

# Decision of the Dispute Resolution Chamber

passed on 4 April 2023

regarding an employment-related dispute concerning  
the player **RAFAEL ALEXANDRE DE CONCEIÇÃO LEÃO**

**BY:**

**DE WEGER Frans (The Netherlands), Chairperson**  
**COLLINS Angela (Australia), member**  
**ANDRADE José Luis (Portugal), member**

**CLAIMANT:**

**Sporting CP, Portugal**  
Represented by Ruiz-Huerta & Crespo

**RESPONDENT:**

**LOSC Lille, France**  
Represented by Moyersoen Avocats / Cavaliero & Associates

## I. Introduction

1. The relevant natural or legal persons involved in this dispute are:
  - a. The Portuguese club, Sporting Clube de Portugal (hereinafter: *the Claimant* or *Sporting*), a club headquartered in Lisbon, Portugal, and affiliated to the Portuguese Football Federation (FPF).
  - b. The Portuguese footballer, Mr Rafael Alexandre de Conceição Leão (hereinafter: *the Player*).
  - c. The French club, LOSC Lille (hereinafter: *the Respondent* or *LOSC*), a club headquartered in Lille, France, and affiliated to the French Football Federation (FFF).
2. Notwithstanding the above and as will be further commented on below, it is relevant to note that the Player is not a party to these FIFA proceedings.
3. Below is a summary of the relevant facts and allegations as established by the FIFA Dispute Resolution Chamber (hereinafter: *DRC* or *Chamber*) based on the submissions on file and the evidence adduced. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the DRC has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it shall refer in this decision only to the submissions and evidence it considers necessary to explain its reasoning.

## II. Facts of the case

### ***The execution of the Employment Contract***

4. On 14 September 2017, the Claimant and the Player entered into an employment contract, valid from 1 June 2017 to 30 June 2022 (hereinafter: *the Employment Contract*). Under the Employment Contract, the Claimant undertook to pay the following fixed remuneration to the Player per season:
  - Season 17/18: EUR 60,000;
  - Season 18/19: EUR 65,004;
  - Season 19/20: EUR 70,008;
  - Season 20/21: EUR 75,000;
  - Season 21/22: EUR 89,004.

5. In addition, Sporting undertook to pay to the Player conditional bonuses linked to the player's appearances, limited to a maximum of EUR 100,000.

6. In accordance with clause 8 of the Employment Contract:

*"8. The PLAYER has the right to unilaterally terminate this contract without cause, being immediately released from his employment and sports duties vis-a-vis SPORTING, SAD under the following conditions:*

*a) Termination can only occur during the period comprised between 15 May and 15 June of each sports season, SPORTING, SAD to be notified in advance of 15 days in relation to the date when termination shall become effective;*

*b) Together with the notification mentioned in the foregoing subparagraph, an immediate payment in the amount of € 45,000,000.00 (forty five million euro) shall be made to SPORTING, SAD.*

*c) Upon notification made with prior notice and within the terms laid down in subparagraph a) and upon payment of the amount mentioned in the foregoing subparagraph b), SPORTING, SAD undertakes to release the PLAYER, in terms of employment and sport and, further, if so requested, to authorise the Portuguese Football Federation to forward the relevant International Certificate to any foreign country that may have requested same".*

7. In the event of a dispute in relation to the terms of the Employment Contract, its clauses 9 and 10 provide for the following:

*"9. The parties mutually and reciprocally undertake, in view of a situation of dispute, breach or divergence in relation to the terms, conditions and performance of this contract and prior to any other initiative of contentious nature, to demand the other party with a view to a consensual solution of the divergence within a term of thirty days counted from such demand, however the breach or divergence cannot be invoked as a motive of disruption of the contract by any party, both parties accepting that this clause was essential for the conclusion of this contract, pursuant to the exact terms and conditions herein set out.*

*10. Without prejudice to the provisions set out in the foregoing number 9, the Parties agree to confer exclusive and final competence to settle any dispute arising out of this Contract or related with same to the Court of Arbitration for Sport (TAS), under the provisions set out in the TAS Law approved by Law no. 74/2013, of 6 September and in the Regulation of Proceedings and of Procedural Costs within the scope of the TAS Voluntary Arbitration."*

8. As to termination of the Employment Contract, its clause 11 provides for the following:

*“11. In the event one party terminates this contract alleging cause and the Arbitration Court for Sports, in accordance with the provisions set out in number 10 hereinabove, does not recognise its existence, that party shall be obliged to indemnify the other party for the damages caused by the illegitimate conduct, the penalty clause being herein set out in the amount to be paid, as follows:*

*- In the event SPORTING, SAD illegitimately terminates this contract, SPORTING, SAD shall be obliged to pay to the PLAYER a compensation corresponding to the value of the remunerations falling due until the end of the contract, but it can, however, deduct from the compensation awarded the values to be received by the PLAYER for the provision of the same activity to another sports entity during the period corresponding to the term of the terminated contract;*

*- In the event the PLAYER illegitimately terminates the contract, within the legal-labour scope, the PLAYER shall be obliged to pay to SPORTING, SAD a compensation corresponding to the value of the remunerations he should receive until the end of the terminated contract, his registration with a third Club being dependent, within the legal-sports scope, on the payment of the amount of € 45,000,000.00 (forty five million euro) corresponding to the valuation of the PLAYER 's sports participation rights established by the parties in this contract.”*

### **The termination of the Employment Contract**

9. On 15 May 2018, and within a context of tension between the Claimant's squad and the Claimant's management, a group of supporters illegally broke into Sporting's facilities and some of Sporting's employees and players were physically threatened and/or attacked.
10. On 14 June 2018, the Player terminated the Employment Contract by way of letter, invoking just cause, arguing that the Claimant's President - with no grounds - accused the players of the first team of not committing to their job and threatened them that he would not tolerate anything less than the victory in all competitions, meaning that each match lost would be “totally unforgivable”.
11. On 1 August 2018, following a petition filed by the Player, the *Comissão Arbitral Paritária* (Parity Arbitral Commission, hereinafter: CAP) in Portugal validated the Player's termination of the Employment Contract for “sporting purposes”, stating that the Player could as, from that moment on, “*proceed to the celebration of sports employment contract with third parties*”.
12. On 2 August 2018, the Player concluded a new employment contract with Respondent, valid as from the same date until 30 June 2023, whereby the Player would earn a monthly gross salary of EUR 107,962 for the duration of said contract, which could be increased

if certain performance goals were achieved by the Player. The contract in question further established various bonuses payable to the Player for performance, loyalty or in case of a future transfer of the Player. In the last scenario, said bonus amounted to EUR 2,699,055 gross. The DRC is unaware of the amount in fact paid by LOSC to the Player in light of his future transfer to AC Milan, as detailed below.

### ***The parallel claims filed by Sporting and the Player***

13. On 17 August 2018, the Player lodged a claim (hereinafter: *the Portuguese Claim*) against Sporting before the Portuguese Court of Arbitration for Sport, i.e., *Tribunal Arbitral do Desporto* (hereinafter: *TAD*). In his Portuguese Claim, the Player requested to be awarded compensation for breach of contract of EUR 390,000 (i.e., the residual value of the Employment Contract).
14. On 14 September 2018, Sporting filed its reply in the Portuguese Claim rejecting the Player's position on the merits and requesting, as a counterclaim, a compensation for breach of contract of EUR 45,292,516.
15. On 31 October 2018, in the context of the Portuguese Claim, Sporting raised an objection to the exclusive jurisdiction of the TAD, requesting those proceedings to be stayed on the grounds that the DRC was the appropriate body to hear the dispute.
16. On 5 November 2018, Sporting lodged a claim against the Player and LOSC before FIFA, requesting said body to hold the Player and the Respondent jointly and severally liable for the payment of a compensation of EUR 45,292,516, plus interest in line with clause 11 of the Employment Contract (hereinafter: *the FIFA Claim*).
17. On 5 December 2018, the TAD confirmed its jurisdiction to hear the Portuguese Claim pursuant to Portuguese law, the principle of *kompetenz-kompetenz* and clause 10 of the Employment Contract. The TAD also rejected Sporting's application to stay the proceedings.
18. On 23 January 2019, the Player and LOSC submitted their replies regarding the FIFA Claim, alleging that FIFA was not competent, but that the TAD rather was. In the alternative, the Player argued that the Employment Contract had been terminated with just cause and, thus, he lodged a counterclaim, requesting to be awarded EUR 290,000 as compensation for breach of contract and EUR 100,000 as damages.
19. On 18 March 2019, the TAD issued its decision regarding the Portuguese Claim (hereinafter: *the TAD Decision*), whereby it ruled that:
  - Sporting harassed the Player and violated several safety rules, which constituted a violation of the Collective Bargaining Agreement to which the Parties were subject and amounted to a "serious and culpable breach of contract" by Sporting;

- Thus, Sporting's conduct towards the Player did, in principle, give the Player just cause to terminate the Employment Contract;
  - However, the Player's subsequent conduct demonstrated that the employment relationship could have continued and, thus, the termination was without just cause.
20. In the TAD Decision, it was ruled as follows:
- Sporting shall pay EUR 40,000 to the Player as compensation "for its harassment against the Player";
  - The Player shall pay to Sporting EUR 16,500,000 as compensation for breach of contract – the compensation sought by Sporting was reduced from EUR 45,292,516 to EUR 16,500,000, since the TAD considered that the amount set out in clause 11 was "manifestly excessive" and created a situation of "contractual incarceration".
21. On 30 July 2019, LOSC transferred the Player to the Italian football club, AC Milan, against payment of EUR 29,000,000.
22. On 20 February 2020, the DRC rendered its decision regarding the FIFA Claim and concluded that Sporting's claim was inadmissible on the grounds of *litispendence* (hereinafter: *the FIFA Decision*).
23. On 3 April 2020, the Player submitted a petition for annulment against the TAD Decision before the Lisbon Court of Appeal, which dismissed the petition for annulment.

### ***The appeal against the FIFA Decision***

24. On 6 May 2020, Sporting lodged an appeal before the Court of Arbitration for Sport (hereinafter: CAS) against the Player, LOSC and FIFA, concerning the FIFA Decision (hereinafter: *the Appeal*).
25. By Award dated 21 February 2022, CAS partially upheld the Appeal (hereinafter: *the CAS Award*) and set aside the FIFA Decision, ruling as follows:

*"1. The appeal filed by Sporting Clube de Portugal on 6 May 2020 against the Decision issued on 20 February 2020 by the Dispute Resolution Chamber of the Federation Internationale de Football Association is partially upheld.*

*2. The Decision issued on 20 February 2020 by the Dispute Resolution Chamber of the Federation Internationale de Football Association is set aside.*

*3. The prayer for relief of Sporting Clube de Portugal to "order FIFA to impose over the*

*Player a six-month restriction in participating in official matches or any other sporting sanctions considered appropriate” is dismissed.*

*4. The prayer for relief of Sporting Clube de Portugal to “order FIFA impose over the New Club a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods or any other sporting sanctions considered appropriate” is dismissed.*

*4. The prayer for relief of Sporting Clube de Portugal that LOSC Lille be condemned to pay a compensation to Sporting Clube de Portugal is partially upheld.*

*5. The matter is referred back to the FIFA Dispute Resolution Chamber that will decide on Sporting Clube de Portugal's claim for compensation against LOSC Lille being bound to the legal directions and findings expressed in this Award.*

*6. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Sporting Clube de Portugal in 50% and LOSC Lille in 50%.*

*7. Sporting Clube de Portugal shall pay a contribution to Rafael Alexandre de Conceição Leão of CHF 5,000 towards its legal or other expenses.*

*9. LOSC Lille shall pay a contribution to Sporting Clube de Portugal of CHF 10,000 towards its legal or other expenses.*

*10. All other motions or prayers for relief are dismissed.”*

### **The CAS Award**

26. The reasoning of the Panel embodied in the CAS Award can be summarized as follows:

#### Effects of the TAD decision:

- ➔ The TAD Decision could only enjoy *res judicata* effects once it had become final and binding. As the proceedings in Portugal were still ongoing, the TAD Decision was not final and binding. Consequently, there were no *res judicata* effects.
- ➔ The Appeal and the CAS Award were not impacted by *lis pendens*: art. 186 (1bis) of PILA states that there is no automatic stay or inadmissibility in case of *lis pendens*. In addition, the matters in dispute before the TAD and before the CAS were different. In fact, the Claimant pursued three different claims before the CAS: (i) a claim against the Player and FIFA to impose sporting sanctions on the Player; (ii) a claim against LOSC for a certain amount of money; (iii) a claim against LOSC and FIFA to impose

sporting sanctions on LOSC. Thus, the nature of the dispute in the context of the Appeal was different from the one brought before the TAD.

Merits:

- ➔ Sporting pursued three different claims, regrouped by the Panel into two: 1.) claims to impose sporting sanctions on the Player and LOSC: 2.) claim against LOSC for a certain amount of money.
- ➔ In accordance with the CAS jurisprudence (*inter alia*, CAS 2007/A/1359, 2016/A/4826), players and clubs - as indirect FIFA members - have no standing to request that sporting sanctions be imposed on other indirect members, such as players or clubs; and Sporting, despite having been asked by the Panel, could not provide justified reasons to overrule precedents. Thus, the Panel concluded that it is only within FIFA's prerogative to impose sporting sanctions on indirect members such as the Player and LOSC. The Panel concluded consequently that "[t]he only claim left before the CAS was therefore the claim for compensation and unjust enrichment against LOSC".
- ➔ The Panel considered that the nature of a dispute - whether it is vertical or horizontal - depended on what was claimed by the parties, not on the reasons provided by the adjudicatory chamber (the DRC, *in casu*) to dismiss or accept the claim. The Panel further underscored that disputes adjudicated by FIFA can still be deemed as horizontal if they involve direct or indirect members of FIFA (*in casu*, Sporting). Thus, as a horizontal (and not vertical) dispute, the Panel considered that LOSC has standing to be sued.
- ➔ In the absence of any *lis pendens* regulation under the FIFA Regulations on the Status and Transfer of Players (hereinafter: *RSTP*), the Panel noted that Swiss Law applies to fill the *lacuna*. Accordingly, *lis pendens* only applies if the parallel proceedings involved cumulatively and necessarily the same parties and the same object.
- ➔ On this point, the Panel deemed it important to answer the question of whether Sporting's claim against LOSC was merely accessory to the claim against the Player before the TAD or not. In doing so, the Panel referred to art. 17.2 of the *RSTP* and stressed that it does not describe a claim against the new club of a player as purely accessory. Thus, the Panel interpreted the joint and several liability of the new club under Swiss Law (subsidiarily applicable), particularly ex. art. 144 of the Swiss Code of Obligations (hereinafter: *SCO*), whereby the liability of the joint and several debtor (LOSC, *in casu*) is on "an equal footing" as the one of the first debtor (the Player, *in casu*). This approach has also been confirmed by the Swiss Federal Tribunal (hereinafter: *SFT*) (SFT 140 III 520). Thus, the argument of FIFA that LOSC's liability is accessory to the one of the Player was dismissed.



- ➔ From a procedural point of view, the Panel referred to the doctrine followed by the SFT, in accordance with which, in cases of joint liability, there are as many matters in disputes as there are couples of claimant-respondent (CAS 2018/A/5693). Thus, the Panel underscored that the claim of Sporting against the Player and against LOSC are two different claims. In addition, the Panel referred to the jurisprudence of the SFT, whereby “the presence of joint defendants does not affect the plurality of the matter in dispute and the parties. The joint defendants remain independent from each other”. Although this could lead to practices of forum shopping, the Panel stressed that those were the consequences of the joint and several liability provided by the RSTP.
- ➔ Consequently, the Panel deemed that FIFA was wrong to dismiss Sporting’s claim under art. 17.2 of the RSTP against LOSC on the grounds of *lis pendens*.
- ➔ The Panel held that FIFA accepted its jurisdiction by stating that the DRC would be – albeit “in principle” – competent to deal with a dispute involving a Portuguese player, a Portuguese club and a French club. Thus, the Panel was of the opinion that FIFA rejected its jurisdiction, not ex. art. 22 of the RSTP, but only on the *lis pendens* allegedly appreciated because of the TAD proceedings (which the Panel had already established was wrongly decided).
- ➔ The Panel underscored that, until 31 August 2018, the matter was purely national, i.e., an employment-related dispute between a Portuguese player and a Portuguese club. However, the dispute then gained international dimension upon the issuance of the International Transfer Certificate (hereinafter: *ITC*) from the FPF to the FFF and the subsequent transfer of the Player to LOSC. Thus, FIFA was and is competent to deal with the claim of Sporting against LOSC cf. art. 22 lit. a) of the RSTP.
- ➔ The Panel was of the opinion that, in the absence of *lis pendens*, considering that the claim of Sporting against LOSC was independent from the proceedings at the TAD and considering that LOSC was the new club of the Player (to which he was transferred only 10 weeks after the termination of the Employment Contract), when Sporting lodged the claim against LOSC in front of FIFA, FIFA should have dealt with the dispute (having jurisdiction cf. art. 22 lit a.) of the RSTP) since the claim for breach of contract against LOSC ex. art. 17.2 of the RSTP (inducement) occurred within the context of an ITC issuance (ITC requested by the French FA and delivered by the Portuguese FA).
- ➔ The fact that FIFA did not decide on the merits of the dispute did not *per se* turn the CAS into the first instance adjudicatory chamber (CAS 2019/A/6621). In accordance with the said CAS award, the CAS has two options: 1.) start *de novo* to analyse the merits of the case (nothing prevents the CAS from deciding on the merits of a case and analysing from scratch the facts and the applicable law) since the first instance

(FIFA, *in casu*) did not enter into the merits by dismissing the claim as inadmissible; 2.) refer the case back to FIFA.

- However, the Panel proceeded to analyse whether the Player terminated the contract with or without just cause. In this respect, the CAS states that whether the Player terminated the contract with just cause ex. art. 14.1 of the RSTP needed to be analysed in accordance with Swiss Law, which states that an employee or employer has a very limited window to terminate a contract upon the finding of the event eventually creating the just cause to terminate it: 2/3 business days (CAS 2014/A3643 and CAS 2009/A/1856-1857).
- In the present case, the Player's termination (notified on 15 June 2018) referred to events that occurred two months prior in March and April 2018. The Panel deemed that waiting two months constituted an unreasonable timeframe from the moment the alleged cause had occurred. Further, even if the event that gave rise to the just cause was that which occurred on 15 May 2018 (the assault at Sporting's facilities), the termination still occurred too late. Thus, the CAS concluded that the termination of the contract occurred without just cause, since it happened outside of the jurisprudential window of 2/3 business days (referring to both Swiss and CAS jurisprudence).
- The Panel was not presented with enough evidence as to determine the amount payable as compensation for breach of contract, particularly considering that the Player elected not to participate in the proceedings once the CAS had dismissed the only claim of Sporting against the Player (i.e., the claim in connection with the imposition of sporting sanctions on the Player). Since the CAS was entitled to refer the case back to FIFA, the Panel therefore decided to do so.
- Thus, the Panel concurred that Sporting and LOSC shall be given the procedural opportunity to submit all necessary evidence in order to determine the amount of compensation payable and considering that the DRC did not adjudicate on the merits of the dispute, it would make sense that FIFA then dealt with those evidentiary matters at first instance.
- The Panel also held that if the TAD Decision became final and binding in the meantime this would in any case not be relevant, because following what has been underscored concerning the independence of the proceedings of Sporting against the Player and of Sporting against LOSC, a final and binding decision against one of the debtors does not affect the liability of the other debtor.

### III. Proceedings before FIFA

27. On 31 March 2022, the FIFA general secretariat acknowledged the contents of the CAS Award and informed the parties that these proceedings would take place as instructed therein. Contextually, the FIFA general secretariat equally informed the parties that the new file received the reference FPSD-5438.
28. On 6 April 2022, the FIFA general secretariat informed the parties that the proceedings were suspended following an appeal lodged by LOSC with the SFT against the CAS Award (hereinafter: *the SFT Appeal*).
29. On 17 October 2022, the Claimant wrote to FIFA and while informing FIFA of the dismissal of the SFT Appeal (hereinafter: *the SFT Decision*), filed its position as to the amount of compensation it sought from the Respondent. It is noteworthy that the Claimant did not include any claim against the Player, which is in line with CAS' indication that the only claim left before the CAS was Sporting's claim for compensation against LOSC.
30. On 21 October 2022, the FIFA general secretariat invited LOSC to file its position, which it timely did on 30 November 2022 following a relevant deadline extension.
31. On 13 December 2022, the FIFA general secretariat invited Sporting to file its rejoinder, which it timely did on 16 January 2023 following a relevant deadline extension.
32. On 17 January 2023, the FIFA general secretariat invited LOSC to file its final comments, which it timely did on 13 February 2023 following a relevant deadline extension.
33. A brief summary of the position of the parties is detailed in continuation, encompassing both rounds of submissions.

#### a. Position of the Claimant

34. The Claimant started by recalling that per the CAS Award it had already been established that the Player terminated the Employment Contract without just cause and that LOSC benefited from the contractual violation. It equally underlined that the CAS Award instructed FIFA to make the determination on the *quantum* payable by LOSC insofar as the latter was found liable for the payment of compensation in line with art. 17 par. 2 of the RSTP.
35. Sporting highlighted that the current proceedings are in fact limited insofar as the CAS Award narrowly determined that the case was referred back to the DRC solely to establish the amount of compensation payable by LOSC to Sporting. It equally stated that the admissibility and jurisdiction of the DRC had already been determined by the CAS Award, and by the SFT Decision for that matter.

36. Therefore, Sporting concluded that LOSC is not authorized to depart from the findings of the CAS Award and bring new objections as if the latter or the SFT Decision never existed. As such, Sporting is of the opinion that the objections raised by LOSC are outside the scope of the present proceedings.
37. Sporting is of the opinion that clause 11 of the Employment Contract should apply in that it established a valid liquidated damages clause accounting for the minimum damage Sporting would suffer in case of termination of the Employment Contract by the Player. Accordingly, it stated that the amount to be paid by LOSC as compensation is equal to (a) EUR 292,516 corresponding to the remuneration the Player would earn if the Employment Contract was carried out entirely and (b) EUR 45,000,000 corresponding to the valuation of the Player's "sports participation rights".
38. In this respect, Sporting outlined that EUR 45,000,000 is also found in clause 8 of the Employment Contract, which denotes that such amount is equal to the minimum damage suffered by Sporting and the equivalent benefit acquired by LOSC. Sporting explained that since clause 8 of the Employment Contract is a buy-out clause, this means that by depositing such amount the Player would have been released from its contractual bond.
39. Sporting furthermore outlined that under FIFA and CAS jurisprudence, clause 11 of the Employment Contract is valid and thus should be enforced, even more so considering the current market value of the Player.
40. The Claimant requested the following relief, as amended:

*"In view of all the foregoing, Sporting Clube de Portugal – Futebol, SAD herein request the Dispute Resolution Chamber of the FIFA Football Tribunal to decide on its claim for compensation against LOSC (being bound to the legal directions and findings expressed in the CAS Award) and to issue the Decision under the following terms:*

*1. to determine that LOSC is condemned to pay a compensation to Sporting in the minimum amount of EUR 45,292,516.00/- (forty-five million two hundred ninety-two thousand five hundred sixteen Euros);*

*Additionally:*

*2. to declare that, in case the Player is sold and transferred from Milan to a third club, LOSC is condemned to pay a compensation to Sporting, corresponding to all and any amounts receivable from Milan as they exceed said minimum amount, subject to the provisions of the Transfer Agreement concluded between Milan and LOSC on 30 July 2019;*

*In any case:*

*3. to condemn LOSC to pay in favor of Sporting the corresponding interest of five percent (5%) per annum applicable to the amount due as from the 9th of August 2018 (when LOSC requested the ITC of the Player) until the date of eventual payment; and*

*4. to order the Respondent to assume the entirety of the FIFA DRC administration and procedural fees.”*

#### **b. Position of the Respondent**

41. The Respondent started by disputing the jurisdiction of the Football Tribunal to hear the dispute. In doing so, it argued that the criteria of art. 22 par. 1 lit. a) of the RSTP must be met, since the CAS Award determined that FIFA had jurisdiction to hear the merits of the dispute.
42. LOSC contended that since the CAS Award determined that the case be referred back to FIFA for a determination in a dispute to which the Player was no longer a party and because the Claimant's petition is directed at the Respondent only, FIFA lacks jurisdiction as the dispute is limited to one between clubs and not a player and a club.
43. In continuation, LOSC argued that under art. 17 par. 2 of the RSTP, a club can only be found jointly and severally liable in case a player is required to pay compensation as ordered by FIFA or CAS, which was not the case at hand as expressly recognized by the CAS Award, in that it ruled that the Panel was not bound by the TAD Decision since it was rendered in proceedings between different parties. Absent any condemnation from FIFA or CAS that the Player should pay compensation, FIFA has no room to award any compensation to Sporting, and the claim should be deemed inadmissible.
44. Additionally, LOSC submitted that even if the CAS Award determined that a creditor may lodge separate claims against each of its co-debtors, this does not mean that art. 17 par. 2 of the RSTP allows a club to sue only the new club without seeking the player to also pay compensation. In particular, LOSC is of the position that the CAS Award erred in that it mistook the triggering element of the joint and several liability with the effects of the same. What is more, LOSC argued that the Panel in the CAS Award only referred the case back to FIFA because it could not determine the amount of compensation in the absence of the Player.
45. Furthermore, LOSC argued in the alternative that in case FIFA deemed itself competent and found the claim to be admissible, FIFA cannot order LOSC to pay compensation on the sole basis of clause 11 of the Employment Contract, as it was not a party to the said contract.
46. In the further alternative, LOSC submitted that any amount of compensation should be calculated on the basis of the criteria set forth in art. 17 of the RSTP, in that clause 11 of the Employment Contract is a liquidated damages clause which is manifestly

disproportionate and not reciprocal. Accordingly, LOSC provided the following elements as to its stated position that the amount of compensation should be reduced to zero:

- a. Residual value of the Employment Contract: EUR 290,016.
  - b. Value of the labour contract between the Player and LOSC until 30 June 2022: EUR 6,531,704.
  - c. Serious breaches of Sporting as recognized by the TAD Decision.
47. The requests for relief of the Respondent were the following:
- a. Primarily to declare that the Football Tribunal has no competence or jurisdiction to determine the matter;
  - b. In the alternative to declare that Sporting's claim is inadmissible;
  - c. In the further alternative to reject in full Sporting's claim;
  - d. Order Sporting to assume the entirety of the FIFA DRC and CAS fees as from its first request before the DRC (i.e. 5 November 2018).
48. In case the DRC decide that LOSC shall pay a compensation to Sporting (*quod non*):
- a. Decide that such compensation should be reduced to zero due to the faults committed by Sporting against the Player and against LOSC;
  - b. Decide that any compensation shall not bear interest before the date of the present request of Sporting before the DRC (i.e. 14 October 2022).

## IV. Considerations of the Dispute Resolution Chamber

### a. Preliminary remarks

49. Having carefully examined the CAS Award, the DRC came to the conclusion that the decision touches upon, and calls into question, certain fundamental elements of the RSTP concerning the joint and several liability of new clubs under art. 17 par. 2 and the related well-established jurisprudence of this Chamber. The DRC therefore felt compelled, on an exceptional basis, to make some introductory general remarks (i.e. remarks that are relevant in general to the application of the RSTP, as opposed to specifically about the present dispute) concerning these fundamental elements of the FIFA regulatory system.

#### i. Nature of the liability under art. 17 par. 2 of the RSTP

50. Art. 17 par. 2 plays an essential role in the architecture of the RTSP and its objectives are well-known and accepted. It is predominantly aimed at reinforcing the principle of contractual stability and providing the player's former club with an additional guarantee that the compensation for breach of contract owed by the player will in fact be paid.<sup>1</sup>

51. Art. 17 par. 2 provides that ***"If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment"*** (emphasis added). The wording of the provision (and, therefore, its literal interpretation) makes it clear that the liability of the new club is the liability for the payment that the player has been ordered to pay. In other words, it is the player's breach, and consequent liability to pay, that triggers the new club's liability.

52. The literal interpretation of the provision is further confirmed by its teleological and historical interpretation, as established, for example, by the following elements:

- a. the FIFA Commentary on the RSTP (hereinafter: *FIFA Commentary*) which provides as follows: *"Equally, this provision gives the player's former club that was damaged because of the breach of contract, a stronger additional guarantee that **the compensation the player is required to pay** will in fact be paid."*<sup>2</sup> (emphasis added);
- b. the well-established jurisprudence of this Chamber;<sup>3</sup> and
- c. previous iterations of art. 17 par. 2: ***"If a player is registered for a new club and has not paid a sum of compensation within the one month time limit referred to above,***

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<sup>1</sup> cf. FIFA Commentary, page 171.

<sup>2</sup> cf. FIFA Commentary, page 173.

<sup>3</sup> cf. for instance, DRC decision of 18 June 2020, Cinari; DRC decision of 21 February 2020, Malango; DRC decision of 20 May 2020, Diaz; DRC decision of 17 January 2020, Ayala; DRC decision of 18 June 2020, da Silva Barbosa; DRC decision of 25 March 2021, Khacef; DRC decision of 28 April 2021, Henriquez; DRC Decision of 21 June 2022, Pantilimon; DRC decision of 2 June 2022, Ivakhnov.

*the new club shall be deemed jointly responsible for **payment of the amount of compensation***<sup>4</sup> (emphasis added).

53. The consistent and well-established jurisprudence of the DRC states that the joint liability of a player's new club is *accessory* to the principal relationship between the player and the club. The FIFA Commentary describes the player's liability as follows: "*the **primary debtor** for the payment of the compensation due because of the breach of contract is, and remains, the professional player*"<sup>5</sup> (emphasis added). A CAS decision has described this liability mechanism as follows: "*It follows that Al Shorta is not the **principal obligor** but rather a **subsidiary obligor**, with Al Shorta merely being jointly and severally liable*"<sup>6</sup> (emphasis added). Finally, in another CAS award, the Panel held that "[...] art. 17.2 RSTP provides that if a professional is required to pay compensation, his new club shall be jointly and severally liable to pay that compensation. **The basis of the new club's liability, however, is the player's liability.** As a consequence, the new club (in this case Boca Juniors) cannot be held liable for amounts that exceed those for which the player himself is liable."
54. Notwithstanding the various specific terms used to describe the mechanism set out in art. 17 par. 2 of the RSTP, it is therefore clear in the eyes of this Chamber that they all effectively acknowledge that the liability of the new club is "*inseparably tied to that of the player*"<sup>8</sup> and "*its extent necessarily depends on the amount to be owed (or not owed) by the player to his former club*".<sup>9</sup> The joint and several liability of the new club can only be triggered upon the player having been ordered to pay compensation for breach of contract to their former club.

#### ii. FIFA's jurisdiction to hear claims under art. 17 par. 2 of the RSTP

55. Given the link between the player and the new club's liabilities as described above (i.e., the liability of the new club can only be triggered upon the player having been ordered to pay compensation for breach of contract), claims against new clubs pursuant to art. 17 par. 2 of the RSTP are necessarily deemed to be employment-related claims.
56. This means that FIFA's jurisdiction to hear claims regarding the joint and several liability of the new club must be based on art. 22 par.1 lit. a) or art. 22 par.1 lit. b) of the RSTP, which are the provisions specifically enabling FIFA to decide upon labour-related disputes between clubs and players.
57. These two articles provide as follows:

<sup>4</sup> See art. 14.3 of the Regulations governing the Application of the RSTP 2001.

<sup>5</sup> cf. FIFA Commentary, page 173.

<sup>6</sup> CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC, para. 143.

<sup>7</sup> CAS 2015/A/4111 & CAS 2015/A/4116, para. 113.

<sup>8</sup> CAS 2013/A/3365 Juventus FC v. Chelsea FC / CAS 2013/A/3366 A.S. Livorno Calcio S.p.A. v. Chelsea FC, para. 133.

<sup>9</sup> CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC, para. 141.



*“Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

*a) **disputes between clubs and players** in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract; [...]*

*b) **employment-related disputes between a club and a player** of an international dimension; [...]*” (emphasis added).

58. The aforementioned provisions make it clear in this regard that FIFA’s jurisdiction is to hear disputes **between clubs and players** and the Chamber noted that nowhere in those articles is there a reference to a dispute only between clubs or any suggestion that there would be a – separate – possibility for FIFA to hear claims between a former club and a new club independently of the labour dispute between a club and a player. In other words, these provisions confer that the FIFA’s jurisdiction to assess a claim for liability of the new club under art. 17 par. 2 of the RSTP would require that FIFA has been called upon to decide on the contractual dispute between the player and their former club.
59. In the Chamber’s opinion, these considerations further reinforce the DRC’s general view that the potential liabilities of the player and the new club pursuant to art. 17 par. 2 of the RSTP are inextricably linked.
60. For the sake of completeness, the Chamber also wished to note that the only provision in art. 22 of the RSTP (which governs FIFA’s competence) that specifically confers the jurisdiction on FIFA to decide upon a contractual dispute between two clubs (i.e., disputes not related to training compensation and the solidarity mechanism) is par. 1 lit. g) which is a sort of “catch all” provision granting FIFA the competence to decide on disputes between clubs based in different countries that are not covered by the remaining provisions of the article. Pursuant to art. 23 par. 2 of the RSTP, these disputes are under the jurisdiction of the Players’ Status Chamber of the Football Tribunal. It is clear to this Chamber that art. 22 par. 1 lit. g) would not enable FIFA to adjudicate on a claim under art. 17 par. 2 of the RSTP, because, as stated above, claims for the joint liability of the new club can only be made in the context of a employment-related disputes which are the exclusive jurisdiction of the DRC pursuant to articles 22 par. 1 lit. a) and lit. b) and art. 23 par. 1 of the RSTP.
61. Finally, the Chamber wished to conclude these general preliminary remarks by suggesting that, pursuant to art. 54 par. 4 of the FIFA Statutes, an assessment should be made by the FIFA Football Tribunal as to whether any amendments to the RSTP could be useful, or indeed required, in order to ensure that the principles and the objectives of

art. 17 par. 2 of the RSTP are adequately protected and implemented in the context of the FIFA dispute resolution system.

#### b. The DRC's mandate

62. This Chamber wishes to make it very clear that, even though it may have its own views as to the general application of certain provisions of the RSTP as set out in the preceding section, it is in any case bound to abide by the conclusions and orders of the CAS regarding the present dispute, as established in the CAS Award.
63. Indeed, as per articles 56 and 57 par. 1 of the FIFA Statutes, FIFA has elected to confer upon the CAS the jurisdiction to rule on appeal from final decisions of the FIFA bodies and to, consequently, decide on the application of the relevant provisions of the FIFA regulatory framework. As the first instance tribunal, this Chamber shall therefore respect the dispute resolution system implemented by FIFA and abide by the instructions provided by the CAS as the higher court within the system.
64. The Chamber found it equally important to note that LOSC challenged the CAS Award before the SFT, but said appeal was dismissed and the CAS Award was therefore confirmed by the SFT Decision. The CAS Award therefore became final and binding regarding the matters on which it ruled.
65. Having confirmed that it is bound to abide by the instructions contained in the CAS Award, the Chamber first noted that its mandate was essentially limited to determining what amount is payable by LOSC to Sporting as compensation for the Player's breach of contract, since LOSC was found to be jointly and severally liable for the payment of such compensation. Noting that the CAS Award expressly ordered the DRC to "*decide on Sporting Clube de Portugal's claim for compensation against LOSC Lille **being bound to the legal directions and findings expressed in this Award***"<sup>10</sup> (emphasis added), the Chamber considered that it would therefore be useful at this stage to clarify the boundaries of its narrow mandate by recalling the matters which were finally decided by the CAS and which therefore cannot be re-visited by this Chamber:
- a. The DRC had jurisdiction to decide on Sporting's claim against LOSC (for joint and several liability pursuant to art. 17 par. 2) under art. 22 par. 1 lit. a) RSTP;<sup>11</sup>
  - b. The Player terminated the contract without just cause and is liable to pay compensation for the damages suffered by Sporting;<sup>12</sup>

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<sup>10</sup> cf. item 6 of the operative part of the CAS Award.

<sup>11</sup> cf. paras. 210 and 214 of the CAS Award.

<sup>12</sup> cf. para. 228 of the CAS Award.

- c. LOSC is liable pursuant to art. 17 par. 2 of the RSTP to pay compensation to Sporting;<sup>13</sup>
  - d. The DRC will decide on Sporting's claim for compensation against LOSC;<sup>14</sup>
  - e. The DRC (and the CAS) are not bound by the decision taken by the TAD (including as to the amount of compensation) and are therefore free to determine said amount payable by LOSC.<sup>15</sup>
66. Having clarified the scope of its mandate and the principles and rules which it is bound to abide by, the Chamber wished to note that the present case and the mandate that has been given to it are fairly unique and that therefore the DRC has had to rule without the benefit of prior precedent or guidance, making the best possible use and interpretation of the applicable rules within its narrow mandate.
67. The Chamber also wished to point out that the main reason why the CAS Panel decided to refer the determination of compensation payable by LOSC back to the DRC was because it considered that it did not have sufficient evidence available to it in order to make that assessment, in particular because the Player had ceased to participate in the proceedings and had become unavailable to provide evidence.<sup>16</sup> In this regard, the Chamber felt compelled to underline that any evidentiary difficulties which the CAS Panel faced arising from the Player's absence in the arbitration proceedings, evidently apply just as equally to this Chamber considering that the Player is not a party to this DRC proceeding.

### **c. Jurisdiction, admissibility, and applicable legal framework**

68. First of all, the Chamber noted that the present matter was referred back to FIFA by means of the CAS Award, dated 21 February 2022. It equally underlined that the matter was submitted for decision of the DRC on 4 April 2023. Considering the wording of art. 34 of the October 2022 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.
69. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. b) of the Procedural Rules and observed that in accordance with the CAS Award *ex positis* and art. 23 par. 1 in combination with art. 22 par. 1 lit. a) of the RSTP (October 2022 edition), the DRC shall deal with the matter at stake.

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<sup>13</sup> cf. para. 233 of the CAS Award.

<sup>14</sup> cf. operative part of the CAS Award.

<sup>15</sup> cf. para. 237 of the CAS Award.

<sup>16</sup> cf. para. 235 of the CAS Award.

70. Despite the above, the DRC took due note that LOSC argued that the Football Tribunal does not have jurisdiction to hear the dispute because the Player is not a party to the same, and therefore the criteria under art. 22 par. 1 lit. a) of the RSTP are not met. It equally argued that the claim of Sporting is inadmissible since the Player has not been summoned by the Claimant, thus FIFA cannot award any compensation to Sporting.
71. As previously mentioned, the DRC remarked that, in both scenarios, the objections raised by LOSC have already been determined by the CAS Award, which indicated that (a) the DRC is competent based on art. 22 par. 1 lit. a) of the RSTP, and (b) the claim of Sporting against the Player is independent to that against LOSC. The DRC emphasised, once again, that the case was only referred back for the DRC to make an assessment on the *quantum* owed by LOSC to Sporting in line with art. 17 par. 2 of the RSTP, as explained above.
72. The DRC therefore concluded that the objections raised by LOSC have already been finally decided upon by the CAS Award, and the DRC is not empowered to re-visit them (the Chamber also recalled in this regard that LOSC's SFT Appeal was dismissed and the CAS Award was therefore confirmed by the SFT Decision).
73. It follows that the DRC has jurisdiction to hear the claim, which is equally admissible.
74. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (October 2022 edition), and considering that the present claim was referred back to the DRC on 21 February 2022, the September 2021 edition of said regulations is applicable to the matter at hand as to the substance.

#### **d. Burden of proof**

75. The Chamber 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 Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

#### **e. Merits of the dispute**

76. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by noting, once again, that the scope of its competence within the present proceedings cannot exceed the boundaries established under the CAS Award and, in doing so, acknowledged all the above-mentioned facts as well as the arguments and the documentation on file.

However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand, in particular given the scope of its mandate.

**i. Main legal discussion and considerations**

77. The foregoing having been established, the Chamber moved to the substance of the matter, and stressed once again that the question to be answered in these proceedings is the following: considering that the Player has been found to have terminated the Employment Contract without just cause and that LOSC has been found to be jointly and severally liable for the payment of compensation to Sporting, what is the amount of compensation payable by LOSC to Sporting?
78. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to Sporting in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the RSTP, 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 law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
79. In application of the relevant provision, the Chamber held that it first of all had to clarify 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. In this regard, the Chamber noted that clause 11 of the Employment Contract reads as follows:

*“11. In the event one party terminates this contract alleging cause and the Arbitration Court for Sports, in accordance with the provisions set out in number 10 hereinabove, does not recognise its existence, that party shall be obliged to indemnify the other party for the damages caused by the illegitimate conduct, the penalty clause being herein set out in the amount to be paid, as follows:*

*- In the event SPORTING, SAD illegitimately terminates this contract, SPORTING, SAD shall be obliged to pay to the PLAYER a compensation corresponding to the value of the remunerations falling due until the end of the contract, but it can, however, deduct from the compensation awarded the values to be received by the PLAYER for the provision of the same activity to another sports entity during the period corresponding to the term of the terminated contract;*

*- In the event the PLAYER illegitimately terminates the contract, within the legal-labour*

*scope, the PLAYER shall be obliged to pay to SPORTING, SAD a compensation corresponding to the value of the remunerations he should receive until the end of the terminated contract, his registration with a third Club being dependent, within the legal-sports scope, on the payment of the amount of € 45,000,000.00 (forty five million euro) corresponding to the valuation of the PLAYER 's sports participation rights established by the parties in this contract."*

80. Having analysed the clause in question, the DRC came to the conclusion that, indeed, the objective/purpose of the clause was to establish in advance the amount of compensation payable in the event of an unlawful termination of the Employment Contract. In the event that the unlawful termination was carried out by the Player and he was subsequently registered by another club, then it was agreed that the compensation payable would be the residual value of the Employment Contract, plus an amount of EUR 45,000,000.
81. The Chamber furthermore noted that both Sporting and LOSC agreed in their respective submissions that the purpose of clause 11 of the Employment Contract was to establish in advance the amount of compensation payable in the event of a termination without cause,<sup>17</sup> even though they disagreed regarding its enforceability and application.
82. Indeed, the DRC recalled that, on the one side, Sporting argued that the liquidated damages clause under the Employment Contract should be fully enforced as per its terms, entitling Sporting to a payment comprising (i) the salaries the Player would have earned had the Employment Contract been complied with until its expiry (EUR 292,516), plus (ii) an amount of EUR 45,000,000. On the other side, LOSC argued that (i) the liquidated damages clause is not reciprocal and is disproportionate and should consequently be disregarded, and that (ii) a calculation pursuant to art. 17 par. 1 of the RSTP in accordance with the DRC's standard approach should lead to compensation being reduced to zero, particularly considering how Sporting, through its conduct, was found to have contributed to the early termination of the Employment Contract.
83. The Chamber decided to start first by assessing LOSC's contention that the liquidated damages clause should be held invalid because it is not reciprocal (i.e. it establishes a different amount of compensation depending on whether the unlawful termination is carried out by the Player or by Sporting). In this regard, the Chamber acknowledges that the DRC and CAS jurisprudence on this point is not entirely consistent, but has decided to adhere to the position that a contractually agreed liquidated damages clause does not necessarily have to be reciprocal in order to be valid<sup>18</sup> and that the appropriate test

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<sup>17</sup> See para. 43 of Sporting's claim (*"The purpose of said clause 11 of the Contract was to agree on a specific amount established in advance in case any of the Parties unilaterally terminated the Contract without just cause, in accordance with article 17 of the FIFA RSTP."*) and para. 156 of LOSC's answer (*"Hence, based on the foregoing, there is no doubt that Article 11 of the Player's Employment Agreement is a liquidated damage clause within the meaning of the well-established CAS and FIFA DRC jurisprudence."*)

<sup>18</sup> CAS 2013/A/3411 Al Gharafa S.C. & M. Bresciano v. Al Nasr S.C. & FIFA, para. 95.

should be whether there has been an excessive commitment from either of the contractual parties in respect of the applicable clause.<sup>19</sup>

84. As stated in section IV. d. above, pursuant to art. 13 par. 5 of the Procedural Rules, it would be incumbent on the party arguing for the invalidity of a liquidated damages clause (in this case, LOSC) to establish that said clause should be held invalid due to “excessive commitment”. In this regard, the Chamber noted that, on the basis of the evidence on file, even though there is certainly a significant disparity between the financial consequences associated with a termination without cause between the Player and Sporting, it is not in a position to conclude that there was an excessive commitment on the part of the Player and therefore it is not prepared to conclude for the invalidity of the agreed upon liquidated damages on that basis. The Chamber also wished to underline in this regard that the assessment of any potential excessive commitment again highlights the difficulties which this Chamber is faced with by having been ordered to establish the compensation payable by the new club in the absence of the Player as a party in these proceedings, as evidently the Player was the counterparty to the Employment Contract and therefore the party that would have been best placed to provide evidence of any such potential excessive commitment.
85. On the other hand, even though the DRC is not prepared to declare the liquidated damages clause to be invalid, this does not mean that it finds it to be proportionate. The DRC found the following elements to be of particular relevance when assessing the proportionality of the liquidated damages provision:
- the moment to assess the damages sustained by Sporting is at the point of termination of the Employment Contract and should therefore be carried out on the basis of the circumstances that existed on the date of termination<sup>20</sup>. Therefore, the subsequent evolution of the Player and his market value, in particular after the Player had departed from LOSC, are not determinative;
  - at Sporting, the Player was entitled to relatively low salary (an average yearly salary of EUR 71,803 over the duration of the Employment Contract). This constitutes an important indicator of the value attributed by Sporting to the Player’s services in the context of their relationship;
  - at the time of termination, the Player was indeed already recognised as a promising talent in Sporting’s academy, was still very young and had a clear expected margin for improvement;

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<sup>19</sup> CAS 2018/A/5771 Al Wakra FC v. Gastón Maximiliano Sangoy & FIFA - CAS 2018/A/5772 Gastón Maximiliano Sangoy v. Al Wakra FC, para. 162.

<sup>20</sup> cf. FIFA Commentary, p. 153.

- at the point of termination, Sporting had an expectation to count on the Player's services for another four years and had a legitimate expectation to at least have the potential opportunity to transfer him for a significant transfer fee;
- the Player moved on to LOSC to earn, at least, approximately EUR 1,284,000 gross per season, plus other bonuses agreed with LOSC;
- there was a significant disparity between the financial consequences associated with a termination without cause between the Player and Sporting. Even though the Chamber found that this should not in this case lead to the invalidity of the clause, this does not necessarily mean that the DRC cannot take that disparity into account in its assessment of the proportionality of the amount in question;
- Sporting was found by the TAD to have seriously breached the Employment Contract, to a point where the Player would have had just cause to terminate it had he done that promptly thereafter.<sup>21</sup> In the CAS Award, even though the CAS Panel does not expressly make the exact same statements as the TAD with regard to Sporting's serious breaches of contract, the Panel does suggest, in the view of this Chamber, that the main reason why it found that the Player did not have just cause to terminate the Employment Contract was because he did not exercise his right to terminate within an appropriate – limited – time window and not because Sporting had not seriously breached the Employment Contract.<sup>22</sup> In this regard, the Chamber adheres to the position that, where the conduct of one of the parties has contributed to the deterioration of the relationship between them and potentially to the early termination of the employment contract, this should lead to a reduction of the compensation payable to the aggrieved party. The DRC therefore considers that this is another critical element to consider when assessing the proportionality of the contractually agreed liquidated damages provision and awarding compensation.

86. In light of the elements set out above and all things considered, the Chamber accepts LOSC's position that the liquidated damages clause providing for a payment of EUR 45,292,516 is manifestly disproportionate and clearly exceeds the admissible amount in consideration of justice and equity. In light of the above, the Chamber is entitled, and indeed obliged, to significantly reduce the contractually agreed liquidated damages so as to neutralise the excessive nature of the compensation payable.
87. Having duly considered the circumstances of this case and the elements on file, the Chamber first considered that a reduction to approximately 1/3 of the agreed liquidated damages amount is necessary in order to render it proportionate, fair and reasonable.

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<sup>21</sup> cf. para. 24 of the CAS Award.

<sup>22</sup> cf. paras 226-228 of the CAS Award.



88. Then, in establishing the exact/specific amount of compensation payable, the Chamber took note that the TAD had ordered the Player to pay Sporting an amount of EUR 16,500,000 and noted that this amount corresponds to slightly more than 1/3 of the amount set forth in the applicable liquidated damages provision, which is consistent with the level of reduction that this Chamber deems appropriate. In light of the fact that, pursuant to art. 17 par. 2 of the RSTP, the basis of the new club's liability is the player's liability,<sup>23</sup> the Chamber therefore considered that it would be appropriate to proportionately reduce the liquidated damages amount to the specific compensation payable of EUR 16,500,000.
89. In doing so, the Chamber acknowledged, and indeed was bound to accept, the CAS Panel's findings that the respective liabilities of the Player and of LOSC were not *purely accessory or ancillary*<sup>24</sup> vis-à-vis each other and that, from a procedural point of view, Sporting's compensation claims against the Player and LOSC were two distinct claims.<sup>25</sup> Equally, the Chamber also acknowledged, and indeed was bound to accept, the CAS Panel's finding that a final and binding decision by the TAD against the Player would not affect the liability of LOSC.<sup>26</sup> At the same time, the Chamber wished to note that, even though the CAS Panel stated that the liability of the new club was not subsequent or accessory to the Player's liability and that the two claims were, from a procedural point of view, independent claims, it did not state that the two claims were entirely unrelated to each other (for example, the CAS Panel accepted that the Player being ordered to pay compensation is a condition with respect to the new club's liability<sup>27</sup>).
90. The Chamber therefore wished to emphasise that it makes no contrary findings in this decision to those of the CAS Panel. Rather, having already previously decided that the liquidated damages clause is disproportionate and must be reduced to approximately 1/3 of its amount, the Chamber simply considered that, in light of the principle that under art. 17 par. 2 of the RSTP *the basis of the new club's liability is the player's liability*, it would be appropriate, in using its reasonable discretion, to fix the specific amount of compensation payable at the same level as that which the Player has been ordered to pay by the TAD. In other words, the DRC has not decided that the amount of compensation payable by LOSC should be EUR 16,500,000 *because* it considered that the claim against LOSC is accessory to the claim against the Player and therefore the amount necessarily had to be the same or *because* it is bound to the decision pronounced by the TAD and consequently the compensation payable necessarily had to be the same, but rather because having already decided to proportionately reduce the liquidated damages clause to an approximate amount, it considered that the principle that *the basis of the new club's liability is the player's liability* would be of assistance in determining the specific amount of compensation payable.

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<sup>23</sup> CAS 2015/A/4111 & CAS 2015/A/4116, para. 113.

<sup>24</sup> cf. para. 177 of the CAS Award.

<sup>25</sup> cf. para. 180 of the CAS Award.

<sup>26</sup> cf. para. 237 of the CAS Award.

<sup>27</sup> cf. para. 216 of the CAS Award.

91. As to Sporting's additional request to receive compensation from LOSC if the Player's registration is sold and transferred from AC Milan to a third club, the Chamber finds this request without merit as that part of the claim clearly lacks legal basis. First, the Chamber has already concluded that a liquidated damages clause had been agreed between the parties to the Employment Contract and therefore it would have been for Sporting to establish that its damages exceeded the contractually agreed amount of compensation. As the Chamber concluded that the liquidated damages clause was excessive and disproportionate, it naturally follows that no additional damages can be considered to have been established. Moreover, in any event it is not demonstrated by Sporting that there is a close connection between the termination and the lost opportunity to realize such future profit. In other words, there is no logical nexus between Sporting's damages and such highly hypothetical future transfer compensation, which is at the least required to successfully claim such compensation (particularly considering that the DRC has found that the moment to assess the damages sustained by Sporting is at the point of termination of the Employment Contract). Consequently, this additional claim must be rejected.
92. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the amount of EUR 16,500,000 to the Claimant.
93. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of the date LOSC requested the Player's ITC until the date of effective payment.
94. For the sake of completeness, the Chamber is acutely aware that Sporting may ultimately become in possession of two final and binding decisions ordering respectively the Player and LOSC to the payment of a sum of money (one in the context of the TAD proceedings and another in the context of these DRC/CAS proceedings). In this regard, the Chamber considered important to emphasise that, even though the joint and several liability of the Player and LOSC is deemed to give rise, from a strict procedural standpoint, to two separate claims of Sporting, the claims/obligations derive from the same cause and have the same object. Consequently, where one of the joint and several debtors satisfies the creditor by paying (fully or partially) the relevant debt, this payment should extinguish/reduce the creditor's credit to the same extent of the payment received in relation to the other joint and several debtor. This circumstance should be duly considered before the relevant instances throughout this dispute, so as to ensure that Sporting is not, unintentionally, placed in a situation of unjust enrichment.

## ii. Compliance with monetary decisions

95. Finally, taking into account the applicable regulations, the Chamber referred to art. 24 par. 1 and 2 of the RSTP, 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.
96. In this regard, the DRC 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.
97. Therefore, bearing in mind the above, the DRC decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, 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 Respondent in accordance with art. 24 par. 2, 4 and 7 of the RSTP.
98. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
99. The DRC 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. 24 par. 8 of the RSTP.

## f. Costs

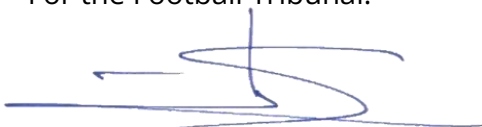
100. The Chamber referred to art. 25 par. 5 of the Procedural Rules, according to which “[t]he chamber will decide the amount that each party is due to pay, in consideration of the parties’ degree of success and their conduct during the procedure, as well as any advance of costs paid. In exceptional circumstances, the chamber may order that FIFA assumes all procedural costs.”. Accordingly, the Chamber found that because of the exceptional nature of these proceedings, any procedural costs should be borne by FIFA.
101. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.

102. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by either of the parties.

## V. Decision of the Dispute Resolution Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Sporting Clube de Portugal.
2. The claim of the Claimant is admissible.
3. The claim of the Claimant is partially accepted.
4. The Respondent, LOSC Lille, is jointly and severally liable for the payment of EUR 16,500,000 as compensation for breach of contract without just cause plus interest of 5% p.a. on said amount as from 9 August 2018 until the date of effective payment.
5. Any further claims of the Claimant are rejected.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
7. Pursuant to art. 24 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.
8. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
9. This decision is rendered without costs.

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 Governing the Football Tribunal).

**CONTACT INFORMATION**

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