

Decision of the Players Status Chamber

passed on 19 July 2022

regarding an employment-related dispute concerning the coach Jorge Hernán Crespo

BY:

Angélica ISLAS (Mexico), Single Judge of the PSC

CLAIMANT:

Jorge Hernán Crespo, Argentina

RESPONDENT:

São Paulo Futebol Clube, Brazil

I Facts

1. On 15 January 2021, the coach Jorge Hernán Crespo and São Paulo Futebol Clube concluded an employment contract valid as from 15 February 2021 until 31 December 2022.
2. According to clause 4 of the employment contract, the coach was entitled to a gross monthly salary of BRL 435,000 between February 2021 until December 2021 and BRL 296,301 from January 2022 until December 2022.
3. Clause 1 of the employment contract stipulated the following:
"CLÁUSULA PRIMERA - El CONTRATADO prestará servicios de técnico / entrenador del equipo profesional de fútbol del CONTRATANTE, encargándose de la dirección de las actividades del referido equipo y de la orientación técnica y táctica a los atletas, de los cuales exigirá disciplina, obediencia, empeño, perfeccionamiento y conducta ética, con el de cumplir su contrato de trabajo, la legislación deportiva, los reglamentos oficiales y las normas establecidas por el CONTRATANTE."

Free translation into English:

"CLAUSE ONE - The CONTRACTOR shall provide services as coach/trainer of the CONTRACTOR's professional football team, in charge of directing the activities of said team and of the technical and tactical guidance to the athletes, from whom he/she shall demand discipline, obedience, commitment, improvement and ethical conduct, in order to comply with his/her employment contract, sports legislation, official regulations and the rules established by the CONTRACTOR."

4. Art. 3 of the employment contract stipulated the following:
"CLAUSULA TERCERA - Si bien el presente contrato tiene un plazo fijo, cualquier PARTE podra, en cualquier momenta, anticipar la terminación de este contrato de trabajo, y en este caso, la PARTE responsable de dicha terminacion anticipada debera abonar a la otra la cantidad de R\$ 2.716.200,00, si ocurre hasta el 30 de junio de 2021; de R\$ 2.037.150,00, si ocurre entre el 1 de julio y el 31 de diciembre de 2021 y, finalmente, de R\$ 1.358.100,00, si ocurriera antes de la finalizacion del contrato. En todos los casos, dichas sumas son netas y liquidas de impuesto a las ganancias y / o de cualquier otro impuesto que grave dichos pagos y que deba abonar el CONTRATADO en Brasil.
(...)

"A todo evento se deja aclarado que, en ambos casos, dichas sumas tienen naturaleza punitiva, por lo cual no será necesario demostrar la existencia de daño alguno ni será posible aplicar la mitigación en caso que el ENTRENADOR suscriba contrato con una nueva institución luego de la rescisión, debiendo en cualquier caso abonarse las sumas acordadas de manera íntegra y en el plazo pactado. Dichas sumas deberán ser abonadas dentro de los 30 días posteriores a la terminación de este contrato. En caso de falta de pago de cualquiera de dichas sumas en el plazo indicado, las partes acuerdan la aplicación de un interés mensual del 1% el que comenzará a computarse a partir del día siguiente al vencimiento del plazo fijado para el pago de las mismas."

Free translation into English:

"CLAUSE THREE - Although the present contract has a fixed term, either PARTY may, at any time, anticipate the termination of this employment contract, and in this case, the PARTY responsible for such early termination shall pay to the other the amount of R\$ 2.716,200.00, if it occurs until 30 June 2021; of R\$ 2,037,150.00, if it occurs between 1 July and 31 December 2021 and, finally, of R\$ 1,358,100.00, if it occurs before the end of the contract. In all cases, such sums are net and net of income tax and/or any other tax levied on such payments and payable by the CONTRACTOR in Brazil".

(...)

"In any event it is made clear that, in both cases, such sums are punitive in nature, so it will not be necessary to prove the existence of any damage nor will it be possible to apply the mitigation in the event that the COACH signs a contract with a new institution after the termination, and in any case the agreed sums must be paid in full and within the agreed period. Such sums must be paid within 30 days of the termination of this contract. In the event of non-payment of any of the said sums within the period indicated, the parties agree to the application of a monthly interest of 1%, which shall begin to be calculated as from the day following the expiry of the period fixed for the payment of the said sums".

5. In addition, on 15 February 2021, the parties concluded an image rights agreement ("*Instrumento particular de contrato de licencia de derecho de uso de nombre, apodo deportivo, voz e imagen*").

6. The contract stipulated, inter alia, the following:

"La licencia del uso de los DERECHOS DE IMAGEN del ENTRENADOR, descrita en el presente contrato, abarca todas las formas de captación, fijación, exposición y reproducción de la IMAGEN, incluyendo, pero no limitando, las fotografías, reproducciones tridimensionales, dibujos, videos, audios y caricaturas."

Free translation into English:

The licence to use the COACH'S IMAGE RIGHTS, described in this contract, covers all forms of capture, fixation, exhibition and reproduction of the IMAGE, including, but not limited to, photographs, three-dimensional reproductions, drawings, videos, audio and cartoons.

7. Clause 5 of the image rights agreement stipulated the following:

5 - 1 Las PARTES acuerdan que debido a la apreciación positiva inmediata de la IMAGEN del ENTRENADOR, SPFC pagará a la CONTRATADA un monto cierto, único y ajustado en Reais equivalente a US\$ 300,000.00 netos, líquidos y libres de cualquier impuesto que deba abonarse en la República de Brasil relacionada con dicho pago. Dicha suma será abonada en 4 (cuatro) cuotas de US\$ 75.000,00, en febrero, mayo, junio y septiembre de 2021.

5.2 Sin perjuicio de lo anterior, al otorgar la licencia de uso de la IMAGEN del ENTRENADOR, SPFC pagará a la CONTRATADA, en forma adicional a las sumas indicadas en el ítem 5.1, el monto anual en Reais equivalente a US\$ 389.600.- netos, líquidos y libres de cualquier impuesto en Brasil, durante el año 2021, y el monto anual en Reais equivalente a US\$382.400.- netos, líquidos y libres de cualquier impuesto en Brasil durante el año 2022. Dichas sumas se pagarán en cuotas en forma mensual, con vencimiento cada cuota el décimo (diez) día de cada mes siguiente a la entrada en vigencia de la licencia. Es decir, la suma correspondiente al año 2021 se abonará en 10 cuotas de USD 38.960.- netos, líquidos y libres de cualquier impuesto en Brasil, vencimiento la primera el 10 de marzo de 2021 y la última el 10 de enero de 2022. Y la suma correspondiente al año 2022 se abonará en 12 cuotas de USD 31.866,67.- netos, líquidos y libres de cualquier impuesto en Brasil, vencimiento la primera el 10 de febrero de 2022 y la última el 10 de enero de 2023.

(...)

5.9 Asimismo, se deja constancia que las sumas establecidas en la cláusula TERCERA del contrato de trabajo suscripto entre SPFC y el INTERVINIENTE en el día de la fecha deberán ser ajustadas de la misma manera que lo previsto en la cláusula 5.6. En consecuencia, de manera conjunta con el pago de la suma de reales prevista en dicha cláusula y en caso que corresponda, deberá el SPFC abonar una suma adicional en función de la variación de la relación entre el real y el dólar utilizada como referenda en dicha cláusula (dólar equivalente a 5,398305 reales) y la cotización del día en que se efectivice dicho pago.

Free translation into English:

5 - 1 The PARTIES agree that due to the immediate positive appreciation of the IMAGE OF THE COACH, SPFC shall pay to the CONTRACTOR a certain, one-time, adjusted amount in Reais equivalent to US\$ 300,000.00 net, liquid and free of any taxes payable in the Republic of Brazil in connection with such payment. Such sum shall be paid in 4 (four) instalments of US\$ 75,000.00, in February, May, June and September 2021.

5.2 Notwithstanding the foregoing, upon granting the licence to use the COACH'S IMAGE, SPFC shall pay to the CONTRACTOR, in addition to the sums indicated in item 5.1, the annual amount in Reais equivalent to US\$ 389,600.- net, liquid and free of any taxes in Brazil, during the year 2021, and the annual amount in Reais equivalent to US\$382,400.- net, liquid and free of any taxes in Brazil during the year 2022. Said amounts will be paid in monthly instalments, with each instalment due on the tenth (tenth) day of each month following the entry into force of the licence. That is to say, the amount corresponding to the year 2021 will be paid in 10 instalments of USD 38.960.- net, liquid and free of any taxes in Brazil, the first due on 10 March 2021 and the last due on 10 January 2022. And the one corresponding to the year 2022 will be paid in 12 instalments of USD 31,866.67, net, liquid and free of any taxes in Brazil, the first due on 10 February 2022 and the last on 10 January 2023.

(...)

5.9 It is further noted that the amounts set out in clause THREE of the employment contract signed between SPFC and the INTERVINIENT on the date hereof shall be adjusted in the same manner as provided for in clause 5.6. Consequently, together with the payment of the amount of reais provided for in that clause and if applicable, SPFC shall pay an additional amount based on the variation of the ratio between the real and the dollar used as a reference in that clause (dollar equivalent to 5.398305 reais) and the exchange rate of the day on which such payment is made.

8. The image rights agreement stipulated the following contingent payments:

"5. 4. Al otorgar la licencia para utilizar la imagen del ENTRENADOR, en caso de que el SPFC masculino, adulto y equipo de futbol profesional principal alcance alguno de los logros a continuación, las PARTES especifican expresamente el monto bruto que se adeudara por la variacion positiva de la imagen del ENTRENADOR, y el cual resultara directamente de la valorizacion de la imagen y exposicion del ENTRENADOR, de manera acumulativa, para cada uno de los siguientes y eventuales resultados positivos del equipo SPFC, siempre que este contrato continúe vigente cuando dicho resultado ocurra:

- Campeon de la Copa Conmebol Libertadores: el equivalente en reales a US\$800.000,00 (ochocientos mil dolares);

- Campeon de la Copa Conmebol Sudamericana: el equivalente en reales a US\$ 200.000,00 (doscientos mil dolares);

- Campeon del Campeonato Brasileño: el equivalente en reales a US\$ 500.000, 00 (quinientos mil dolares);

- Campeon de la Copa do Brasil: el equivalente en reales a US\$ 450. 000, 00 (cuatrocientos e cincuenta mil dolares);

Campeon del Campeonato Paulista: el equivalente en reales a US\$ 200. 000, 00 (doscientos mil dolares);

- Campeon del Campeonato Mundial FIFA: el equivalente en reales a US\$ 1.000.000,00 (un millon de dolares)."

Free translation into English:

"5. 4. In granting the licence to use the image of the COACH, in the event that the SPFC men's, adult and senior professional football team achieves any of the achievements below, the PARTIES expressly specify the gross amount that will be due for the positive variation of the image of the COACH, and which will result directly from the enhancement of the image and exposure of the COACH, on a cumulative basis, for each of the following and eventual positive results of the SPFC team, provided that this contract remains in force when such result occurs:

- *Champion of the Copa Conmebol Libertadores: the equivalent in reais of US\$800,000.00 (eight hundred thousand dollars);*
- *Champion of the Copa Conmebol Sudamericana: the equivalent in reais of US\$ 200.000,00 (two hundred thousand dollars);*
- *Champion of the Brazilian Championship: the equivalent in reais of US\$ 500.000,00 (five hundred thousand dollars);*
- *Copa do Brasil Champion: the equivalent in reais of US\$ 450,000.00 (four hundred and fifty thousand dollars);*
- Campeonato Paulista Champion: the equivalent in reais of US\$ 200,000.00 (two hundred thousand dollars);*
- *Champion of the FIFA World Championship: the equivalent in reais of US\$ 1.000.000,00 (one million dollars)".*

9. Clause 5.8 of the image rights agreement foresaw the following consequences in case of a delayed payment for more than 60 days:

"(...) Si SPFC no subsanara el incumplimiento en dicho plazo, LA CONTRATADA y / o la INTERVINIENTE a titulo personal podrán reclamar el pago de las mismas en los terminos de lo previsto por el Art. 5 del Anexo 8 del Reglamento sobre el Estatuto y la Transferencia de Jugadores de FIFA."

Free translation into English:

"(...) If SPFC fails to remedy the non-compliance within the said period, the CONTRACTEE and/or the INTERVINIENT in their personal capacity may claim payment of the same in accordance with the provisions of Art. 5 of Annex 8 of the FIFA Regulations on the Status and Transfer of Players".

10. The image rights agreement further stipulated the following:

"9-1 Toda y cualquier disputa o litigio procedente del presente Contrato debera ser sometido a los organos competentes de la FIFA y/o a la Corte Arbitral de Deportes - CAS (a eleccion del reclamante).

(...)

9-5 Las Partes acuerdan expresa e irrevocablemente que las comunicaciones entre las PARTES sobre este Contrato de Trabajo deben ser por escrito"

Free translation into English:

"9-5 The Parties expressly and irrevocably agree that communications between the PARTIES concerning this Employment Contract shall be in writing".

(...)

Any and all disputes or litigation arising out of this Contract shall be submitted to the competent bodies of FIFA and/or the Court of Arbitration for Sport - CAS (at the Claimant's choice).

11. On 13 October 2021, the club sent a termination letter to the coach, while noting that it will pay the agreed penalties

12. On 21 December 2021, the legal representative of the coach sent a default notice by means of which he requested the payment of total amount of USD 1,283,390.14 net, detailed as follows: the following (free translation from English):

"a. USD 377,368.42 net, for the early termination without cause of the employment contract (clause THIRD of the Employment Contract), plus interest of 1% per month as contractually agreed, from 12 November 2021.

b. USD 460,320 net, as compensation (residual value) for the early termination without cause of the employment contract, plus interest at the contractually agreed rate of 1% per month, as of the date of termination, i.e. 13 October 2021.

c. USD 150,000 net, as provided for in Article 5.1 of the Image Agreement, plus interest of 1% per month as contractually agreed, according to the following schedule:

i. USD 75,000 corresponding to the instalment due in June 2021, plus interest at the rate of 1% per month from 1 July 2021.

ii. USD 75,000 corresponding to the instalment due in September 2021, plus interest at 1% per month as from 1 October 2021.

d. The sum of USD 116,880 net, plus interest at 1% per month as contractually agreed under Article 5.2 of the Image Contract, according to the following schedule:

i. USD 38,960 corresponding to the instalment due on 10 August 2021, plus interest of 1% per month as contractually agreed, as from 11 August 2021.

ii. USD 38,960 corresponding to the instalment maturing on 10 September 2021, plus interest of 1% per month as contractually agreed, as from 11 September 2021.

iii. USD 38,960 for the instalment maturing on 10 October 2021, plus interest at the contractually agreed rate of 1% per month from 11 October 2021 onwards.

e. The sum of USD 200,000 net, plus interest of 1% per month as contractually agreed, as from 10 June 2021, minus the partial payments made and imputed as explained in point III-, which results in a sum of USD 135,679.19, on which interest at a rate of 1% should be recognised as from 23 February 2021 until its effective repayment.

c) Tax debt

(...) USD 76,221.72"

13. On 7 January 2022, the club replied with a "comfort letter" insisting that it will comply with the contractual terms.

14. On 24 March 2022, the coach concluded an employment contract with the Qatari club, Al Duhail SC, valid as from the date of signature until 30 June 2023 for a total remuneration of USD 1,881,000, payable as follows:

- USD 621,080 as sign-on fee;
- USD 148,225 on 30 June 2022;
- USD 74,113 per month, from April 2022 until June 2023

15. On 4 February 2022, the Argentinean coach, Jorge Hernán Crespo lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause and requested the following:

a. USD 377,368.42 net, for the early termination without cause of the employment contract (clause THIRD of the Employment Contract), plus interest of 1% per month as contractually agreed, from 12 November 2021.

b. USD 460,320 net, as compensation (residual value) for the early termination without cause of the image rights agreement, plus interest at the contractually agreed rate of 1% per month, as of the date of termination, i.e. 13 October 2021.

c. USD 150,000 net, as provided for in Article 5.1 of the image rights agreement, plus interest of 1% per month as contractually agreed, according to the following schedule:

i. USD 75,000 corresponding to the instalment due in June 2021, plus interest at the rate of 1% per month from 1 July 2021.

ii. USD 75,000 corresponding to the instalment due in September 2021, plus interest at 1% per month as from 1 October 2021.

d. USD 116,880 net, plus interest at 1% per month as contractually agreed under Article 5.2 of the image rights agreement, according to the following schedule:

i. USD 38,960 corresponding to the instalment due on 10 August 2021, plus interest of 1% per month as contractually agreed, as from 11 August 2021.

ii. USD 38,960 corresponding to the instalment maturing on 10 September 2021, plus interest of 1% per month as contractually agreed, as from 11 September 2021.

iii. USD 38,960 for the instalment due on 10 October 2021, plus interest at the contractually agreed rate of 1% per month, starting 11 October 2021

e. USD 200,000 net (clause 5.4 of the image rights agreement) plus interest of 1% per month as contractually agreed, as from 10 June 2021, corresponding to the bonus for winning the Paulista Championship 2021 minus the partial payments already made, which results in a sum of USD 135,679.19, on which interest at a rate of 1% should be recognized as from 23 February 2021.

16. The Coach explained that the Image Contract is a cover for the labor contract, i.e. it is not a genuine the employment contract. The coach argued that the club did not use his image, name and much less his voice for commercial purposes at any time during their relationship.

17. The Coach declared that the splitting and the use of image contracts to include a significant portion of the agreed remuneration in the contracts in order to reduce the tax burden is a common practice in the football industry,

18. In its reply to the claim, the Respondent partially contested the competence of FIFA as it considered that the Image Rights Contract is not considered an employment-related dispute in light of FIFA rules and jurisprudence.

19. In this respect, the Respondent argued that the Employment Agreement was signed directly with Mr. Crespo to rule his legal employment relationship and activities as professional football coach of São Paulo. On the other hand, the Image Rights Contract was entered into with HERNAN CRESPO - MEI (i.e. a Company).

20. As to the substance, the Respondent argued that, concerning the image rights agreement, the Claimant was paid as follows:

Reason of Payment	Gross amount (BRL)	Corporate tax retained*	Gross deposit in BRL	Corporate tax**	Net value (BRL)	Date of Payment	Exchange rate (BRL to USD)	Net amount in USD	Supporting Document
Clause 5.1 (1/4)	500.798,43	(30.799,08)	469.999,35	-65.006,85	404.992,50	07/05/2021	5,40	75.000,00	Doc. 02
Clause 5.2 (1/8)	258.953,78	(15.925,63)	243.028,15	-32.648,05	210.380,10	07/05/2021	5,40	38.960,00	Doc. 02
Clause 5.2 (2/8)	258.953,78	(15.925,63)	243.028,15	-32.648,05	210.380,10	07/05/2021	5,40	38.960,00	Doc. 02
Clause 5.2 (3/8)	249.139,94	(15.322,08)	233.817,86	-31.334,95	202.482,91	27/07/2021	5,20	38.960,00	Doc. 02
Clause 5.2 (4/8)	247.963,44	(15.249,74)	232.713,70	-31.177,52	201.536,18	02/09/2021	5,17	38.960,00	Doc. 02
Clause 5.1 (2/4) and Clause 5.2 (5/8)	734.048,54	(45.143,98)	688.904,56	-96.215,70	592.688,86	14/09/2021	5,22	113.576,74	Doc. 02
Bonus	20.000,00	(4.749,37)	15.250,63	-2.129,98	13.120,65	20/08/2021	5,22	2.513,53	Doc. 02

Bonus	8.900,00	(547,35)	8.352,65	-1.166,57	7.186,08	24/09/2021	5,22	1.376,64	Doc. 02
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21. In relation to the payable compensation, the Respondent considered that clause 3 of the employment contract shall be applied.
22. In the opinion of the Respondent, from no perspective should the amount agreed upon by the Parties as liquidated damages be considered abusive to São Paulo, once the amount of BRL 2,037,150 corresponds to over 4 (four) monthly payments.
23. The Respondent considered that the coach shall bear all the procedural costs.
24. In his replica, the Claimant underlined that the club acknowledged that the contract was terminated without just cause on 13 October 2021.
25. The Claimant considered that FIFA shall be deemed as competent also for the image rights agreement, and noted the following elements:
- Both contracts were signed on the same day and were due to expire on the same day.
 - In both contracts Mr. Jorge Hernán Crespo appears as a party and signatory.
 - The image rights agreements provides for the payment of bonuses for winning championships, which is a typical clause of an employment contract.
 - The image rights agreements, in its point 9.5, establishes and classifies it as an employment contract.
 - The image rights agreements itself in point 5.8 states that the non-payment of any sum foreseen may be claimed under the terms of Art. 5 of Annex 8 of the FIFA RSTP (Art. 5 of the RSTP). Annex 8 of the FIFA RSTP (now Annex 2).
 - The image rights agreements itself in point 9.1 provides for the submission to the jurisdiction of FIFA jurisdictional bodies to resolve any dispute in connection with the contract.
26. As to the applicable currency, the coach referred to clause 5.9 of the image rights agreements and considered that intention of the parties was, by having agreed on the economic conditions in USD was to avoid the agreed remuneration being affected by the variation of the exchange rate of the BRL and the inflation in the country.
27. In its duplica, the Respondent insisted in the lack of jurisdiction of FIFA in relation to the image rights agreement.
28. In particular, the Respondent argued that the execution of contracts separately between São Paulo and the coach took place pursuant to the laws of Brazil specifically for football coaches, namely Federal Law 8.650/93 – “the Professional Football Coach Law”, and specific Brazilian legislation that governs sports relationships, that is, Federal Law 9.615/98 (“Pelé Law”).
29. In this respect, the Respondent argued that the image of the coach was exploited several times due to (i) the partnership with the clothing brand - VR Collezioni and the company in the automotive sector - Volvo; (ii) the partnership involving company Brahma in relation to the video celebrating São Paulo’s championship in 2021; (iii) the print of a brand placement inside the dressing room of its stadium, Estádio Cícero Pompeu de Toledo - Morumbi Stadium, which was also the subject of several jerseys sold in partnership with companies of São Paulo; (iv) his participation in several interviews with the objective of leveraging partnerships with brands stamped on São Paulo’s

backdrops, such as Adidas, Konami, Cimento Cauê, Brahma; (v) the partnership with Publisher Konami in 2021, among others.

II Considerations of the Players Status Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Players Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 4 February 2022 and submitted for decision on 19 July 2022. Taking into account the wording of art. 34 of the October 2021 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (June 2022 edition), she is competent to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
3. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering that the present claim was lodged on 4 February 2022, the October 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which she may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Admissibility

5. In reference to art. 24 par. 2 of the Procedural Rules, the Single Judge first recalled that the dispute at stake arises from an employment contract concluded between the parties on 15 January 2021, as well as on the basis of a so-called image right agreement, dated 15 February 2021.
6. In this regard, the Single Judge noted that the Respondent disputed the competence of FIFA, as it considered the Players' Status Chamber to not be competent in relation to the so-called image rights agreement. On the other hand, the Single Judge verified that the Claimant insisted in the competence of FIFA.
7. In view of the above, the Single Judge referred to the jurisprudence of the Football Tribunal, according to which, as a general rule, if there are separate agreements, FIFA tends to consider the agreement

on image rights as such and does not have the competence to deal with it. However, the Single Judge pointed-out that such conclusion might be different if specific elements of the separate agreement suggest that it was in fact meant to be part of the actual employment relationship. In the cases at hand, such elements appear to exist.

8. In this case, the Single Judge acknowledged that it is true that the image rights agreement thoroughly specifies that it *"covers all forms of capture, fixation, exhibition and reproduction of the IMAGE, including, but not limited to, photographs, three-dimensional reproductions, drawings, videos, audio and cartoons."*
9. Equally, the Single Judge did not neglect that the Claimant, Mr Hernán Crespo, is a globally known professional football coach and former player and, as such, could potentially be concerned by the commercial use of his image rights.
10. However, while referring to the contents of the "image rights agreement", the Single Judge observed that it occasionally refers to itself as an employment contract (cf. clause 9-5 of the "image rights agreement").
11. The Single Judge also noted that said agreement contains a series of bonuses for the performance, which are constructed as a bonus for the increase of the reputation for the coach. Yet, in the opinion of the Single Judge, this form of bonus traditionally works as an incentive in employment contracts, and this also seems to be the case. In other words, the club committed to reward the coach for his sports performance, which means that it is not paying for his image rights, but rather for his work as a coach. According to the Single Judge, if the contract truly referred to image rights, said bonuses would rather be related to aspects such as his appearances in the media or in marketing products, but not due to the sporting performance of the club.
12. Furthermore, the Single Judge observed that, following clause 5.8 of the image rights agreement, compensation is also to be calculated in accordance with the Regulations on the Status and Transfer of Players. The Single Judge concurred that this fact also serves as an indication of the sports employment nature of the "image rights agreement".
13. In addition, the Single Judge underlined that the image rights agreement grants jurisdiction to FIFA and CAS. By granting competence to FIFA, the Single Judge considered the parties implicitly understood that the so-called *"image rights agreement"* was *de facto* an employment agreement.
14. As a result, the Single Judge established that it cannot consider the image rights agreements as such, but rather as an additional agreement to the employment contract instead. Hence, the Single Judge confirmed that it is competent to examine the entire dispute, including the so-called *"image rights agreement"*, which is *de facto*, part of the employment contract concluded between the parties.

d. Merits of the dispute

15. Her competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge

emphasised that in the following considerations she will refer only to the facts, arguments and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

16. The Single Judge first recalled that the parties entered an employment relationship that was integrated by a contract dated 15 January 2021 (cf. point I 1 above), as well as by another contract signed on 15 February (cf. point I 5 above).
17. Subsequently, the Single Judge noted that the Claimant lodged a claim before FIFA, arguing that the club unilaterally terminated the contract without just cause on 13 October 2021.
18. On the other hand, the Single Judge took note of the Respondent's position which, on this point, acknowledged said termination, while argued that compensation shall be paid as per clause 3 of the employment contract.
19. In view of the above and given that the termination of the contract without just cause is uncontroverted, the Single Judge confirmed that the Claimant is entitled to compensation due to the unilateral termination of the contract without just cause on 13 October 2021. On this note, the Single Judge wished to underline that said termination comprises the termination of the two contracts concluded between the parties, i.e. the contract of 15 January 2021 and the contract of 15 February 2021.

ii. Consequences

20. Having stated the above, the members of the Single Judge turned her attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
21. Before entering into the calculation of the payable compensation, the Single Judge established that the Claimant is entitled to his outstanding dues until 13 October 2021, i.e. until the date of termination of the contract.
22. In this regard, the Single Judge took note of the position of the parties as well as the documentary evidence gathered during the investigation.
23. Therefore, the Single Judge examined the Claimed amounts, as follows.
24. In relation to the amount of USD 150,000 net, as provided for in Article 5.1 of the so-called image rights agreement, the Single Judge verified that the Claimant requested the following amounts:
 - USD 75,000 corresponding to the instalment due in June 2021, plus interest at the rate of 1% per month from 1 July 2021.
 - USD 75,000 corresponding to the instalment due in September 2021, plus interest at 1% per month as from 1 October 2021.

25. In this regard, the Single Judge observed that art. 5.1 of the image rights agreement stipulated four instalments, of USD 75,000 each, due on February, May, June and September 2021.
26. On this note, the Single Judge observed that the club provided did not provide evidence that the instalments due on June and October 2021 were paid.
27. As a result, in accordance with the principle of *pacta sunt servanda*, the Single Judge decided to award the outstanding amount of USD 150,000 net.
28. Moreover, considering the default interest agreed between the parties, the Single Judge decided to award 1% interest per month over said amount as from the due dates.
29. The Single Judge then observed that the Claimant requested the payment of USD 116,880 net, as agreed under Article 5.2 of the so-called image rights agreement, according to the following schedule:
 - USD 38,960 for the instalment due on 10 August 2021,
 - USD 38,960 for the instalment due on 10 September 2021,
 - USD 38,960 for the instalment due on 10 October 2021,
30. The Single Judge then verified that, as per the contract, the coach was entitled to USD 38.960 per month, as follows (until date of termination)
 - 1 - USD 38,960 on 10 March 2021;
 - 2 - USD 38,960 on 10 April 2021;
 - 3 - USD 38,960 on 10 May 2021;
 - 4 - USD 38,960 on 10 June 2021;
 - 5 - USD 38,960 on 10 July 2021;
 - 6 - USD 38,960 on 10 August 2021 (claimed);
 - 7 - USD 38,960 on 10 September 2021 (claimed);
 - 8 - USD 38,960 on 10 October 2021 (claimed);
31. The club provided evidence of having paid until instalment 4 (10 June 2021), but no evidence for instalments quoted in points 6, 7 and 8. Of the previous paragraph.
32. Therefore, in accordance with the principle of *pacta sunt servanda*, the Single Judge decided to award the outstanding amount of USD 116,880 net,
33. Moreover, taking into account the default interest agreed between the parties, the Single Judge decided to awards 1% interest per month over said amount as from the due dates.
34. The Single Judge then referred to the Claimant's request for USD 200,000 net (clause 5.4 of the image rights agreement), corresponding to the bonus for winning the Paulista Championship 2021 minus the partial payments already made, which results in a sum of USD 135,679.19.
35. In relation to this amount, the Single Judge observed that the Claimant did not provide any evidence about the conditions arising for the payment for this amount. Moreover, the Single Judge observed that there is no convincing evidence that the alleged partial payments are necessarily linked to this bonus.

36. As a result, the Single Judge decided to reject this part of the Claimant's request.
37. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the coach by the club in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
38. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.
39. In this regard, the Single Judge took note of the wording of clause 3 of the contract of 15 January 2021, which established the following:

"CLAUSULA TERCERA - Si bien el presente contrato tiene un plazo fijo, cualquier PARTE podra, en cualquier momenta, anticipar la terminación de este contrato de trabajo, y en este caso, la PARTE responsable de dicha terminacion anticipada debera abonar a la otra la cantidad de R\$ 2.716.200,00, si ocurre hasta el 30 de junio de 2021; de R\$ 2.037.150,00, si ocurre entre el 1 de julio y el 31 de diciembre de 2021 y, finalmente, de R\$ 1.358.100,00, si ocurriera antes de la finalizacion del contrato. En todos los casos, dichas sumas son netas y liquidadas de impuesto a las ganancias y / o de cualquier otro impuesto que grave dichos pagos y que deba abonar el CONTRATADO en Brasil.

(...)

"A todo evento se deja aclarado que, en ambos casos, dichas sumas tienen naturaleza punitiva, por lo cual no será necesario demostrar la existencia de daño alguno ni será posible aplicar la mitigación en caso que el ENTRENADOR suscriba contrato con una nueva institución luego de la rescisión, debiendo en cualquier caso abonarse las sumas acordadas de manera íntegra y en el plazo pactado. Dichas sumas deberán ser abonadas dentro de los 30 días posteriores a la terminación de este contrato. En caso de falta de pago de cualquiera de dichas sumas en el plazo indicado, las partes acuerdan la aplicación de un interés mensual del 1% el que comenzará a computarse a partir del día siguiente al vencimiento del plazo fijado para el pago de las mismas."

Free translation into English:

"CLAUSE THREE - Although the present contract has a fixed term, either PARTY may, at any time, anticipate the termination of this employment contract, and in this case, the PARTY responsible for such early termination shall pay to the other the amount of R\$ 2. 716,200.00, if it occurs until 30 June 2021; of R\$ 2,037,150.00, if it occurs between 1 July and 31 December 2021 and, finally, of R\$ 1,358,100.00, if it occurs before the end of the contract. In all cases, such sums are net and net of income tax and/or any other tax levied on such payments and payable by the CONTRACTOR in Brazil".

(...)

"In any event it is made clear that, in both cases, such sums are punitive in nature, so it will not be necessary to prove the existence of any damage nor will it be possible to apply the mitigation in the event that the

COACH signs a contract with a new institution after the termination, and in any case the agreed sums must be paid in full and within the agreed period. Such sums must be paid within 30 days of the termination of this contract. In the event of non-payment of any of the said sums within the period indicated, the parties agree to the application of a monthly interest of 1%, which shall begin to be calculated as from the day following the expiry of the period fixed for the payment of the said sums".

40. After analysing the content of the aforementioned clause, the Single Judge concluded that it fulfilled the criteria of reciprocity and proportionality, in line with the Single Judge's longstanding jurisprudence, and therefore was to be applied in the case at hand.
41. Consequently, the Single Judge decided that the amount of BRL 1,358,100 net, as per the compensation clause agreed between the parties in the contract, is due to the coach by the club.
42. In addition, as also stipulated in the clause, the Single Judge decided to award 1% interest p.a. over said amount as from the due date.
43. The foregoing been established, the Single Judge noted that said clause three is only applicable to the termination of the contract of 15 January 2021, i.e. the contract properly labelled as the "employment contract". However, the Single Judge observed that the so-called "image rights agreement", which was also part of the employment relationship and was also terminated without just cause by the club, foresaw different consequences. Clause 5 par. 8 of the so-called "image rights agreement" referred to the FIFA Regulations on the Status and Transfer of Player and to the provisions of its Annexe concerning the Rules for the employment of coaches (former Annexe 8 and current Annexe 2).
44. Therefore, the Single Judge understood that, accordingly, the parties agreed that the compensation payable due to the termination of the so-called "image rights agreement" shall be calculated in accordance with the current Annexe 2 of the Regulations.
45. In this respect, the Single Judge observed that, in accordance with art. 6 par. 2 of Annexe 2 of the Regulations, the amount of compensation shall be calculated, and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
46. Bearing in mind the foregoing as well as the claim of the coach, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the contract (i.e. the so-called "image rights agreement") until its term.
47. In particular, the Single Judge noted that, from October 2021 until 13 January 2023, the "image rights agreement" established the following payments:
 - From 10 November 2021 to 10 January 2022, the coach would be entitled to $3 \times 38,960 = \text{USD } 116,880$ net
 - From 10 February 2022 to 10 January 2023, $31,866.67 \times 12 = \text{USD } 382,400$Total: USD 499,280 (i.e. USD 116,880 + 382,400).

48. Consequently, the Single Judge concluded that the amount of USD 499,280 serves as the basis for the determination of the amount of compensation for breach of contract.
49. In continuation, the Single Judge verified whether the coach had signed an employment contract with another club during the relevant period, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Single Judge as well as art. 6 par. 2 lit. b) of Annexe 2 of the Regulations, such remuneration under a new employment contract shall be considered in the calculation of the amount of compensation for breach of contract in connection with the coach's general obligation to mitigate his damages.
50. Indeed, on 24 March 2022, the coach concluded an employment contract with the Qatari club, Al Duhail SC, valid as from the date of signature until 30 June 2023 for a total remuneration of USD 1,881,000.
51. In accordance with the pertinent employment contract, from 24 March 2022 until 31 December 2022, the coach would have earned the following:
USD 621,080 + USD 148,225 + 9*74,113 = USD 1,436,322.
52. Therefore, the Single Judge concluded that the coach fully mitigated his damages, insofar he would have earned USD 1,436,322 from Al Duhail, which is significantly more than the amount of USD 499,280 that he would have earned from the Respondent during the considered period.
53. Hence, the Single Judge was not in a position to award compensation in this regard.

iii. Compliance with monetary decisions

54. Finally, considering the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
55. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
56. Therefore, bearing in mind the above, the Single Judge decided that the club must pay the full amount due (including all applicable interest) to the coach within 45 days of notification of the decision, failing which, at the request of the creditor, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the club in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.

57. The club shall make full payment (including all applicable interest) to the bank account provided by the coach in the Bank Account Registration Form.
58. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

e. Costs

59. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
60. Furthermore, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
61. Lastly, the Single Judge concluded her deliberations by rejecting any other requests for relief made by any of the parties.

III Decision of the Players Status Chamber

1. The claim of the Claimant, Jorge Hernán Crespo, is admissible.
2. The Claim of the Claimant is partially accepted.
3. The Respondent, São Paulo Futebol Clube, has to pay to the Claimant, the following amounts:
 - **USD 150,000 net as outstanding remuneration**, detailed as follows:
 - USD 75,000 plus interest at the rate of 1% per month as from 1 July 2021 until the date of effective payment;
 - USD 75,000 plus interest at the rate of 1% per month as from 1 October 2021 until the date of effective payment.
 - **USD 116,880 net as outstanding remuneration**, detailed as follows:
 - USD 38,960 plus interest at the rate of 1% per month as from 11 August 2021 until the date of effective payment,
 - USD 38,960 plus interest at the rate of 1% per month as from 11 September 2021 until the date of effective payment,
 - USD 38,960 plus interest at the rate of 1% per month as from 11 October 2021 until the date of effective payment.
 - **BRL 1,358,100 net as compensation for breach of contract without just cause plus 1% interest per month as from 13 November 2021** until the date of effective payment.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules).

CONTACT INFORMATION

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