos sobre el pase del Jugador (en adelante la "Opción de Compra") por la suma de DOLARES ESTADOUNIDENSES UN MILLON QUINIENTOS (u$s 1.500.000), netos, libres de todo impuesto, gravámen o contribución, de ahora en adelante nos referimos al mismo como "el PRECIO

5.2 El precio de la "Opción de Compra" deberá ser cancelado por BANFIELD en tres cuotas trimestrales, iguales y consecutivas de DOLARES ESTADOUNIDENSES QUINIENTOS MIL (u$s 500.000) cada una, venciendo la primera de ellas el 30 de enero de 2016, la segunda el 30 de octubre de 2016 y la tercera el 30 de enero del 2017

5.3 La opción de compra deberá ser ejercida por BANFIELD con anterioridad al día 30 de noviembre de 2015, mediante comunicación fehaciente dirigida al fax y al email de INDEPENDIENTE, conforme al número de fax y la dirección de email expuesto en el encabezado de este Contrato. Los pagos, en caso de hacer uso de la Opción de Compra, deberán ser formalizados por BANFIELD, en la cuenta exterior indicada en el anexo 1.0 en la cuenta de INDEPENDIENTE que en el futuro le indique fehacientemente a ese efecto

5.6 Ante la falta de pago en término de una de las cuotas pactadas, INDEPENDIENTE en forma previa deberá intimar por 15 días a que regularicen la situación, bajo aprecibimimento de incurrir en mora automática sin necesidad de interpelación de ningún tipo. De no hacerse efectivo el pago dentro del plazo de intimación, se decretará la caducidad de todos los plazos, pudiendo INDEPENDIENTE reclamar la totalidad del saldo del precio de la TRANSFERENCIA

SÉPTIMA: En caso que BANFIELD haga ejercicio de la Opción de Compra las partes se obligan a suscribir un convenio que regulará y determinará la forma en que se definirá y gestionará eventuales transferencias, cesiones y/u operaciones de cualquier tipo sobre el Jugador."

13. A free translation to English of the clauses previously reproduced is:

5.1.Independiente establishes in favor on Banfield a definitive purchase option of one hundred percent (100%) of the registration rights and fifty percent (50%) of the economic rights derived from the registration rights on the Players transfer (hereinafter referred to as the "Purchase Option") for the sum of UNITED STATES DOLLARS ONE MILLION AND FIVE HUNDRED THOUSAND (u$s 1.500.000), net, free of any tax, assessment or

contribution, hereinafter referred to as "the PRICE"

5.2 The price of the "Purchase Option" shall be paid by BANFIELD in three quarterly, equal and consecutive installments of UNITED STATES DOLLARS HUNDRED THOUSAND (u$s 500.000) each, the first of which shall expire on January 30, 2016, the second on October 30, 2016 and the third on January 30, 2017

5.3 The purchase option must be exercised by BANFIELD prior to November 30, 2015, by means of a reliable communication sent to the fax and email of INDEPENDIENTE according to the fax number and email address contained on the header of this Contract. The payments in the event of making use of the Purchase Option, must be made by BANFIELD, in the foreign account specified in Annex 1 or in the account of INDEPENDIENTE that in the future will indicate it reliably to that effect

5.6. In the event of non-payment of one of the agreed-upon instalments, INDEPENDIENTE must previously request a solution to the situation for 15 days, under the warning of automatic default without the need for any type of default notice. If the payment is not made within the deadline, the expiration of all deadlines will be declared, and the entire balance of the transfer price may be claimed by INDEPENDIENTE.

SEVENTH: In the event that BANFIELD exercises the Purchase Option, the parties undertake to sign an agreement that will regulate and determine the manner in which any transfers, assignments and/or operations of any kind on the Player will be defined and managed".

14. On 28 July 2014, the Player and Banfield entered into a conditional contract (hereinafter referred to as the "Conditional Contract").

15. The Conditional Contract included *inter alia,* the following clauses:

"Primero: Para el caso que EL CLUB decidiera ejercer la opción de compra definitiva prevista en el contrato de cesión con opción de compra definitiva de derechos económicos derivados de los federativos suscrito entre EL CLUB y EL CLUB DEPORTIVO INDEPENDIENTE JOSÉ TERÁN fechado el 28/07/2014, EL JUGADOR se obliga a suscribir con el CLUB contrato reglamentario de trabajo establecido por la ley 201160 y CCT 557/09 por el plazo de tres años, es decir, desde el 1º de enero de 2016 hasta el 31 de diciembre del 2018 (en adelante el "Contrato Reglamentario de Trabajo 2016/2018"), que será registrado ante la Asociación del Fútbol Argentino.

Duodécimo. Estabilidad Contractual- Cláusula de Rescisión- Sanciones:De acuerdo con lo dispuesto por el art 17.1 del Reglamento sobre el Estatuto y la Transferencia de Jugadores de FIFA y en concordancia con lo establecido en el art. 21 CCT 557/09 AFA-FAA, para el supuesto de ruptura anticipada del contrato por decisión expresa o culpa del JUGADOR las partes acuerdan en concepto de indemnización por rescisión anticipada del contrato a favor de EL CLUB la suma de u$s 15.000.000."

16. A free translation to English of the clauses previously reproduced is:

" *First: In the event that BANFIELD decides to execute the purchase option provided for in the agreement for the loan with definitive purchasing option of the economic rights derived from the registration rights, signed by THE CLUB and EL CLUB DEPORTIVO INDEPENDIENTE JOSÉ TERÁN dated 28/07/2014, THE PLAYER undertakes to sign with BANFIELD a statutory employment contract established in LAW 201160 and CCT 557/09 for a period of three years, that is from 1 January 2016 to 31 December 2018...)*

Twelfth. Contractual Stability-Termination Clause-Sanctions: In accordance with the provisions of Article 17.1 of the FIFA Regulations on the Status and Transfer of Players and in accordance with Article 21 CCT 557/09 AFA-FAA, in the event of early termination of the contract by express decision or fault of THE PLAYER the parties agree as compensation for early termination of the contract in favor of THE CLUB the amount of u$s 15.000.00"

17. In the same document of the Conditional Contract, the parties involved also included the conditions of an employment contract entered into between the Player and Banfield, valid upon the execution of the purchase option (hereinafter referred to as the "Banfield Employment Agreement").

18. On 27 August 2015, Independiente sent an email to Banfield requiring the payment of the loan fee.

19. On 5 October 2015, Banfield sent an communication to Independiente explaining the reason why Banfield had not performed the agreed payments and communicating its intention to exercise the option set out in the Second Loan Agreement.

20. By means of a letter dated on 7 October 2015, Independiente answered the correspondence mentioned in the previous paragraph, objecting Banfield's right to exercise the purchasing option, due to the lack of payment from Banfield of the loan fee and terminating the Second Loan Agreement. This same letter was received by the Player on 8 October 2015.

21. On 9 October 2015, Banfield replied to the previous correspondence sent by Independiente.

22. On 14 October 2015, Independiente sent another letter, reiterating the termination of the Second Loan Agreement due to the non-payment of the loan fees and expressing that Independiente has asked the Player to go back and train with them.

23. On 16 October 2015, Banfield sent a letter to the Player notifying that it had exercised the purchase option and that the Player was linked to Banfield by a labor contract for three seasons.

24. On 19 October 2015, Banfield sent another letter to Independiente rejecting the content of the letter sent by Independiente to Banfield on 14 October.

25. On 23 October 2015, Banfield sent a letter to AFA informing the exercise of the purchase option contained in the Second Loan Agreement.

26. The First Division Championship "A" organized by AFA ended on 6 December 2015.

27. On 16 December 2015, Banfield sent the registration of the option to purchase to the TMS.

28. On 23 December 2015, Banfield paid Independiente, the USD 50.000 established in the Second Loan Agreement.

29. On 2 January 2016, Mineiro and Independiente reached an agreement in relation to the permanent transfer of the Player from Independiente to Mineiro.

30. On 20 January 2016, Mineiro and the Player signed an employment contract (hereinafter referred to as the "Mineiro Employment Contract.")

31. On 19 February 2016, the Single Judge of the FIFA Player′s Status Committee (hereinafter referred to as the "FIFA PSC") rendered a decision allowing the EFF to register the Player for Independiente.

32. On 26 August 2016, Banfield lodged a claim before FIFA against the Player, Mineiro e Independiente, alleging breach of contract with no cause, and requesting the payment of USD 15.000.000 basing its claim in the compensation foreseen in clause 12 of the Conditional Contract. Banfield also asked for sporting sanctions to be applied.

33. On 24 August 2018, the FIFA Dispute Resolution Chamber (hereinafter referred to as the "FIFA DRC") issued a decision (hereinafter referred to as the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Appellant on 22 October 2018. FIFA stated:

"1. The claim of the Claimant, Club Atlético Banfield, is rejected"

III. THE ARBITRAL PROCEEDINGS BEFORE THE CAS

34. On 12 November 2018, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"), pursuant to the Code of Sports-related Arbitration (hereinafter referred to as the "Code"), challenging the Appealed Decision. In the Statement of Appeal the Appellant requested CAS to:

"CLUB ATLÉTICO BANFIELD, as Appellant, request the COURT for relief in order to solve the present dispute, so that the appealed decision is revoked and that the claim of Club Atletico Banfield is fully accepted on the merit that:

(…)

In virtue of such circumstance the appellant requested the payment of the compensation foreseen in clause 12 (USD 15.000.000) of the employment contract due to the breach without just cause accordingly to the provisions of Art. 17 of the FIFA REJT.

(…)

Subsidiary, in case the PANEL revoked the decision passed by FIFA but invalidate the amount of compensation requested and agreed by the parties contractually in the case of breach or noncompliance, we request to the PANEL to set compensation in favor of the appellant taking into account the parameters established by art 17 of the FIFA RETJ."

35. In the Statement of Appeal, Banfield appointed Mr. Diego María Lennon as an arbitrator.

36. On 21 November 2018, FIFA requested to be excluded from the procedure.

37. On 23 November 2018, Banfield insisted on having FIFA as a party of this arbitral procedure. Consequently, on 26 November 2018, the CAS notified the parties that FIFA remained as a party.

38. On 27 November 2018, Independiente informed the CAS that three of the Respondents agreed to appoint Mr. Efraim Barak as arbitrator.

39. On 30 November 2018, FIFA notified the CAS that it did not have any objection regarding Mr. Efraim Barak´s nomination.

40. On 18 December 2018, the Appellant filed its appeal brief, together with supporting documents.

41. On 29 January 2019, the CAS Court Office notified the parties the composition of the Panel with Mr Ricardo de Buen as President, Mr Diego María Lennon and Mr Efraim Barak as Arbitrators.

42. On 15 February 2019, The Player filed his Answer.

43. On 22 February 2019, Independiente filed its Answer.

44. On 11 March 2019, FIFA filed its Answer.

45. On 26 March 2019, Mineiro filed its Answer.

46. On 12 April 2019, after having consulted the parties, the CAS Court Office informed them that the Panel had decided to hold a hearing, in Lima, Perú.

47. On 10 May 2019, the CAS Court Office issued the Order of Procedure, which was duly signed by all parties.

48. The hearing of the case was held on 14 August 2019, in Lima, Perú, with the presence of the members of the Panel and Mr Antonio de Quesada, CAS Head of Arbitration. The Appellant was represented by its legal counsels Mr Santiago Clariá and Rafael Trevisán, as well as Juan Carlos Gibson and Vanessa Espino as translators; the First Respondent was represented by his legal representatives Mr Daniel Crespo, Mr Cristan Germán Ferrero and Ms Ana María Favier, as well as Mare Gordillo as translator; the Second Respondent was represented by its legal representative Mr Breno Tannuri; the Third Respondent was represented by its legal representative Mr Andrés Holguin and the Fourth Respondent was represented by its legal

counsel Ms Marta Ruíz Ayucar.

49. At the beginning of the hearing the parties stated that they did not have any objection regarding the conformation of the Panel, all the parties had the opportunity to express everything they considered important to, and the Panel heard all their arguments, including the declaration of all of the witnesses. The Appellant presented by teleconference Mr Martin Moya, Mr Eduardo Spinosa and Mr Juan Pablo Regoli and Mineiro presented Mr Lucas Otoni as their respective witnesses. All the parties had the opportunity to interrogate each one of the witnesses. The parties agreed to listen the declaration of those speaking in Spanish without a translation.

50. At the end of the hearing the parties expressed that they were comfortable with the way the hearing had been held and stated that the right to be heard had been respected.

IV. SUMMARY OF THE PARTIES POSITIONS

51. 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, for the purposes of the legal analysis, which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. THE APPELLANT´S POSITION

52. The First Appellant´s position and arguments can be summarized as follows:

53. On 5 October 2015 Banfield effectively exercised the purchase option for the permanent transfer of the Player. The Appellant acted in consequence and within the time frame stipulated in the Second Loan Agreement, sending proper notification to Independiente. Since the Appellant validly executed the purchase option, the Banfield Employment Agreement entered into between the Player and Banfield (according to the Conditional Agreement), came into force on 5 October 2015.

54. The Player refused and breached the signed contracts with the Appellant with no cause, and in complicity with Mineiro, and without any previous notification to the Appellant, they signed the Mineiro Employment Contract.

55. As a demonstration that the Appellant counted on the Player to participate in the next three seasons, it sent a letter to the First Appellant asking him to be present in the pre-season.

56. The Panel shall declare the validity and effectiveness of the effects derived from the exercise of the effects derived from the exercise of the purchase option, with the automatic entry in force of the Banfield Employment Agreement.

57. The following legal effects were consolidated by the Appellant since the exercise of the purchase option on 5 October 2015:

- The extinction of the temporary transfer by the exercise of the option, changing the transfer as a definitive transfer.
- The automatic entering into force of the Banfield Employment Agreement.
- The Player became a Banfield´s permanent player.
- The birth of the rights and obligations derived from the exercise of the option to purchase.

58. The Player cannot allege ignorance of the obligations undertaken.

59. The Banfield Employment Agreement cannot be considered "null" and "void", since the option given to the Appellant is not abusive. The Banfield Employment Agreement complied with all the requirements in the Private Order of Football.

60. It is duly proven that the Player terminated the Banfield Employment Agreement without just cause and without notifying the Appellant, and this happened during the protected period.

61. Regarding the payment of the loan of the Player to be performed by the Appellant, Banfield started, in December 2014, the administrative steps required to such effect and the Appellant asked the Player´s agent for his help to put the Player´s tax situation in order, given the fact that it was necessary in order to finalize the payment from Banfield to Independiente. This Banfield´s behavior is enough to sustain the non-existence of arrears of the debtor.

62. Due to the fact that the asked cooperation was not performed by the Player, Banfield offered Independiente to pay the loan fee owed, in cash in Buenos Aires.

63. On 5 October 2015 the purchase option was in force because Independiente had not sent a formal notice to Banfield asking for the loan fee payment and had not filed a delaying objection, among other things.

64. According to doctrine and CAS jurisprudence, Independiente cannot declare a loan terminated due to a default in the payment of a transfer fee.

65. The conduct of Independiente, which received, without reserves, the payment for the charge of the loan on December 23, 2015, before transferring the Player to Mineiro implied:

- The exemption from late penalties to the Appellant.
- The validity of the inadmissibility and unenforceability of the termination of Independiente for lacking cause.

66. In relation to the penalty clause established in the Conditional Agreement, the USD 15.000.000 must be paid respecting the *pacta sunt servanda* principle. The clause is precise and clear, it was a result of a meditated agreement and during the negotiation the Player and his agent adopted a professional and dominant position.

67. The fact that a termination clause in the amount of EUR 50.000.000 was established in the Mineiro Employment Agreement, is an objective and concrete fact that obliges the Panel to validate the amount claimed by Banfield.

68. Mineiro is a "new club", in terms of article 17.2 of the FIFA Regulation on the Status and Transfer of Players (hereinafter referred to as "FIFA RSTP") since 20 January 2016, date of the signature of the Mineiro Employment Agreement.

69. Interest must be paid and disciplinary sanctions must be applied to the First, Second and Third Respondents.

70. The Appellant requested the CAS to:

"164. Therefore, CAB request to CAS under reservation of any and all rights according to the severity of the case, and without any prejudicial acknowledgment, considering the facts described in point IV, and based on the evidence offered and that will be produced at the hearing (Item VII) to issue an Order:

***a.** Declaring the Appeal admissible and grounded.*

***b.** Set aside the decision of the FIFA DRC No. 16-01563/aos of August 24 2018 in its entirety.*

***c.** Ordering the Player and ATM to pay a compensation for the unilateral termination and without just cause of the contract amounting to US Dollars Fifteen Million (USD $ 15,000,000) as expressly agreed on Clause Twelfth of the "Branched Employment Contract", increased by an interest rate of 5% per annum from January 4th, 2016.*

***d.** Ordering FIFA Disciplinary Committee to Impose sporting sanctions to the Player, IDV and ITM.*

***e.** Condemning the Respondent to bear all costs of the procedure.*

***f.** Condemning the Respondents to pay a contribution towards the Appellant's legal fees for a total amount of CHF 30.000"*

B. THE FIRST RESPONDENT'S POSITION

71. The First Respondent's position and arguments can be summarized as follows:

72. From August 2015 on, the Player started to receive comments which stated that Banfield had not complied with the payment owed to Independiente.

73. In October 2015, the Player received contradictory communications from the Appellant and from the Third Respondent. The Third Respondent notified him that the Second Loan Agreement had been terminated. The Appellant informed him that it had exercised the purchase option and that he had to sign a new employment contract for 2016-2018.

74. The Player denies that he had any responsibility in relation with the lack of payment from

Banfield to Independiente, supposedly due to an omission to fill some tax forms by the Player alleged by Banfield.

75. Banfield intends to justify its non-compliance by invoking that the bank transfer required the activity of a third party, the Player, according to Argentinian regulation that imposed certain conditions since 2012, this is two years before the execution of the Second Loan Agreement, in which it was expressly stated, in Clause 5.5., that "*This contract is entered into taking into account the existing restrictions; however, according to the statements made in clause 5.4, BANFIELD guarantees to be able to fulfill the obligations undertaken as agreed upon herein…"*.

76. The Player notes that Banfield did not request FIFA or the CAS to condemn Independiente for breach of contract between the two clubs. The purpose of Banfield's claim does not therefore include a condemn to the transferor club as a direct result of that transfer contract.

77. This claim is based on the alleged breach of a contract of employment ignoring an undeniable fact: the Second Loan Agreement was terminated by the transferor club, therefore, justified or not, that contractual termination prevented the work obligations undertaken by the Player from entering into force, if the international transfer between both clubs took place. Then, in the absence of a contractual breach by the Player, no condemn can be imposed on the three defendants.

78. Regarding the legal opinion presented by Banfield, the Player states that the consequences of the non-occurrence of the permanent transfer due to the termination of the transfer contract decided by the transferor club, cannot have detrimental effects on the Player.

79. Since the execution of the Second Loan Agreement, this is 28 July 2014, until the date that the payment should had been performed by Banfield, this is 30 June (sic) 2015, there were no "*new restrictions*" that forced the parties to seek alternative payment mechanisms. In any case, the debtor club, in order to prove its real intention to comply, may had performed a deposit before a Court or a Notary Public.

80. The Argentinian Law does not require a request for payment to be made under waring of termination. The termination will take place automatically.

81. There is no dispute about the fact that Independiente required payment on 27 August 2015; that after the term indicated in Section 1204 of the Argentine Civil Code (hereinafter referred to as "ACC") continued unfulfilled; and, for that reason, the contract was effectively terminated. Therefore according to the mentioned Section 1204 of the ACC, the Second Loan Agreement would be terminated on 12 September 2015.

82. The reception of the payment on 23 December 2015, by Independiente, does not imply that the default in the payment was purged.

83. There is no doubt that the issues that did not permit the permanent transfer were originated

by Independiente and Banfield´s behavior, but they were never the result of the Player´s behavior.

84. The sum claimed represents 90 years of salary of the Player and Mineiro only paid USD 1.000.000 for the Player.

85. The First Respondent requested the CAS to:

Taking into account everything stated before, we request that:

the appeal be dismissed.

the Appellant be ordered to pay all costs of the proceeding.

the Appellant be sentenced to pay legal costs and expenses in connection with the proceeding."

C. THE SECOND RESPONDENT´S POSITION

86. The Second Respondent's position and arguments can be summarized as follows:

87. Mineiro has no relation whatsoever with any eventual decision from the Player to supposedly having decided to breach the Conditional Agreement, and never induced the Player to do so. Mineiro does not have any standing to be sued in this case.

88. Mineiro does not fulfil with the definition of "*new club*" within the framework established by the FIFA legislator in Art. 17, par. 2 and par. 4 of the FIFA RSTP.

89. In line with the CAS jurisprudence, it is undisputed that the Player was registered before the EFF. This registration occurred after the issuance of a provisional ITC rendered by the Single Judge of FIFA PSC. It was because of such registration before the EFF that Mineiro had to negotiate with Independiente the terms and conditions of the Transfer Agreement. The Player was not transferred from Banfield to Mineiro.

90. The Appellant did not fulfil the minimum legal premises determined by the applicable norm in order to substantiate its intention to provide a kind of alternative meaning (or use) for "*new club*". Even they are signed concomitantly, a loan agreement and the new employment contract signed by the Player and his new club are (in general and theoretically) two completely separate agreements.

91. When Banfield decided to communicate Independiente its intention to exercise the purchase option set out in the Second Loan Agreement, it was under clear and undeniable contractual breach. Banfield did not pay the loan fee before the due date and did not provide any feasible clarification, despite Independiente addressed its attention to such failure.

92. It is obvious that the failure to comply with such main obligation resulted into a breach of the confidence that Independiente had on Banfield. How was Banfield going to afford the payment of USD 1.500.000, when the payment of USD 50.000 was pending for months?

93. Note that the Second Loan Agreement ended on 6 December 2015, and the payment of the loan fee was paid on 23 December 2015. Hence, considering that it is incontestable that the option established in the Second Loan Agreement for the permanent transfer of the Player was not exercised, consequently, there is no doubt that the Conditional Agreement was never binding or in force.

94. The Second Respondent requested the CAS to:

In view of the above, the Player herein submits to the attention of the CAS the following request for relief:

i. To dismiss in full the appeal filed by the Appellant

ii. To confirm the terms and conditions of the Appealed Decision rendered by the FIFA DRC

iii. To disregard any request for the payment of procedural costs nor legal fees whatsoever; and

iv. To order the Appellant to pay to CAM any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount the amount of CHF 50,000."

D. THE THIRD RESPONDENT´S POSITION

95. In a nutshell, the position and arguments of the Third Respondent are the following:

96. It is clear that under Argentinian Law, the Implicit Resolutory Clause is legally recognized as valid. No notice was required prior to the termination of the Second Loan Agreement, according the Article 509 of the ACC. This Code requires a notification prior to the termination, however the same Law indicates that the requirement is not necessary when the essential term of compliance has expired.

97. Given the essential breach of the only obligation that the Appellant had in favor of Independiente, it is clear that Independiente had full right to invoke the tacit resolutory condition and terminate the Second Loan Agreement.

98. It could not be interpreted that the norm invoked by the Appellant in Exhibits 17 and 21 of its Appeal Brief is a new regulation that in some way modified the contractual conditions. The Regulation of the Federal Administration of Public Revenue presented by the Appellant, is dated on 23 August 2012, this is two years prior to the signing of the Second Loan Agreement.

99. Resolution 3376 does not apply to the Player. It applies to players that come from specific clubs. The Player did not come from that kind of clubs.

100. There was lack of due diligence from the Appellant. Although the Appellant knew about the Resolution 3376 since August 2012, it did not initiate any procedure to comply with the tax regulation until December 2014. In December 2014 the Argentinian Tax Authority denied

the Appellant's request, and since that date there is no action from the Appellant to correct this problem, for five months.

101. From the email dated 28 August 2015, the Appellant did not make any effort to comply with the loan fee, and instead of paying, on 5 October 2015 decided to communicate that they were going to make use of the purchase option.

102. The Appellant tried to exercise a purchase option contained in a contract already terminated.

103. Clause SEVENTH of the Second Loan Agreement establishes that an additional document, that was never submitted by Banfield to Independiente, was an essential condition for the purchase option.

104. The Third Respondent requested the CAS to:

"Based on the proposals in this response to the appeal, we request the Panel to resolve the following:

1.- Independiente del Valle has no relationship whatsoever with the work contract between Juan Cazarez and the Appellant, so any dispute regarding said contract and its penalties could not be applied to IDV.

2.- Resolve that the Appellant did not justify his lack of payment of the loan and that the resolution presented is not new or applicable to the player Juan Cazarez; within this same point I request the Panel to also resolve the lack of diligence of the Appellant in relation to the payment and compliance with the tax regulations of the country.

3.- That based on the lack of justification and valid cause that has prevented the payment of the Appellant to IDV, resolve the origin of the termination of the loan contract signed between the Appellant and IDV for the rights of the player Juan Cazarez.

4.- Resolve that the termination of the loan contract invoked by IDV, for causes attributable to the appellant, had as direct consequence the termination of the player's purchase option.

5.- When the purchase option with the loan agreement has been extinguished, the exercise of the purchase option by the Appellant has no basis and any right whatsoever.

6.- Deny the requests for sports sanctions by the Appellant against IDV.

7.- If our petitions are denied by the Panel, we kindly ask to issue a decision taking into consideration what has been stated in title VII of this answer."

E. THE FOURTH RESPONDENT'S POSITION

105. The Fourth Respondent's position and arguments can be summarized as follows:

106. The Appellant request for relief concerns a contractual relationship, between Banfield and the Player and the consequences arising from the alleged breach.

107. Consequently, FIFA does not have standing to be sued in relation to the Appellant's request for relief which finds its cause of action purely in the contractual relationship between the Appellant and the First Respondent.

108. Based on CAS jurisprudence and taking into account the considerations expressed by FIFA regarding this specific case, it can be concluded, that Banfield does not have standing to request the imposition of sporting sanctions on the first, second and third Respondents and thus, its request to impose sporting sanctions on the aforementioned parties should be totally dismissed.

109. In this case, contrary to the CAS jurisprudence presented by the Appellant (*CAS 2013/A/3260*), the purchase option was clearly a right solely in favor of the Appellant *vis-à-vis* the Third Respondent, without the First Respondent having any influence on its potential exercise.

110. Considering the specific factual background and circumstances of the matter at stake, the Conditional Agreement had a unilateral and abusive nature, and was therefore deemed null and void.

111. It is clear that the Appellant was well aware of the financial situation in Argentina and the different bureaucratic hurdles that it had to overcome to pay on time. The Appellant appears to be trying to shift the responsibility for late payment to the First and the Third Respondent, for not having provided the allegedly necessary documentation and for not having offered a solution for its inability to pay. The burden to find an alternative way to perform the payment obligation was clearly on the Appellant. Apparently, the Appellant managed to perform the payment without having received any documentation from the First Respondent, however it did so almost five months after the due date for payment.

112. The mentioned circumstances reveal the unilateral and potestative nature of the Conditional Agreement, which entry in force depended entirely on the Appellant. The Player decided, in good faith, to return to Independiente.

113. The Fourth Respondent requested the CAS to:

"In the light of all of above considerations, we request for the present appeal against FIFA to be rejected and the relevant decision to be confirmed in its entirety. All costs related to the present procedures as well as the legal expenses of FIFA shall be borne by the Appellant."

V. LEGAL ANALYSIS

V.1. JURISDICTION

114. The CAS jurisdiction derives from Art. R47 of the Code and from Art. 58 par. 1 and 2 of the FIFA Statutes. It follows that CAS has jurisdiction to rule on this dispute. All the parties have agreed with the CAS jurisdiction by signing the order of procedure.

115. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

V.2. Admissibility

116. The Appealed Decision was issued, and notification given to the Appellant on 22 October 2018 and the statement of appeal was filed on 12 November 2018, within the twenty-one-day deadline specified in the FIFA Statutes and the Code. No further stages of appeal against the Appealed Decision were available at the FIFA level. The appeal therefore complies with the requirements of Art. R48 of the Code. Accordingly, the appeal is admissible.

V.3. Applicable Law

117. According to Art. R58 of the Code,

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

118. In this case, the Panel notes that the parties maintain different positions with respect to the applicable law. While all the parties agree that the FIFA RSTP and subsidiarily the Swiss Law apply, the Parties maintain different arguments regarding the application of Argentinian Law. Banfield considers that it is applicable mainly to interpret the intention of the parties in the Second Loan Agreement, the Player and Independiente express that it is applicable in some issues, Mineiro, (at the hearing) stated that it had to be applied subsidiarily after FIFA Regulations and Swiss Law, and FIFA opposes to its application.

119. After analyzing the position of each of the parties and based on the above mentioned article, the occurrence of the significant facts, and in the relevant agreements that are part of this procure, the Panel concludes that FIFA rules and regulations, in particular the FIFA RSTP (2015 version due to the date of the occurrence of the relevant facts) have to be applied primarily, the Swiss Law in second place and the Argentinian Law subsidiarily in those issues than are not covered by the FIFA rules and regulations and by Swiss Law.

V.4. The merits of the dispute

V.4.1 The objects of the dispute

120. According to the parties' written submissions, and given the plurality of Respondents, the claims against the various Respondents, and a complex mixture of legal documents and legal

acts at stake, the Panel considers that, in order to issue a clear and coherent award, it is essential to present a general description of the legal venue and the order in which the Panel will analyze the legal issues to be decided in this dispute.

V.4.1.1 The different claims

121. The prayers for relief in the case at hand consist of two different kind of claims by nature. An economic claim and a disciplinary request. Usually these two types of claims are defined as an "Horizontal Claim" and a" Vertical Claim"

122. The economic claim is directed against the Player and to Mineiro, for the payment of USD 15.000.000, plus interests.

123. The second one, that is the imposition of sporting sanctions, has been brought against the Player, Independiente and Mineiro. This appeal is also directed against FIFA, being the proper party, in the eyes of the Appellant, in the Vertical Claim in order to apply those disciplinary sanctions.

124. The Panel is also requested to decide on accessory claims, such as the payment of legal costs. Obviously, that those claims will be decided once the main issues at stake will be decided.

125. Following the above-mentioned methodology, the Panel considers that the following are the main topics to be solved:

a) Regarding the economic claim brought against the Player and against Mineiro, in a simple outline, the following are the questions to be addressed:

i. Was the Second Loan Agreement still in force on 5 October 2015 when Banfield, exercised the purchase option contained in same Agreement?

ii. What are the legal consequences derived of any conclusion and decision made by the Panel on question (i) on the relations between the Player and Banfield considering the alleged execution of the purchase option by the Appellant , did the Conditional Employment Agreement came into force?

iii. In case of a positive answer on question (ii) did the Player breach the Employment Contract with Banfield; and if so, is Banfield entitled to compensation? And in which amount?

iv. In case of a finding of breach of contract by the Player, and given the circumstances of this case should Mineiro be considered as the "*new club*" for the purpose of Article 17 of RSTP and therefore is jointly and severally liable regarding the payment of any compensation amount?

b) In relation to the disciplinary claim, it has a direct relation with the resolution of the economic one and has its bases in the alleged mentioned violations by the Player and by

Mineiro, plus an alleged violation by Independiente. As explained the Panel will go back to this second part, after giving its conclusions regarding the economic claim.

V.4.1.2 The Economic Claim.

126. In order to arrive to a conclusion on this first topic, the Panel will perform an analysis of the relevant documents and legal conduct of the relevant parties to this claim, as well as the arguments presented by them in relation to those documents and acts.

The Second Loan Agreement and its termination.

127. While the economic claim has its bases mainly on the alleged violation of the Conditional Contract, the relation between the Second Loan Agreement (and most important its date of termination), and all the alleged violations claimed by the Appellant are essential and relevant as well. Thus, the starting point in the assessment of the situation lays with the Second Loan Agreement and the circumstances surrounding its either breach or validity on the relevant times.

128. On one side, the Appellant argues that the Second Loan Agreement was in force at the moment it exercised the purchase option on 5 October 2015 and that the fact that, at the date of the exercising, it had not paid the USD 50.000 established in the Second Loan Agreement, did not invalidate, until that moment, said agreement and did not invalidate Independiente´s and the Player´s obligations.

129. Banfield reinforces its arguments by expressing that the non-payment of the USD 50.000 was not its fault, due to the fact that it had not been able to perform it because the Player had not provided some documents that were essential for that purpose.

130. On the other hand, the Respondents presented different arguments:

a) The Player basically argues that Second Loan Agreement was not in force any more at the moment that Banfield tried to exercise the purchase option and that he had no responsibility in relation to Banfield´s non-payment of the USD 50.000.

b) Mineiro expressed that when Banfield decided to communicate Independiente the exercise of the option set out in the Second Loan Agreement, the Appellant was already under contractual breach and also that the non-payment meant a loss of confidence from Independiente to Banfield.

c) On its side, Independiente claims that on October 7 it notified Banfield its decision to terminate the Second Loan Agreement, due to the non-payment of the USD 50.000 established in the Second Loan Agreement.

d) Finally, FIFA argues that the Panel should take into account the content of Article 82 of the Swiss Code of Obligations (hereinafter referred to as the "SCO") that *"provides that a party to a bilateral contract may not demand performance until he has discharged or offered to*

discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date. The provision is based on the principle that, in the absence of other statutory provision or contractual agreement, the obligations of synallagmatic contracts of exchange must be met simultaneously".

131. To get to conclusions, it is important to asses and examine the arguments of the parties against or in light of the relevant content of the Second Loan Agreement, that can be summarized as follows:

- It was valid as from the date of signature (28 July 2014) and *"until the end of the 2015 Primera División "A" championship organized by AFA",* and the First Respondent was expected to return to the Third Respondent no later than 1 January 2016, in case Banfield did not exercise the purchase option.
- The amount to be paid for the loan was USD 50,000. The payment due date was on 30 July 2015.
- Independiente established in favor on Banfield a definitive purchase option for the sum of USD 1.500.000.
- The price of the purchase option if executed, had to be paid by Banfield in three payments, starting on January 30, 2016.
- The purchase option should have been exercised by Banfield prior to November 30, 2015.
- Both parties acknowledged that they were aware of the international money transfer restrictions existing, and Banfield expressed that it guaranteed to comply with its obligations.
- The parties agreed to apply Argentinian Law.

132. Before going forward, as expressed in the Applicable Law chapter of the present Award, the Panel decided that the Applicable Law is the RSPT as well as Swiss Law complementary, and Argentinian Law subsidiarily. In the specific case of the Second Loan Agreement and despite the fact that the parties agreed to apply Argentinian Law in said contract and in the other documents to be analyzed, the Panel will apply the same order as expressed in the respective chapter. When Argentinian Law is subsidiarity applicable, the Panel will expressly mention said Law.

133. Taking into account all the precedent information, the Panel finds that there is no doubt that the Appellant, at the time it notified its intention to make use of the purchase option had not complied with the main obligation established in the Second Loan Agreement, this is the payment to Independiente of USD 50.000.

134. The Panel also finds that the explanation given by Banfield, to justify the non-compliance of the payment of USD 50.000 to Independiente, by expressing that it was attributable to the Player, is not convincing. It was established as a matter of facts and is accepted upon the

Panel, that when Banfield signed the Second Loan Agreement, it was clear that some restrictions regarding international money transfer were in force, and that the Appellant was aware of them. This is confirmed by the content of clause 5.5. of the Second Loan Agreement, in which all the parties stated that they were aware of the international money exchange restrictions and also by the fact that those restrictions were imposed since 2012, as it can be read in the Resolutions issued by the Argentine Federal Administration of Public Revenues (hereinafter referred to as the "AFAPR") that were presented and admitted to the arbitration file.

135. The Panel finds that given that those restrictions were clear and they preceded the Second Loan Agreement as well as the date in which the USD 50.000 must had been paid, those restrictions were not a new or surprising interfering factor, thus the Appellant should had been prepared to comply with them before the due date. Besides, the Panel does not find any reason, after analyzing the mentioned AFAPR resolutions, to consider that the Player was responsible nor contributed in any way to the non-payment for not sending the alleged documents.

136. Moreover, assuming, just as a matter of assessing all the arguments and without deciding that this was the case, that the Appellant was not able to perform the transfer due to a third person´s fault, it could had performed and discharge its obligation by a deposit in front of the National Court. The Argentinian Civil Code (hereinafter referred to as the "ACC"), establishes the possibility to pay by consignment, making a judicial deposit. This was not done.

137. Additionally, there is documental evidence, proving that Independiente sent an email to Banfield already on 27 August 2015, demanding the payment of the USD 50.000. i.e. it was established that Independiente did not ignore the non-payment.

138. The first Panel conclusion it is that there is no doubt that Banfield, on 5 October 2015, was in non-compliance of the Second Loan Agreement situation. However, it is important to further examine and determine what are the consequences of the non-payment. Does the non-compliance meant that the Second Loan Agreement was terminated or not on the relevant date (5 October 2015). Being in default in a contract does not necessary mean that the contract is then terminated.

139. On this regard, the Player maintains the position that according to Argentinian Law, the Second Loan Agreement was terminated before 5 October 2015. The main argument is that according to Section 1204 of the ACC "*If payment is not accomplished, the creditor require the* noncompliant *party to fulfill its obligation within a period of not less that fifteen days, unless custom or an express agreement establish a shorter one, together with the damages and losses resulting from the delay; if after this term the payment has not been made, the obligations arising from the contract it will be terminated and the creditor will have the right to claim for damages*", the Second Loan Agreement was terminated automatically 15 days

after the requirement made by Independiente to Banfield i.e. on 12 September 2015.

140. Regarding the mentioned Player's allegation, the Panel finds that it is groundless. Firstly, Argentinian Law does not apply, because the SCO has its own regulations regarding the non-compliance of the obligations and the termination on contracts, and there is no need to apply it on a subsidiary way on that issue. Secondly, assuming without granting that the mentioned Article 1204 is applicable, the Panel considers that to have the Second Loan Agreement terminated, Independiente should have expressly stated, in its 27 August 2015's notification, that the Appellant had 15 days to comply, otherwise the contract would have deemed terminated. Furthermore, by not asking the Player to return (regardless of the question of the validity of such request), this means that no termination of the Second Loan Agreement took place at that time.

141. Independiente presents different allegations regarding the termination of the Second Loan Agreement. Some of them with grounds. However, for the purpose of determining if this agreement was terminated before Banfield exercised the purchase option, there is an express recognition by Independiente that it notified Banfield the termination of the Second Loan Agreement on 7 October 2015. If Independiente expressly acknowledged that the termination was notified on that date, it means that the Second Loan Agreement was not terminated before October 7 2015.

142. From its side, Mineiro states that with the non-compliance of the Second Loan Agreement by Banfield, Independiente had, justifiably, lost its confidence. The Panel agrees that Banfield's behavior implied a loss of confidence by Independiente, but Independiente did not take any action to terminate the Second Loan Agreement before 5 October 2015.

143. FIFA's arguments on this issue focus on the application of Article 82 of the SCC. The Panel agrees that according to Swiss Law, which is applicable, in a bilateral contract, like the Second Loan Agreement, a party may not demand performance until he has discharged or offered to discharge its own obligation. However this does not mean, and there is no provision stating that, that the consequence is having the contract automatically terminated.

144. Thus, the conclusions of the Panel regarding the termination of the Second Loan Agreement are the following:

a) The Second Loan Agreement was not automatically terminated for the non-payment before 5 October 2015.

b) The Second Loan Agreement was in force on 5 October 2015, when Banfield exercised the purchase option.

c) The Second Loan Agreement was terminated by Independiente on 7 October 2015. The Panel considers that due to Banfield's behavior and non-compliance, Independiente may have had grounds to terminate the said contract with just cause. On the other hand, Independiente should have sent a default notice in a different way in order to execute a

justified termination. The existence of the termination notice of the Second Loan Agreement performed by Independiente, is recognized by Banfield in point 66 of its Appeal Brief, but not its validity.

d) However, due to the way that the claims have been presented in this arbitration, in relation to the economic claim, it is not for this Panel to determine if the termination performed by Independiente on 7 October 2015, was with or without just cause, because Banfield has not presented any economic claim against Independiente regarding the termination of the Second Loan Agreement. The important conclusion on this issue, which is essential for the Panel, to go forward with the legal analysis and determine any responsibility for the Player and Mineiro, is that the Second Loan Agreement was in force on 5 October 2015 and then unilaterally terminated by Independiente on 7 October 2015.

The Conditional Agreement and the Banfield Employment Agreement.

145. These documents, which are linked one to the other and at the same time linked to the Second Loan Agreement, are essential to arrive to a final conclusion, regarding a possible legal responsibility by the Player and then by Mineiro.

146. The content of the Second Loan Agreement together with the Banfield Employment Agreement, signed in the same document, on 28 July 2015, can be summarized as follows:

- In the event that Banfield decided to execute the purchase option provided for in the Second Loan Agreement, the Player undertook to sign with Banfield the Banfield Employment Agreement, for a period of three years, that is from 1 January 2016 to 31 December 2018.
- In the event of early termination of the agreement by the Player by an express decision or fault of the Player, the parties agreed as compensation for early termination of the contract in favor of Banfield the amount of USD 15.000.000
- The different salary and benefits to be paid by Banfield were also established.

147. The above means that if Banfield exercised the purchase option contained in the Second Loan Agreement, then the Player will become a permanent player of Banfield and the Banfield Employment Agreement would be in force.

148. In light of the previous finding regarding the validity of the Second Loan Agreement, it is for the Panel to decide if the Player is responsible for breach of Banfield Employment Agreement.

Does the Player have any responsibility?

149. In addition to analyzing the content of the relevant documents, for a fair solution it is essential to study, focusing on the Player, the conditions of his relationship with Independiente and Banfield before, during and after 5 October 2015:

- There was an existing labor relationship between the Player and Independiente. This

relationship, according to the First Labor Agreement, started on 1 July 2013 and was initially planned to end on 30 June 2017. After Independiente and Banfield signed the First Loan Agreement and then the Second Loan Agreement, the labor relationship between the Player and Independiente was suspended, but not terminated. According to the Second Loan Agreement, if Banfield executed the purchase option then this employment relationship between the Player and Independiente would finish the same day of the execution of the mentioned option. If the purchase option was not exercised, then the suspension of the labor relationship between Independiente and the Player would end and the Player would have to go back to be registered with and work for Independiente on 1 January 2016 at the latest, to comply with the First Labor Agreement until its due date.

- Meanwhile, there was also a labor relationship between Banfield and the Player. At the same time the First Loan Agreement was signed, Banfield and the Player initiated, by signing the Second Labor Agreement, a temporary labor relationship beginning on 31 July 2013. This temporary labor relationship between Banfield and the Player was extended by signing the Third Labor Agreement, valid from 1 July 2014 until the end of 2015.

- The above mentioned two employment relationships existed on 5 October 2015. The one with Independiente that was suspended, and the temporary with Banfield that was in force.

- The Panel finds it important to mention that the Player was not formally notified on 5 October 2015 about Banfield exercising the purchase option. It appears that a copy of the email sent by Banfield to Independiente was sent on the same day to an e-mail address with his name, but there is no evidence that the Player received it and that it was his official e-mail (Clause Sixteenth of the Conditional Contract states that the notifications must be performed in their respective addresses and Clause Tenth of the Second Loan Agreement has the same prescription). When Banfield, in its Appeal Brief, refers to this notification, it only expresses that it was received by Independiente, not by the Player.

- On 8 October 2015, the Player received a copy of the letter dated on the previous day, sent by Independiente notifying Banfield the termination of the Second Loan Agreement and notifying the Player that he had to go back to play for Independiente. A similar correspondence was also sent by Independiente on 14 October 2015.

- The formal notification from Banfield to the Player regarding the exercise of the mentioned option was sent up to 16 October 2015.

- As a matter of the sequence of events, after the sending of those letters, there were some emails exchange between Banfield and Independiente, in relation to the conflict between both clubs regarding the Second Loan Agreement and then there was the registration of the Banfield Employment Agreement in front of AFA on 23 October 2015 and the registration of the option to purchase in the TMS on 16 December 2015.

- The Player then went back to Ecuador.

150. After reviewing all the above-mentioned facts, the Panel finds as an important and relevant fact that, in between 5 and 16 October 2015, the Player was in an unclear situation. The Panel agrees with the Appellant with respect to the common practice, in the business of football, of the purchase options, and that it is in general, an effective and a legal instrument that may also entail legal effects on the players involved regarding their future employment agreements. However, the specific conditions and circumstances of this case have to be taken into account when assessing the impact of this state of uncertainty on the conduct of the Player.

151. As thoroughly explained above, both Clubs (Banfield and Independiente) had different levels of responsibility in creating an unclear state with respect to the Player and his duties to this Club or to the other. Whatever step taken by the Player; he could have put himself in risk towards one of the clubs without having really any responsibility for the creation of the situation. The Panel finds that in the very specific circumstances of this case, the Panel must decide not only if the Player breached the Banfield Labor Agreement but also, and more important, even if technically he committed a breach, if he is under any duty to pay any compensation to Banfield. The finding of the Panel is that in the very specific and peculiar circumstances of this case, the Player cannot be held liable for breach of the Banfield Employment Agreement.

152. First of all, even if the purchase option was allegedly executed by Banfield on 5 October 2015, while the Second Loan Agreement was in force although not respected by Banfield, it is also true that the Player was not notified on same date nor in the next two or three days by Banfield that they executed the option. The Player was informed by Independiente on 8 October 2015 that Independiente terminated the Second Loan Agreement giving him the legitimate understanding that he was not any more under any duty towards Banfield with respect to the Banfield Employment Agreement.

153. It was only on 16 October 2015, that Banfield notified the Player that it had exercised the purchase option and that the club considered that the Banfield Employment Agreement supposedly came into force.

154. This means that when the Player first received a formal notification of the exercise of the purchase option, he was also under the understanding that the Second Loan Agreement had been terminated already 8 days ago.

155. It is true that, in principle, the entering into force of the Banfield Employment Agreement had to happen at the time the exercise of the purchase option was executed. However, as in all legal acts, the notification of the parties involved is essential, and in this case the Player was informed by Banfield that the Banfield Employment Agreement was executed by means of an alleged execution of the Purchase Option only after he was notified by Independiente, or at least understood from Independiente that the Second Loan Agreement was terminated.

156. Regardless the justification or not of the termination notice sent by Independiente (since this is a matter between Banfield and Independiente), the Second Loan Agreement was terminated. This termination may lead to different consequences, including – just mentioning one possibility – the right of Banfield to seek reliefs and to claim for compensation from Independiente if the latter considered the termination without just cause. But this does not affect the termination itself, especially since urgent claim for – again just as an example – an injunction to put the termination on hold by a legal interim decision was not asked. Therefore, as of 8 October 2015, the Second Loan agreement was terminated and was no longer in force on 16 October, and this was the legitimate understanding of the Player when he received the late Banfield´s notification. The Player was under the understanding that he was no longer contractually bound with Banfield. He therefore cannot be found liable of the non-compliance of an obligation already extinct.

157. The Conditional Agreement was subject to the execution of the condition established in the Second Loan Agreement (the exercise of the purchase option), and if the latter was terminated before the Player was notified of the said exercise, the consequence established in the Conditional Agreement (the obligations contained in Banfield Employment Agreement) never entered into force.

158. Furthermore as an additional argument, assuming without granting that Independiente´s termination of the Second Loan Agreement did not have the effect to directly prevent the entering into force of the Player´s future obligations, the Panel agrees with the Player´s position on this matter, that he was involved in a conflict between two clubs and that he was more an affected party than a responsible party, for the following reasons:

- He received contradictory notifications from both Clubs. Firstly, one from Independiente stating that the Second Loan Agreement was terminated and then some from Banfield and Independiente, with a legal discussion in relation whether the termination was valid or not. This necessarily provoked a confusion in the Player on which of the two-labor agreement he had with two different clubs, was valid. Being true that he may have had legal advice, even with that advice, his legal situation was not clear (An example are the different points of view presented by the parties regarding the same issue, in this arbitration).

- For the purpose of analyzing the Player responsibility, it is important to underline that while the Player was part of the Second Loan Agreement, the main obligations were for Banfield and Independiente, and his future legal situation depended on the decision on one of both clubs. If at the moment that his labor future was about to be affected, his legal situation was not clear, due to a discussion between the clubs in which this legal situation depended on, the Player cannot be blamed and be liable of his decision to go back with his original club.

- As expressed by the First Respondent, *"...the issues that did not permit the transfer originated in the behavior and decisions of Banfield/or Independiente, but were never the result of the behavior and the actions taken by the player..."*. *"Neither was his duty, nor*

was he authorized to decide which of the two clubs was right".

159. Additionally, the requirement that *"In the event that BANFIELD exercises the Purchase Option, the parties undertake to sign an agreement that will regulate and determine the manner in which any transfers, assignments and/or operations of any kind on the Player will be defined and managed"* established in clause SEVENTH of the Second Loan Agreement was never complied by any of the parties because of the confused situation caused by the clubs and mainly Banfield.

160. For the Panel, this requirement is in favor of the Player´s protection. Being part of the nature of Second Loan Agreement to be a conditional agreement, which depends in a unilateral decision by Banfield to purchase the Player, this clause gives the Player an opportunity to be aware, in clear way, which will his future be after the moment the purchase option, in terms of legal documents. The fact that this clause was not complied with, is an additional argument to conclude that that the total requirements established in the Second Loan Agreement to perform a permanent transfer were not performed and thus the Banfield Employment Agreement never came into force.

161. The Panel is of the opinion, that Banfield should have been aware to the importance of respecting its duties under the Second Loan Agreement. Banfield should have taken into consideration that the non-payment of the loan nor the execution of payment by consignation, as an easy way to overcome the possible national restrictions on payments that Banfield was aware to already when it signed this agreement, might lead, at any moment, to the termination of same agreement and by this to the release of the Player from any future duty towards Banfield. This should have been even more so as a matter of awareness if indeed, as Banfield argues now, the Player became to be an important player for them. And yet, Banfield took the risk. In the balance between the risks of the three relevant parties in these complicated circumstances, the Panel finds that the Player cannot be hold responsible for the fact that at the end of the day Banfield Employment Agreement could not materialize, when the other two parties took contradictory measures leaving the Player in an imposible limbo as the victim of the circumstances and not as a responsible party.

162. Due to the above-mentioned facts and situations, the permanent transfer of the Player was not performed, with no fault attributable to the Player, and consequently the obligations contained in the Banfield Employment Agreement never entered into force. Then, no breach of contract can be attributable to the Player.

163. The final conclusion in this part of the Award is that the Player in not responsible for any breach of contract with Banfield and there is no need to analyze the arguments in relation with what happened after the Player went back to Ecuador.

Mineiro´s responsibility.

164. Given the last conclusion, and with the no existence of an obligation from the Player to

Banfield in relation to the Banfield Employment Agreement, there is no need to enter an analysis regarding a possible joint responsibility by Mineiro as the new club.

V.4.1.3 The disciplinary claim.

165. After studying the parties' positions on this matter, especially the ones presented by the Appellant and the Fourth Respondent, the Panel states that the Appellant does not have a legitimate interest, in this case, to ask for disciplinary measures to be applied on the first three respondents.

166. Following the established CAS jurisprudence – *CAS 2015/A/3999 & 4000* and *CAS 2014/A/3690* for example – Banfield does not have a legitimation to request the imposition of sporting sanctions directly to CAS.

167. Independently from a possible breach or not, performed by one of the parties involved in this case, taking the above into account, the Panel considers that the application of such measures directly is out of its scope of review. Thus, no disciplinary sanction is applied.

V.4.1.4 Final conclusions.

168. Given what has been expressed before:

a) There was no responsibility attributable to the Player or Mineiro.

b) There is no legitimate interest from the Appellant to ask CAS to apply disciplinary measures.

c) The appeal filed by Club Atlético Banfield against the decision issued on 24 August 2018 by the FIFA Dispute Resolution Chamber is dismissed.

d) The decision issued on 24 August 2018 by the FIFA Dispute Resolution Chamber is confirmed.

VI. COSTS

169. Pursuant to article R64.4 of the CAS Code, the Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fees, the costs and fees of the arbitrators, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any. In accordance with the consistent practice of the CAS, the award states only how those costs must be apportioned between the parties. Such costs are later determined and notified to the parties by separate communication from the Secretary General of CAS.

170. Article R64.5 of the CAS Code provides that "*the arbitral award shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees*

and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

171. Having taken into account the outcome of the arbitration, in particular the fact that the appeal is dismissed, the Panel holds that the Appellant shall bear 100% of the costs of this appeal and, in an amount to be notified by the CAS Court Office.

172. Furthermore, the Panel deems it fair and reasonable that since the appeal is dismissed, the Appellant pays to each Respondent the amount of CHF 3.000, as partial contribution for the legal costs and other expenses incurred in connection with this CAS proceeding.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Atlético Banfield against the decision issued on 24 August 2018 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued on 24 August 2018 by the FIFA Dispute Resolution Chamber is confirmed.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be paid in full by Club Atlético Banfield.
4. Club Atlético Banfield is ordered to pay Juan Ramón Cazares Sevillano, Clube Atlético Mineiro, Club de Alto Rendimiento Especializado Independiente del Valle and FIFA the amount of CHF 3.000 for each one, as contribution of their legal costs and other expenses incurred in connection with this procedure.
5. All other motions or prayers for relief are dismissed.

Done in Lausanne, on 7 July 2020.

Mr Ricardo de Buen Rodríguez
President