ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof Petros C. Mavroidis, Professor, Commugny, Switzerland

Arbitrators: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
Prof Massimo Coccia, Professor and Attorney-at-Law, Rome, Italy

in the arbitration between

Sport Lisboa e Benfica Futebol SAD, Lisbon, Portugal
Represented by Messrs Iñigo de Lacalle Baigorri and Javier Ferrero Muñoz, Attorneys-at-law with Senn Ferrero Asociados, Sport & Entertainment S.L.P, Madrid, Spain

- Appellant -

and

Mr Bilal Ould-Chikh, the Hague, the Netherlands
Represented by Mr Gonçalo Almeida, Attorney-at-law with ADA Legal, Lisbon, Portugal

- First Respondent -

&

FC Utrecht B.V., Utrecht, the Netherlands
Represented by Mr J.J. (Laurens) Korbee, Attorney-at-law with the Dutch Federation of Professional Football Clubs (FBO), Rotterdam, the Netherlands

- Second Respondent -

&

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Mr Miguel Liétard Fernàndez-Palacios, Attorney-at-law with FIFA Litigation Department

- Third Respondent -

I. THE PARTIES

1. Sport Lisboa e Benfica-Futebol SAD (hereinafter "Benfica", the "Club" or the "Appellant") is a professional football club, now participating in the Portuguese Primeira Liga, the top professional association division in Portugal. Its headquarters are in Lisbon, Portugal.

2. Mr Bilal Ould-Chikh (hereinafter the "Player" or the "First Respondent") is a professional football player of Dutch nationality, currently under contract of employment with ADO Den Haag, a professional football club participating in the Eredivisie, the top professional association division in the Netherlands.

3. FC Utrecht B.V. (hereinafter "Utrecht" or the "Second Respondent") is a Dutch professional football club, competing in the Eredivisie, the top professional association division in the Netherlands. Its headquarters are in Utrecht, the Netherlands.

4. The Fédération Internationale de Football Association (hereinafter "FIFA" or the "Third Respondent") is the international federation of national football associations overseeing international competitions, and regulating football. Its premises are in Zurich, Switzerland, and it is an association under Swiss Law.

II. KEY FACTS

5. Below is a summary of the main relevant facts, some of which are disputed, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Relevant Background

6. On 30 July 2015, it is not disputed that Benfica and the Player entered into a contractual arrangement, whereby the Player committed to play for Benfica for the next five sporting seasons (e.g., until 30 June 2020), and Benfica agreed to pay him EUR 81,000 per month totalling EUR 972,000 for each of the five seasons that he had signed for with the club (the "Contract").

7. During his first season with Benfica (2015-2016), the Player had committed two disciplinary infractions, and had been sanctioned therefore. The first incident occurred when he was on duty with the Dutch U-19 national team, whereas the second was a case of speed driving in France. The Player agreed to pay a fine to Benfica for each of the two cases.

8. On 25 August 2016, Benfica served the Player with a notice of fault for having allegedly committed new disciplinary infractions. Benfica's accusations against the Player essentially consisted of the Player's alleged attitude of indolence while practicing and bad manners vis-à-vis the training staff, as well as through accusations that the Player had come back from vacation overweight and was not adhering to his weight loss regime and had missed some weigh-ins. Through this notice, Benfica opened internal

disciplinary proceedings against the Player (and asked an investigator, a private attorney who is a member of the Portuguese bar, to conduct the process), requested from the Player to provide his response to the charges within 10 days, and informed him that, until further notice, he would be suspended *"(...) until notice to the contrary is served"*.

9. On 7 November 2016, the Player attempted to overturn the charges by lodging an injunction before the competent Portuguese Labour Court, asking the Court to order Benfica to cancel the suspension and reintegrate him. His application for an injunction was rejected.

10. On 25 November 2016, in the context of the initiated disciplinary proceedings, the investigator added to the list of complaints (the existing ones concerning further indifference when training with Benfica and inappropriate behaviour towards Benfica's staff), a new incident which, in the investigator's view, called for an examination, namely a brawl that had happened in a night club in Lisbon in which the Player had allegedly taken part.

11. On 7 December 2016, the Player was heard by the investigator; he denied the veracity of the facts regarding his alleged participation in the brawl.

12. After the investigator had concluded the process, he found that the Player had been at fault as he had committed the alleged infractions.

13. On 8 February 2017, Benfica terminated its contractual relationship with the Player, alleging just cause, following the conclusion of the internal disciplinary proceeding.

B. Proceedings before the FIFA Dispute Resolution Chamber (DRC)

14. On 26 July 2017, the Player lodged a complaint before the FIFA Dispute Resolution Chamber ("DRC") against Benfica, arguing that its decision to terminate his employment relationship with Benfica had been in violation of the relevant rules and requesting compensation of EUR 3,564,000.

15. On 14 September 2018, the DRC issued its decision on this matter, and on 26 September 2018, it communicated the operative part of its decision. On 21 August 2019, it further communicated to the parties the grounds of its decision (the "Appealed Decision").

16. In the Appealed Decision, the DRC allocated the burden of proof to Benfica, and held that Benfica had not met the burden, neither with respect to the claim of gross misconduct vis-à-vis Benfica's officials, nor with respect to the brawl at the night club. The low intensity of his engagement during trainings and his overall indifference when training with Benfica, were not, in the DRC's view, reason enough for Benfica to unilaterally terminate the Contract with just cause. In its view, termination is the *ultima ratio*, and when other more lenient measures can be taken to achieve the objectives sought, then they must be used before eventually moving to termination (assuming that the more lenient means prove to be inefficient).

17. The consequence of the absence of just cause to terminate the Contract entailed an important consequence, in the DRC's view: the Club had to compensate the Player. As he had 41 months remaining until the end of the Contract, at the moment when the unilateral termination occurred, the Player was entitled to EUR 3,321,000. Since

however, the Player had been employed by another football club from 1 July 2017 until 30 June 2019 (FC Utrecht, the club with which he had signed a contract and was employed by, following the end of his contractual relationship with Benfica), and had received EUR 216,000 to this effect, the DRC reduced the amount of compensation due to EUR 3,105,000. To this sum, the DRC decided that a 5% interest rate per annum should be added from the date when the complaint had been lodged, that is, 26 July 2017, until the date of effective payment.

18. The dispute concerns, for all practical purposes, one issue only: if and to what extent Benfica lawfully terminated its contractual relationship with the Player on 8 February 2017. The DRC decided that this had not been the case, which Benfica claims is incorrect.

III. PROCEEDINGS BEFORE THE CAS

19. On 11 September 2019, Benfica filed its Statement of Appeal against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (2019 edition) (the "Code"). In its Statement of Appeal, the Appellant nominated as arbitrator Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal.

20. On 17 September 2019, the CAS Court Office acknowledged receipt of the Statement of Appeal filed by Benfica and initiated an appeal arbitration procedure under the reference *CAS 2019/A/6452 Sport Lisboa e Benfica Futebol SAD v. Bilal Ould-Chick, & FC Utrecht BV, & Fédération Internationale de Football Associations (FIFA).*

21. On 24 September 2019, the First Respondent stated that the Respondents jointly appointed as arbitrator Prof Massimo Coccia, Professor and Attorney-at-law in Rome, Italy.

22. On 3 October 2019, the CAS Court Office confirmed that neither the Second or Third Respondent had objected to the statement that they had jointly appointed Prof Coccia as arbitrator along with the First Respondent.

23. On 4 October 2019, the Parties were informed that Mr Botica Santos had accepted his appointment, and had made a disclosure further to Article R33 of the Code.

24. On 8 October 2019, Parties were informed that Prof Coccia had accepted his appointment, and had made a disclosure further to Article R33 of the Code.

25. On 14 October 2019, it was confirmed that none of the Parties had filed a challenge against Mr Botica Santos' disclosure under Article R34 of the Code, and that the deadline for them to do so had lapsed.

26. On 11 October 2019, following agreed extensions, Benfica filed its Appeal Brief in accordance with Article R51 of the Code.

27. On 17 October 2019, it was confirmed that none of the Parties had filed a challenge against Prof Coccia's disclosure under Article R34 of the Code, and that the deadline for them to do so had lapsed.

28. On 14 November 2019, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division and further to Article R54 of the Code, that the Panel constituted to hear this case was comprised as follows:

President:	Prof Petros C. Mavroidis, Professor, Commugny, Switzerland
Arbitrators:	Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal
	Prof Massimo Coccia, Professor and Attorney-at-law, Rome, Italy

29. On 21 November 2019, the Second Respondent filed its Answer, after agreed extensions, further to Article R55 of the Code.

30. On 22 November 2019, the First and Third Respondent filed their respective Answers, after agreed extensions, further to Article R55 of the Code.

31. On 13 December 2019, the Parties were informed that the Panel had decided to hold a hearing after having consulted the Parties, which was subsequently scheduled for 5 and 6 February 2019, with the agreement of the Parties.

32. On 23 January 2020, Benfica signed the Order of Procedure. The three Respondents signed the Order of Procedure on 17 January 2020 (the First Respondent), on 23 January 2020 (the Second Respondent), and on 15 January 2020 (the Third Respondent).

33. On 3 February 2020, the Appellant submitted an amended version of its requests for relief.

34. On 5 and 6 February 2020, a hearing was held at the CAS headquarters in Lausanne, Switzerland. The following persons attended the hearing in addition to the Panel and Ms Kendra Magraw, CAS Counsel:

a) For the Appellant:

1) Mr Iñigo de Lacalle Baigorri, Counsel;
2) Mr Javier Ferrero Muñoz, Counsel;
3) Mr Juan Alfonso Prieto Huang, Counsel;
4) Mr Paulo Gonçalves, Witness (by video-conference);
5) Mr Miguel Lopes Lourenço, Witness;
6) Mr Bruno Maruta, Witness (by video-conference);
7) Mr Hugo Jorge Guerreiro de Angela Concião Zagalo, Witness (by video-conference);
8) Mr Nelson Alexandre Silva Veríssimo, Witness (by video-conference);
9) Mr David Miguel Costa Costanho, Witness (by video-conference);
10) Dr Pedro Romano Martinez, Expert (by video-conference); and
11) Mr Claudinei Nunes da Silva, Interpreter.

b) For the First Respondent:

1) Mr Gonçalo Almeida, Counsel;
2) Mr Luis Correia Dias, Counsel;
3) Mr Bilal Ould-Chikh, the Player;
4) Mr Sergio Sánchez, Witness;

5) Mr Marouane Melouk, Witness;
6) Mr Jama Razzouki, Witness;
7) Mr Said Ould-Chikh, Witness;
8) Mr Samir El Hadouchi, Witness; and
9) Mr Ali Cherradi, Interpreter.

c) For the Second Respondent:

1) Mr Laurens Korbee, Counsel;
2) Mr Serge Rossmeisl, Counsel; and
3) Ms Anne va Haastert, Party Representative.

d) For the Third Respondent:

1) Mr Michael Liétard, Counsel; and
2) Mr Roberto Nájera, Counsel.

35. At the hearing, the Player provided his own testimony (in addition to the testimony offered by the individuals listed above).

36. Dr Pedro Martinez, Benfica's expert witness, provided his expert opinion on the relevance of Portuguese law in this dispute, and the consequences of recourse to it.

37. At the outset of the hearing all of the Parties confirmed that they had no objection with regard to the composition of the Panel, or the manner in which the process had been handled until then. At the conclusion of the hearing, all of the Parties confirmed that their right to be heard had been fully respected throughout the proceedings.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

38. The following section summarises the Parties' main arguments in support of their respective requests for relief. While the Panel has examined the full record submitted by the Parties to the dispute, it refers in what follows only to the arguments, which, in the Panel's view, were relevant in deciding the issues in the appeal.

A. The Appellant

39. Benfica requests from the Panel to quash the Appealed Decision for the following reasons, since, in its view, it had just cause to terminate the Contract.

- Benfica submits that the unilateral termination of the Contract was legitimate as it was the result of the exercise of a statutory right. Accordingly, there was no unlawful breach of the Contract and it did not have to pay compensation to the Player pursuant to Article 17 of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

- According to Benfica, the Player had committed a series of contractual breaches, which prompted Benfica to instigate internal disciplinary proceedings, including:

  - It was established to the satisfaction of the independent investigator that the

Player had become quite indifferent during training sessions, and was not approaching his professional duties with due diligence;

- It was also established that the Player displayed unprofessional behaviour towards various Club officials, and most importantly towards trainer Mr Zagalo. The Player's gross misconduct towards Benfica's staff was not an isolated incident, but part of a behavioural pattern;

- It was also established that the Player had participated in a brawl at a Portuguese night club, even though, as per the investigator's and Benfica's admission at the hearing, this was not the most important misconduct that the Player had committed;

- And, of course, while at Benfica, the Player had been sent away from the Dutch U-19 team for an incident while committed with his national youth team, and he was further fined for speed driving in France;

- In short, the Player's unprofessional behaviour is a pattern, and not a one-off incident. It is for this reason that Benfica initiated internal disciplinary proceedings. During the internal proceedings the investigator established that the Player was, *inter alia*, in breach of Clauses ten and eleven of the Contract, which obliged him to observe Benfica's internal regulations;

- The various witnesses called by Benfica to testify before the Panel (Messrs Miguel Lopes Lourenço, Paulo Gonçalves, Bruno Maruta, Hugo Jorge Guerreiro de Angela Conceição Zagalo, Nelson Alexandre Silva Veríssimo and David Miguel Costa Castanho Pinto Amaro) confirmed that there was indeed a pattern in the Player's unprofessional behavior;

- The Player appeared before the investigator appointed, and voluntarily submitted to the jurisdiction of that procedure, which, anyway, he had to follow, as a result of the contractual obligations he had assumed by joining Benfica in 2015, and signing the Contract;

- The Player in bad faith appealed before the DRC, which lacked jurisdiction, as it does not constitute an appeals body before which decisions by the competent Portuguese courts can be appealed;

- But even if the DRC was competent to adjudicate the Player's complaint, it erroneously decided in favour of the Player, since, as the record shows, Benfica had just cause to terminate their contractual relationship.

- Benfica claims that FC Utrecht BV is in violation of Article 17.2 RSTP, since, in its view, its responsibility is independent of attempts to induce the Player to sign with his new club. Since the Player signed a contract with Utrecht after Benfica has terminated their contractual relationship, the Dutch club was jointly and severally liable along with the Player for the payment of the compensation requested.

- Benfica finally claims that FIFA did not have competence to adjudicate the dispute and, thus, that the DRC had, for all practical purposes, acted *ultra vires*.

40. In its Appeal Brief, Benfica submitted the following requests for relief:

"*A.- The Decision adopted by the Dispute Resolution Chamber of FIFA of September 14th, 2018 (notified on August 21st, 2019) (Ref.- No 17-01227-sje) is set aside.*

B.- Mr. Bilal Ould-Chikh is condemned to pay Benfica a compensation which amounts to THIRTY-THREE MILLION THREE HUNDRED TWENTY-ONE THOUSAND EUROS (€ 33,321,000) plus the applicable VAT and plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As an alternative prayer of relief:

C.- Alternatively, should the Hon. Panel consider that the amount of the compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a compensation not lesser than the sum of EIGHT MILLION SEVENTY-ONE THOUSAND TWO HUNDRED EUROS (€ 8,071,200) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As a second alternative prayer of relief:

D.- Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty which amounts to THREE MILLION THREE HUNDRED TWENTY-ONE THOUSAND EUROS (€ 3,321,000) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As a third alternative prayer of relief:

E.- Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty which amounts to THREE MILLION FIFTY THOUSAND AND TWO HUNDRED EUROS (€ 3,050,200) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As a fourth alternative prayer of relief:

F.- Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty in an amount to be determined at the discretion of the Hon. Panel plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

In all cases:

G.- Football Club Utrecht BV is declared jointly and severally liable with Mr. Bilal Ould-Chikh for the payment to Benfica of the applicable compensation in accordance with article 17.2 of the FIFA Regulations on the Status and Transfer of Players.

H.- In addition to the obligation to pay compensation to Benfica, sporting sanctions are imposed on Mr. Bilal Ould-Chikh in accordance with article 17.3 of the FIFA Regulations on the Status and Transfer of Players.

I.- Orders Mr. Bilal Ould-Chikh, Football Club Utrecht BV and FIFA to pay the costs and other expenses of this arbitration and legal expenses arising from this proceeding.

J.- Orders Mr. Bilal Ould-Chikh, Football Club Utrecht BV and FIFA to pay the legal fees and other expenses incurred by Benfica." (internal emphasis and citations omitted)

41. On 3 February 2020, Benfica amended its requests for relief, as follows:

"*A.- The Decision adopted by the Dispute Resolution Chamber of FIFA of September 14th, 2018 (notified on August 21st, 2019) (Ref.- No 17-01227-sje) is set aside and it is declared that FIFA had no jurisdiction to hear the Claim brought by MR BILAL OULD-CHIKH provided that such competence corresponds by force of law to the Labor Courts of Lisbon.*

As an alternative prayer of relief:

B.- Should this Hon. Panel decide that FIFA was competent to adjudicate on the present matter, the Claim filed by MR. BILAL OULD-CHIKH against Benfica is fully dismissed given that the Claim is time-barred pursuant to Article 387.2 of the Portuguese Employment Code.

As an alternative prayer of relief:

C.- The Decision adopted by the Dispute Resolution Chamber of FIFA of September 14th, 2018 (notified on August 21st, 2019) (Ref.- No 17-01227-sje) is set aside.

D.- Mr. Bilal Ould-Chikh is condemned to pay Benfica a compensation which amounts to THIRTY-THREE MILLION THREE HUNDRED TWENTY-ONE THOUSAND EUROS (€ 33,321,000) plus the applicable VAT and plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As an alternative prayer of relief:

E.- Alternatively, should the Hon. Panel consider that the amount of the compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a compensation not lesser than the sum of EIGHT MILLION SEVENTY-ONE THOUSAND TWO HUNDRED EUROS (€ 8,071,200) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As an alternative prayer of relief:

F.- Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty which amounts to THREE MILLION THREE

HUNDRED TWENTY-ONE THOUSAND EUROS (€ 3,321,000) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.

As an alternative prayer of relief:

G.- *Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty which amounts to THREE MILLION FIFTY THOUSAND AND TWO HUNDRED EUROS (€ 3,050,200) plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.*

As an alternative prayer of relief:

H.- *Alternatively, should the Hon. Panel consider that the amount of the aforesaid compensation is excessive and should be reduced, Mr. Bilal Ould-Chikh is condemned to pay Benfica a penalty in an amount to be determined at the discretion of the Hon. Panel plus a five per cent (5%) interest from February 8th, 2017 in accordance with Swiss Legislation.*

In all cases from C to H:

I.- *Football Club Utrecht BV is declared jointly and severally liable with Mr. Bilal Ould-Chikh for the payment to Benfica of the applicable compensation in accordance with article 17.2 of the FIFA Regulations on the Status and Transfer of Players.*

J.- *Orders Mr. Bilal Ould-Chikh, Football Club Utrecht BV and FIFA to pay the costs and other expenses of this arbitration and legal expenses arising from this proceeding.*

K.- *Orders Mr. Bilal Ould-Chikh, Football Club Utrecht BV and FIFA to pay the legal fees and other expenses incurred by Benfica.*" (original emphasis and internal citations omitted)

42. The Appellant's revised requests for relief no longer asked for sporting sanctions to be imposed on the First Respondent.

B. The Respondents

i. The Player

43. The Player has concentrated his claims on the inexistence of just cause for Benfica to terminate their employment relationship.

44. In his view, the first two incidents (unruly behaviour when at duty with the Dutch U-19 team; speed driving in France) should not be considered as evidence of unprofessional behaviour by the Panel because:

- time-wise, they occurred when the Player was not at the direct service of Benfica;

- furthermore, both incidents occurred in November 2015, that is nine months before the internal disciplinary proceedings against the Player were effectively initiated; and

- arguably, thus, it was not for these two episodes that the internal disciplinary proceedings had been initiated in the first place.

45. With respect to the remaining allegations, the Player contends that:

- there was no proof that he had participated in the brawl at the Portuguese night club. In fact, the witnesses summoned by the Player all confirmed that the Player had stayed at home on the night of the brawl, and that he had not been involved at all in the incident (the Panel's views in regard to the weight of these testimonies are analysed in paragraph 117 below);

- the alleged incidents of disobedience towards Benfica's staff are either false, or exaggerated, or both. The Player, only when provoked, responded at times using obscene language, and even then, he never reacted in disproportionate manner. Furthermore, the Player did not contest his exclusion from training with the first team and instead accepted the Club's orders to only train with a few other players, doing only exercises without the football;

- on the sporting front, the Player denied allegations that he had come unusually overweight from his vacation. All players, as per his testimony, come back from vacation slightly overweight, and he certainly was no exception to this rule. He had not come back abnormally overweight however, and it is simply untrue that his weight was further evidence of his unprofessional behaviour;

- as a result, all accusations regarding his unprofessional behaviour should fall either because they were untrue, or because they remain unproven. Under the circumstances, the DRC correctly decided that Benfica had not managed to demonstrate that its unilateral breach of contract had been with just cause;

- notwithstanding the above, throughout the internal investigation process, the Player cooperated with the appointed investigator, even though he felt that he had not received a fair treatment and the investigator was not independent at all.

46. Finally, with respect to the competence of the DRC to adjudicate the present dispute, the Player claims that this was, of course, the case, as per the relevant provision of the Contract that the Player had signed with Benfica.

47. The Player submitted the following requests for relief:

"*To entirely uphold the appealed decision; and to*

Condemn the Appellant, as the sole responsible for the present procedure, to bear all proceeding costs, as well as to contribute towards the expenses incurred by the Player (e.g. with legal assistance, transports, meals and accommodation) in a total amount no less than CHF 25.000,00 (twenty five thousand Swiss Francs)."

ii. FC Utrecht B.V.

48. Benfica claims that Utrecht must be considered jointly and severally liable with the Player to compensate Benfica under Article 17.2 RSTP.

49. Utrecht refutes the claim advanced by Benfica on the following grounds:

- the new club is jointly and severally liable, under Article 17.2 RSTP, under the strict conditions established in CAS jurisprudence. To this effect it is useful to distinguish between cases where the player has terminated the contract and cases where the former club has done so;
- with respect to the former cases, the new club can be held severally and jointly liable, and, as per the case law cited by Benfica, even if the new club had no involvement in the decision of the player to sign with it his new contract;
- with respect to the latter cases, case law (notably, *CAS 2013/A/3365* and *CAS 2013/A/3366*) has established that the new club cannot be held liable, if the following three criteria have been cumulatively met, namely:
  - it is the former club's decision to terminate the contract, and dismiss the player;
  - the player had no intention of leaving the club;
  - the new club was not involved in the termination of the employment relationship.

50. Utrecht states that the case law cited by Benfica is not germane to the present case, since all of the cited cases involve termination of the contract by the player, and not the club. This had not been the case in the present dispute.

51. Furthermore, Utrecht submitted that it cannot be held liable since all conditions established in the mentioned case law, when the club has dismissed the player, are met in the present dispute, i.e.:

- the Player had no intention of leaving Benfica in the first place:
  - indeed, the monthly monetary compensation he received upon signing the contract with Utrecht was only a fraction of the compensation he was entitled to under the terms of his employment contract with Benfica;
  - the Player lodged a request for an interim measure before the Portuguese competent court, in his effort to undo Benfica's decision to suspend him from practicing. This is proof of his intention to stay with Benfica and not move to another club;
- Utrecht was not involved at all in the Player's decision to leave Benfica. Indeed, it was the Player who, weeks after Benfica had terminated their employment relationship, approached Utrecht, and its technical director Mr Erik ten Hag.

Although he had trained with Utrecht since March 2017, Utrecht did not offer the Player a contract until 8 June 2017, that is four months after the Contract had been terminated, and weeks after Utrecht had received the translation of the Benfica's decision to terminate the Contract.

52. Utrecht has submitted the following prayers for relief:

"To decide that Second Respondent cannot be held jointly and severally liable for the Player's possible payment in the event the Panel is of the opinion that the Player is required to pay compensation to Appellant; and

To decide that Appellant shall be liable for all costs and expenses incurred by the Second Respondent in bringing this appeal including the costs and expenses of the CAS."

iii. FIFA

53. FIFA made two claims, one of procedural and one of substantive nature:

- it claimed that it has no standing to be sued, and invoked *CAS 2015/A/4000* to this effect. This jurisprudence distinguishes between "horizontal", and "vertical" disputes:
    - the former are cases like the present dispute, where FIFA's involvement in the dispute is confined to that of adjudicator. In similar cases, as per the cited jurisprudence, FIFA has no passive standing to be sued;
    - conversely, "vertical" disputes involve FIFA as party to the dispute. In this setting, and in this setting only, FIFA has standing to be sued;
    - since in the present dispute, FIFA's involvement was restricted to its role as adjudicator (the DRC issuing the appealed decision), Benfica wrongfully identified FIFA as a respondent.
- FIFA further claimed that the Appealed Decision was correct and should be upheld. To this effect, it reiterated the relevant practice and jurisprudence, according to which contractual stability emerges as priority in the FIFA legal framework, and termination of contract, even when facing infractions should be resorted to only at last resort (*ultima ratio*), and should, anyway, be proportional to whatever contractual violation it is meant to redress.

54. As to requests for relief:

"... *FIFA respectfully requests CAS to issue an award on the merits:*

(a) rejecting the reliefs sought by the Appellant;
(b) confirming the Appealed Decision;
(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and
(d) ordering the Appellant to make a contribution to FIFA's legal costs."

V. JURISDICTION

55. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the Code and Article 58 para. 1 of the FIFA Statutes in connection with Article 24 para. 2 RSTP.

56. Article R47 of the Code stipulates:

"*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.*"

57. Article 57 para. 1 of the FIFA Statutes states:

"*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players' agents.*"

58. Article 58 para. 1 of the FIFA Statutes further states:

"*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.*"

59. Article 24 para. 2 RSTP provides that:

"*[...] Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS).*"

60. The present appeal is directed against a final decision of the DRC. Accordingly, the CAS has jurisdiction to rule on the appeal filed by Benfica. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by all Parties.

61. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case, and can decide the dispute *de novo*. The Panel may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY

62. Article R49 of the Code determines 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.*"

63. In accordance with Article 58 para. 1 of the FIFA Statutes,

"appeals against final decisions passed by FIFA's legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question."

64. There is no dispute that the Statement of Appeal, as explained above, was filed within the statutorily permissible 21 days after notification of the DRC decision. Benfica's appeal complies with all other requirements of Article R48 of the Code.

65. The appeal is therefore, admissible (a point never contested by the Respondents).

VII. APPLICABLE LAW

66. There is an issue between the Parties as to the law applicable to the dispute. Whereas Benfica claims that Portuguese law applies exclusively in this dispute, two Respondents (the Player, and FIFA) refute the application of Portuguese law. In their view, FIFA law applies (e.g., the FIFA regulations, and in particular, the RSTP), and Swiss law, on a subsidiary basis.

67. Benfica does not deny that the Contract it signed with the Player made express reference (Articles 13 and 18) to FIFA regulations, including the RSTP, as well as to Swiss law, the applicability of which was explicitly acknowledged on a subsidiary basis. It argues nevertheless that the Player voluntarily accepted the applicability of Portuguese law by: (i) submitting to the internal disciplinary procedure commenced by Benfica to investigate the well-founded unprofessional conduct of the Player; and (ii) submitting a request to the competent Portuguese Labour Court, asking to be re-integrated at the Club. As a result, Portuguese law exclusively governs the present dispute, from the moment he submitted to the internal disciplinary proceedings.

68. To further substantiate its legal opinion on the law applicable to the present dispute, Benfica solicited the legal opinion (expertise) of Professor Pedro Martinez. Professor Martinez appeared before the Panel, and explained why, in his view, it was Portuguese law and Portuguese courts which would exclusively matter when it came to resolving employment disputes, like the present one.

69. The Player claims that the dispute was governed by the relevant FIFA regulations, including the RSTP, as well as Swiss law, to the extent relevant. Recourse to Swiss law nevertheless, should be made on a subsidiary basis. The Player underscored that Clause 13 of the Contract did not make reference to Portuguese law at all, which thus, remained inapplicable.

70. Utrecht did not expressly address the issue of applicable law in its Answer.

71. FIFA submits that the dispute should be adjudicated in accordance with the FIFA regulations, and in particular the RSTP (2016 edition), as well as, on a subsidiary basis, Swiss law.

72. To resolve this issue, the Panel recalls that Article R58 of the CAS Code required it to 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."

73. Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC reads as follows:

"*In their application and adjudication of law, the Players' Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at a national level, as well as the specificity of sport.*"

74. In similar vein, Article 25.6 RSTP reads in material part as follows:

"*[...] the Dispute Resolution Chamber [...] shall, when taking [its] decisions, apply these regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of the sport.*"

75. Finally, Article 57.2 of the FIFA Statutes reads as follows:

"*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.*"

76. The Panel has reviewed the voluminous CAS jurisprudence on and around these provisions. In its view, case law on this score has not evolved in linear manner. There are various inconsistencies, but the Panel sees no benefit in addressing them one by one. Moreover, the regulations are not perfectly drafted nor, if read literally, reflect unambiguously in all instances what FIFA contends was the intent.

77. In the Panel's view, it ought, in the light of the above, to decide the applicable law by asking first the following threshold question: is the factual matter before it addressed in the relevant FIFA statutes?

78. If the answer is yes, then the Panel would distinguish between two instances:

i. Cases where FIFA laws are "complete", and hence there is no need to have recourse to Swiss laws to fill the gaps; and

ii. Cases where FIFA laws are "incomplete", and hence recourse to Swiss laws to fill the gaps becomes a necessity.

79. In the latter case, Swiss laws could lead the Panel to inquire into the law chosen by the Parties (assuming it is different from FIFA statutes and Swiss law).

80. The provisions quoted in paragraphs 72-75 above establish a hierarchy between FIFA laws, Swiss law, and choice of law by the parties, which is consonant with the rationale for, and hence objective of, the adoption of the RSTP: to provide (some) harmonisation regarding, *inter alia*, contractual stability, and conditions for transfer of players.

81. That objective would not be attained if the DRC were to apply national laws chosen by

the parties right away, and thus enter the realm of regulatory diversity when adjudicating disputes coming under its aegis.

82. The Panel would also like to recall in this context that it is dealing with disputes, such as the present, submitted to the DRC (and by means of appeal to CAS), rather than with cases where parties have agreed to submit their dispute to national courts.

83. Finally, the Panel would like to recall, that, even if it were to confine itself to the language of the Contract, the result would be the same: both Articles 13 and 18 of the Contract refer to the FIFA regulations, including RSTP, as well as, on a subsidiary basis, to Swiss law.

84. In light of the above, the Panel finds that to resolve the factual issue before it, it will apply the relevant FIFA statutes and regulations, and, if need be, Swiss law on a subsidiary basis. Consequently, it decides to analyse the merits, that is, the question whether Benfica had just cause to terminate the Contract, by subjecting the facts as presented above to the relevant provisions of FIFA rules and regulations, and more specifically, Articles 13 et seq. of the RSTP (2016 edition, since the dispute concerns facts that occurred in 2017). To the extent necessary, the Panel will have recourse to Swiss law.

VIII. MERITS

A. Competence of the FIFA DRC

85. At the outset, the Panel will address the claim by Benfica that the DRC had no competence to adjudicate the Appealed Decision, and, consequently, this Panel should annul the Appealed Decision on these grounds.

86. The Panel does not concur with this view. Clause 18.2 of the Contract signed between Benfica and the Player reads:

"The contracting parties herein agree to select, as the case may be, the Player Status Committee, the Dispute Settlement Chamber and the Court of Arbitration for Sport in Lausanne, waiving any other jurisdictional body, however appropriate it may be, as the competent body to settle any queries, procedures or controversies arising out of the present contract."

87. This language is unambiguous. The terms "*waiving any other jurisdictional body*" appearing in this clause, leave the Panel without doubt that, if at all, the choice for the parties would be restricted to the three bodies explicitly mentioned in this provision. The choice, nevertheless, is constrained by the subject-matter of their dispute.

88. Benfica claims that, by subjecting himself to the procedures before the Portuguese authorities, the Player had, *ipso facto*, waived his jurisdictional rights under Clause 18.2 of the Contract.

89. The Panel disagrees with this view. First, the Player had no choice but to subject himself to the internal disciplinary procedure instituted by Benfica against him in August 2016. Indeed, Article 10 of the Contract says as much, when it states that the Player must

observe the regulations established by Benfica. Article 10 is of course, integral part of the Contract linking the Player to Benfica, disputes over which can, as per Clause 18.2 of the Contract, be adjudicated exclusively before the three bodies mentioned in that provision.

90. The Player thus, did not engage in forum shopping, as alleged by Benfica. In fact, he behaved in good faith by subjecting himself to the internal disciplinary procedure initiated by Benfica, as he was contractually obliged to do.

91. Subsequently, when he disagreed with the outcome of the procedure, he complained before the DRC, as he was entitled to by virtue of Clause 18.2 of the Contract.

92. As to his request for an interim measure before the Portuguese Court, asking it to force Benfica to re-integrate him in team practices, the Panel fails to see how through this submission the Player waived his rights under the Contract. The obvious rationale behind his initiative was fast relief, since the Player was temporarily suspended from Benfica's activities, and his playing career was being affected by the suspension.

93. At any rate, his request for provisional measures before the Portuguese Court (requesting the cancelation of his suspension) is, when viewed from the angle of the subject-matter involved therein, alien, or, at best, only tangentially, linked to his request before the DRC. The latter concerned the absence of just cause for terminating the contract, and not his re-integration to Benfica's activities during the pendency of the disciplinary proceedings.

94. As a result, the Panel refutes Benfica's claim with respect to the alleged lack of competence of the DRC to adjudicate the complaint that the Player had lodged.

95. Having decided this issue, the Panel next turns to the alternative claim by Benfica, namely, that it indeed had just cause to terminate the employment relationship with the Player, and consequently, that this Panel should annul the Appealed Decision, which had ruled otherwise.

96. Before evaluating the analysis and evidence relied on by the Appellant to establish just cause, the Panel makes the following preliminary observations:

(i) The DRC had in front of it all of the evidence submitted to the Panel to this effect.

(ii) The Panel can review the dispute *de novo* (Article R57.1 of the Code). In doing so, it is not limited to reviewing the legality of the appealed decision, but can issue a new decision based on legal and factual reasoning that did not form the basis of the decision issued by the DRC, subject only to the limitations imposed by Article. 57.3, notably where introduction of fresh evidence would be abusive.

(iii) Procedural flaws that occurred through the previous instance can be cured by the *de novo* appeal to the CAS.

(iv) The burden of proof to establish just cause (and, accordingly, to rebut the evaluation by the DRC) lies with Benfica (the Appellant), as underscored by longstanding CAS jurisprudence:

> "*According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*
>
> *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party*" (*CAS 2016/A/4580*, para. 91, with further references to *CAS 2015/A/309*, *CAS 2007/A/1380*, *CAS 2005/A/968* and *CAS 2004/A/730*).

97. In what now follows, the Panel divides its discussion into three parts:

- under (B) it will first explain its understanding of the term "just cause", and it will then subject the facts of this case to its understanding of the term;
- under (C), the Panel will discuss the complaint of Benfica against Utrecht, namely, that the latter is jointly and severally liable to compensate Benfica up to the amount requested from the Player through the present complaint;
- finally, under (D), the Panel will discuss the complaint by Benfica against FIFA.

B. Did Benfica Have Just Cause to Terminate the Contract?

98. The Panel would first like to recall that, pursuant to the legal maxim "*pacta sunt servanda*", contracts must be performed in good faith (Swiss Federal Tribunal, ATF 135 III 1, c. 2.4). Article 14 RSTP still provides for the possibility of unilaterally terminating a contract, assuming the party terminating the contract has just cause to this effect:

> "*A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause*".

99. The Commentary on the RSTP offers some clarifications regarding the ambit and scope of "just cause":

> "*The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the*

terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally" (RSTP Commentary, N2 to Article 14).

100. CAS jurisprudence has specified that, while the FIFA rules do not precisely define the concept of "just cause", reference to it is compulsory when it is relevant to resolve disputes (*CAS 2006/A/1062*; *CAS 2008/A/1447*).

101. At this stage, the Panel wished to underscore that Article 337.2 of the Swiss Code of Obligations ("CO") contains a similar concept:

"*In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.*".

102. The concept of "just cause", as defined in Article 14 RSTP, is similar to the concept of "good cause" included in Article 337.2 CO. The Panel recalls that recourse to Swiss law on subsidiary basis is warranted, as per the above discussion regarding the applicable law. In this case, when it comes to understanding the scope and ambit of "just cause", the two bodies of law are mutually reinforcing.

103. In fact, when considering the existence of a "just cause" or "good cause", respectively, the CAS has often followed the jurisprudence of the Swiss Federal Tribunal, according to which "good cause" exists (and, consequently, an employment contract may be lawfully terminated) when the fundamental terms and conditions (either general/objective or specific/personal), which formed the basis of the contractual arrangement are no longer respected (ATF 101 Ia 545). Lack of respect of auxiliary terms and conditions, conversely, could not be relied on as a "good cause" or "just cause" for lawfully terminating a contract.

104. In this vein, the Swiss Federal Tribunal has repeatedly held that, in the presence of good cause, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2001; Judgment 4C.67/2003 of 5 May 2003; WYLER R., Droit du travail, Berne 2002, p. 364; TERCIER P., Les contrats spéciaux, Zurich 2003, N 3402, p. 496). In this jurisprudence, the contractual infringement by the counterparty allowing for such release from obligations must be serious (Judgment 4C.240/2000 of 2 February 2001).

105. The case law of the Swiss Federal Tribunal offers various illustrations of "just cause" (or lack of it). A unilateral or unexpected change in the status of an employee, which is not related either to company requirements or to the organization of the work or to a failure of the employee to observe his/her obligations has been considered a just cause for termination (Unpublished judgments of 7 October 1992 in SJ 1993 I 370, of 25 November 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81). Similarly, in certain circumstances, a refusal to pay all or part of the salary has also been considered just cause for termination (STAEHLIN A., Kommentar zum Schweizerischen Zivilgesetzbuch, Obliagtionenrecht, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/ WAEBER/BRUCHEZ, Commentaire du contrat de travail, Lausanne 2010, N 7 ad Art. 337 CO).

106. CAS jurisprudence echoes the case law of the Swiss Federal Tribunal, in that only material breaches of a contract can be considered as "just cause" (*CAS 2006/A/1062*; *CAS 2006/A/1180*; *CAS 2007/A/1210*; *CAS 2006/A/1100*).

107. From a procedural perspective, for a party to be allowed validly to terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its own obligations. A CAS Panel, by way of a typical illustration, has held that:

> "*[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship*" (*CAS 2006/A/1180*).

108. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning were deemed necessary, i.e. in a case when it is clear that the other side does not intend to comply with its contractual obligations.

109. In a nutshell, arbitral tribunals retain a substantial margin of judgment discretion in determining whether a change in circumstances could be a "just cause", given the spectrum described above. It is clear nevertheless, that two requirements must be met for just cause to exist:

- A substantive requirement, consisting usually in a pattern of behaviour that renders the continuation of the employment relationship in good faith unreasonable for the party giving notice. This does not mean that one isolated incident, if it is of such gravity that leads to the same outcome, cannot in and of itself suffice to serve as just cause;

- A procedural requirement, that is, the obligation of the party with just cause terminating the contract to furnish its contractual partner a written notice to this effect.

110. In a case involving private information (where the party possessing it might have no incentive to provide it fully or at all), the allocation of the burden of proof, and the ensuing burden of persuasion, become key factors in the assessment.

111. It is against this legal benchmark that the Panel will proceed to evaluate the question of whether Benfica had just cause in terminating the Contract. In that context, the Panel needs to assess the behaviour of both of the contractual parties (i.e. Benfica and the

Player), since a contractual relationship by definition involves a strategic interaction between parties, and it is very rarely the case that one party's actions are totally independent of the behaviour of the other party.

112. The legal consequence that the Panel will draw from its analysis will, thus, be informed by the behaviour of the parties throughout the life of their contractual relationship.

113. The Panel recalls that Benfica accused the Player of unprofessional behaviour consisting of:

- Alleged serial misconduct towards the Club's officials;
- His alleged participation in a brawl at a Portuguese night club;
- Indifference when performing his contractual obligations, consisting namely of training with low intensity, and returning overweight from his vacation;
- An incident with the Dutch U-19 national team;
- The speed-driving incident in France.

114. In fact, Benfica is not claiming that it was led to terminate the contract because of one incident, but because of a behavioural pattern adopted by the Player which was hardly reconcilable with his contractual duty to adopt a professional conduct when under contract with Benfica.

115. If the Panel were to dissect, and examine the elements one by one, the inescapable conclusion is that the termination of the Contract was a disproportionate measure.

116. The Player's alleged misconduct towards the Club's officials, even if true, would warrant a more lenient reaction, if this had been the only instance of unprofessional conduct. Benfica could have imposed a fine, for example, and a second heavier fine if this conduct had persisted (the Panel notes in this regard that fines were only levied on the Player for his behaviour in connection with the U-19 Dutch National Team and for speeding while in France).

117. Regarding his participation in the brawl, there are question marks and grey areas, that the Panel did not manage to clarify and resolve. The witnesses appearing on behalf of the Player before the Panel provided contradictory statements to this effect, casting thus doubt on the veracity of their claim that the Player was absent when the brawl occurred. The Player testified that he was indeed absent, but two Portuguese journals had published contradictory statements to this effect. But more to the point, both the investigator when testifying before the Panel, as well as Benfica itself when pleading its case at the hearing, stated in unambiguous terms that the night brawl incident was not the tipping point that provoked the termination of the contract. In the Appellant's own admission thus, termination of the employment relationship because of this incident is a disproportionate measure.

118. His indifference expressed through low intensity during training sessions, or returning overweight from vacation, does not deserve a drastic response such as termination of employment either. Indeed, these are hardly the type of incidents that the FIFA legislator

had in mind when providing the commentary on "just cause", as seen above.

119. His inconsequential speed driving (in the sense, that he did not cause any damage other than violating the speed limit) belongs to the same category of minor infractions and occurred many months before the disciplinary proceeding. In any event, Benfica had already fined the Player for this matter and it may not sanction him again for the same behaviour (*ne bis in idem*).

120. Finally, the incident with the Dutch U-19 national team also occurred many months before the disciplinary proceeding and was addressed by Benfica, upon recommendation from the Dutch coach, Mr Aaron Winter, through a milder remedy; as the Player had already been sanctioned by Benfica for this matter, he could not be sanctioned again (*ne bis in idem*)

121. The claim by Benfica though, is not that the incidents viewed separately constituted just cause. The claim by Benfica is that the incidents are part and parcel of a pattern of behaviour that, when viewed in its entirety, constituted just cause for Benfica to have acted the way it did, and terminate its employment relationship with the Player. This is precisely the element in Benfica's argument that the DRC overlooked, and this is why the Panel disagrees with the rationale for the Appealed Decision.

122. Benfica was facing a case of unprofessional conduct. The Player had not been discriminated against. The mentioned incidents were reason enough for Benfica to ask the Player to train separately, and to conduct an internal investigation. The Player was not discriminated against either, during the time that he had been asked to train alone. The best proof is that another player, Mr Adel Taarabt, who had also been punished and was asked to train alone, did re-integrate the first team of Benfica upon demonstration of his change of behaviour.

123. This is not to suggest that the termination of the Contract was justifiable as well. In the Panel's view, while the internal investigation seemed warranted under the circumstances, the penalty chosen was disproportionate.

124. At this stage though, it is impossible to turn the clock back, and anyway no request to this effect has been submitted to the Panel either. Under the circumstances, the most appropriate remedy, in the eyes of the Panel, is a remedy calculated on the basis of mitigating factors, as explained above: Benfica was facing a situation of reiterative misconduct, but overshot its response by adopting a disproportionate remedy to redress it.

125. In the Panel's view, while termination of the contract was a disproportionate remedy, and the Player has consequently legitimate right to be compensated because of the damage he had suffered as a result, there are mitigating factors (as explained above in paragraphs 113-122), which must be taken into account when deciding on the extent of compensation due to the Player. The Player shall therefore be compensated by 50% of the compensation he was awarded by the DRC, that is, EUR 1,552,500.

C. The claim against Utrecht

126. The claim by Benfica against Utrecht pre-supposes that the contract had been terminated without just cause by the Player. In the opposite case, recourse to Article 17 RSTP is

unwarranted. The Panel has concluded that Benfica did not terminate the Contract with just cause, even though we have accepted the presence of mitigating factors. Article 17.2 RSTP states:

"If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment."

127. The new club, in this case Utrecht, can, consequently, be jointly and severally liable, if the Player is found to have terminated the Contract linking him to his former club without just cause (and thus, is liable to pay compensation). This has not been the case here, hence the claim of Benfica against Utrecht falls *ipso facto*.

D. The claim against FIFA

128. In his reiterated requests for relief, Benfica requested in relation to FIFA: (i) that FIFA did not have jurisdiction to hear the claim brought by the Player and that such competence rather corresponds by force of law to the Labour Courts of Lisbon (relief "A"); and (ii) that FIFA share, along with the other Respondents, the cost of arbitration, as well as its own legal fees (requests for relief "J" and "K"). The Panel will discuss this second issue in the last Section of this Award (Section X, entitled "Costs").

129. FIFA objects to Benfica's claim, asking the Panel to decide that it had no standing to be sued, as the dispute was of "horizontal" (as opposed to "vertical") nature, as discussed above. Of course, if FIFA had no standing to be sued, then the question of FIFA participating in the allocation of costs does not arise at all.

130. The Panel disagrees with the contention of FIFA that it lacks standing to be sued, because Benfica's relief A clearly addresses FIFA jurisdiction to decide the Player's claim. For starters, FIFA cited only one CAS award to support its claim, an award that is an outlier in the vast CAS jurisprudence. While Benfica could have introduced its complaint only against the Player (and/or Utrecht), Benfica had of course the right to include FIFA, the body that issued the Appealed Decision, in the list of Respondents.

131. Furthermore, to support its decision in this respect, the Panel recalled that Benfica's claim also addresses a vertical dispute, namely, FIFA's lack of jurisdiction to decide the Player's claim. In this vein, the Panel highlights relevant CAS jurisprudence, namely, *CAS 2015/A/3962*:

"*Neither the CAS Code nor FIFA Regulations contain specific rules on the right to be sued. Pursuant to CAS case law, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. In general, pursuant to art. 75 of the Swiss Civil Code (SCC), as interpreted by case law, a decision made by an association cannot be turned aside without the association being summoned. However, it is also understood that art. 75 SCC does not apply indiscriminately to every decision made by an association, but its applicability has to be determined on a case-by case basis. When the decision taken by the association is not related to a matter of its own but merely relates to a contractual relationship between its members, a so-called "horizontal matter", acting as a first instance decision maker, art. 75 SCC is not necessarily applicable.*"

IX. CONCLUSION

132. Pursuant to its above analysis, the Panel comes to the conclusion that it should:

(1) partially uphold the claim by Benfica;

(2) order Benfica to pay the Player EUR 1,552,500 with immediate effect. Because the Panel disagreed with the rationale of the Appealed Decision, a 5% interest rate should be added not from the date when the original complaint was issued, but from the date when this Award is issued;

(3) all other requests for relief are rejected.

X. COSTS

133. Article R64.4 of the Code, which is applicable to this proceeding, provides that:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties*".

134. Article 64.5 of the Code provides that:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to 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 complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties*".

135. In light of the outcome of these proceedings, the Panel considers that the costs of the arbitration, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne at two thirds by Benfica and one third by the Player. While Benfica partially succeeded in its appeal, the Panel considers that the overall allocation of costs fairly reflects its lack of success on several issues that it raised.

136. The Panel also considers that, in principle, each Party should bear its own legal fees and other expenses incurred in connection with these proceedings. Nevertheless, the Panel also decided that Benfica must also make a contribution of EUR 2,500 to cover in part the legal costs incurred by Utrecht. In the Panel's view, both the facts of the case, as explained above, as well as the clear CAS jurisprudence on this score (*CAS 2013/A/3365* and *CAS 2013/A/3366*) justify this decision.

****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 September 2019 by Sport Lisboa e Benfica-Futebol SAD against the decision of the FIFA Dispute Resolution Chamber of 14 September 2018 is partially upheld.

2. Item 3 of the decision of the FIFA DRC of 14 September 2018 is amended as follows: Sport Lisboa e Benfica-Futebol SAD shall pay Bilal Ould-Chikh the sum of EUR 1,552,500 with immediate effect, to which a 5% interest rate will be due as of the date of issuance of this Award.

3. The costs of these proceedings, to be determined and served on the Parties by the CAS Court Office, shall be borne at a level of 2/3 (two-thirds) by Sport Lisboa e Benfica-Futebol SAD, and 1/3 (one-third) by Bilal Ould-Chikh.

4. Each Party shall bear its own legal costs, but Sport Lisboa e Benfica-Futebol SAD will also make a contribution of EUR 2,500 towards FC Utrecht B.V. in order to cover in part its legal costs.

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

Seat of arbitration: Lausanne, Switzerland
Date: 9 July 2020

THE COURT OF ARBITRATION FOR SPORT

Petros C. Mavroidis
President of the Panel

Rui Botica Santos
Arbitrator

Massimo Coccia
Arbitrator