CAS 2022/A/8807 Pyramids Football Club v. Club Deportivo Especializado de Alto Rendimiento Universidad Católica del Ecuador & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

Arbitrators: Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland

Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy

in the arbitration between

Pyramids Football Club, Egypt

Represented by Mr Rolf Müller and Mr Zani Dzaferi, Attorneys-at-Law, Zurich, Switzerland.

Appellant

and

C.D. Especializado de Alto Rendimiento Universidad Católica del Ecuador, Ecuador

Represented by Mr Andrés Holguín Martinez, Attorney-at-Law, Guayaquil, Ecuador

First Respondent

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Lietard, Director of Litigation and Mr Roberto Nájera Reyes, Senior Legal Counsel, Litigation Department, FIFA

Second Respondent

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I. PARTIES

1. Pyramids Football Club (the "Appellant" or "Pyramids FC") is an Egyptian professional football club with its registered head office in New Cairo, affiliated to the Egyptian Football Federation (the "EFF"), which is a member association of the Fédération Internationale de Football Association.

2. Club Deportivo Especializado de Alto Rendimiento Universidad Católica del Ecuador (the "First Respondent" or "Universidad Católica") is an Ecuadorian professional football club with its registered head office in Quito, Ecuador.

3. Fédération Internationale de Football Association ("Second Respondent" or "FIFA") is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliates. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code with headquarters in Zurich, Switzerland.

4. Pyramids FC and Universidad Católica are collectively referred to as the "Contractual Parties".

5. Universidad Católica and FIFA are collectively referred to as the "Respondents".

6. Pyramids FC, Universidad Católica and FIFA are collectively referred to as the "Parties".

II. INTRODUCTION

7. Pyramids FC is challenging before the Court of Arbitration for Sport ("CAS") the decision rendered by the FIFA Player Status Chamber (the "FIFA PSC") on 8 February 2022 (case ref. FPSD-4181), with grounds communicated to the Parties on 21 March 2022 (the "Appealed Decision").

8. The dispute between the Parties concerns the amount corresponding to the solidarity contribution which Pyramids FC was ordered to pay to Club Deportivo Juventud Minera ("Juventud Minera"). In essence, Pyramids FC wishes to obtain from Universidad Católica the reimbursement of the amount paid to Juventud Minera as solidarity contribution related to the acquisition of the Ecuadorian footballer John Jairo Cifuentes Vergara (the "Player").

III. FACTUAL BACKGROUND

9. Below is a summary of the main relevant facts and allegations based on the Parties' submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

(A) The transfer of the Player from Universidad Católica to Pyramids FC

10. On 20 December 2018, the Contractual Parties entered into a transfer agreement (the "Transfer Agreement") regarding the permanent transfer of the Player from Universidad Católica to Pyramids FC.

11. In accordance with Item 3, para. 1 of the Transfer Agreement, Pyramids FC agreed to pay to Universidad Católica a fee of USD 5,000,000 (five million US Dollars) for the transfer of the Player (the "Transfer Fee"), to be paid in two instalments as below:

    a) USD 3,000,000 (three million US Dollars) to be paid on 31 December 2018 (the "First Instalment");

    b) USD 2,000,000 (two million US Dollars) to be paid on 30 July 2019 (the "Second Instalment").

12. Moreover, Item 3, para. 2 of the Transfer Agreement provided the following about the Transfer Fee:

    "*This amount* [is] *inclusive of solidarity contribution and the training compensation in accordance with FIFA RSTP*".

13. It is undisputed that Universidad Católica received the Transfer Fee, which included the amount of 5% solidarity contribution corresponding to USD 250,000.

(B) The solidarity contribution claims of SD Quito, CSD Macara and CD Olmedo

14. Once aware of the Transfer Agreement, the football clubs SD Quito, CSD Macara and CD Olmedo submitted claims against Pyramids FC to obtain the payment of the relevant solidarity contribution.

15. In total, the Appellant was ordered to pay, and paid, the sum of USD 107,745 to the aforementioned clubs as solidarity contribution.

16. Universidad Católica refused to reimburse Pyramids FC the amount of USD 107,745 and the latter filed a claim before the FIFA PSC claiming such reimbursement. In this

dispute, Pyramids FC was successful in obtaining the claimed amount from Universidad Católica.

(C) The solidarity contribution claimed by Juventud Minera before the FIFA DRC

17. On 2 December 2020, Juventud Minera submitted a claim against Pyramids FC before the FIFA DRC, in which it requested its share of solidarity contribution (the "TMS 6333 Case").

18. On 10 February 2021, Pyramids FC informed Universidad Católica of the TMS 6333 Case and requested it to settle and pay the respective amount to Juventud Minera. On this same day, Universidad Católica answered and rejected Juventud Minera's request, arguing that it was not the "*buying club*" and that it had not been agreed that it would be responsible for said payment.

19. On 11 February 2021, Pyramids FC submitted to the FIFA DRC that – based on the Transfer Agreement's terms and conditions – Universidad Católica was the club that was supposed to pay the amounts claimed by Juventud Minera. Pyramids FC also argued that Juventud Minera's claim was time-barred, since more than two years had elapsed since the Player had been transferred.

20. On 22 June 2021, the Single Judge of the sub-committee of the FIFA DRC issued the decision (the "TMS 6333 Decision") which considered the following:

- The claim of Juventud Minera was not time-barred;
- In light of the Transfer Agreement, Juventud Minera was entitled to receive its share of the due solidarity contribution for the training and education provided to the Player between his 19th and 23rd birthday, which amounted to USD 89,125 (this amount was not contested); and
- Annexe 5 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") establishes that the responsibility to pay solidarity contribution is incumbent on the new club of a player, in this case Pyramids FC, even if the new club agreed otherwise with the former club of said player.

(D) The Contractual Parties' discussions in light of the TMS 6333 Decision

21. On 15 July 2021, Pyramids FC provided Universidad Católica with a copy of the TMS 6333 Decision and requested it to pay the amount of USD 89,125 directly to Juventud Minera or to reimburse Pyramids FC of said amount, all in accordance with Item 3, para. 2 of the Transfer Agreement.

22. On 27 July 2021, Pyramids FC insisted with Universidad Católica, requesting once more the payment of the solidarity contribution to Juventud Minera and providing the relevant banking details.

23. On 9 August 2021, Pyramids FC requested once more that Universidad Católica pay the amount of USD 89,125 as solidarity contribution to Juventud Minera. In its answer on the same day, Universidad Católica informed Pyramids FC that it had contacted Juventud Minera to try and reach a payment agreement, and that it would inform it in case it succeeded.

24. On 20 August 2021, Universidad Católica informed that it had been granted another week to reach an agreement with Juventud Minera and that "*pending the success of a diligence I have next week they will give us 7 months to pay the whole debt*".

25. On 1 September 2021, Pyramids FC, in accordance with the TMS 6333 Decision, paid the claimed amount of USD 89,125 to Juventud Minera.

26. On 2 September 2021, Pyramids FC sent a notice to Universidad Católica informing that the deadline for the payment of the solidarity contribution would expire on 3 September 2021. In the same communication, Pyramids FC informed that it had made the payment to avoid being sanctioned by FIFA, due to the failure of Universidad Católica's attempts to conclude a settlement with Juventud Minera. It further requested Universidad Católica to reimburse Pyramids FC of the amount which was paid plus applicable interest until the date of payment.

27. On 21 September 2021, Pyramids FC sent a letter to Universidad Católica requesting it to pay the full amount of USD 250,000, corresponding to the 5% of solidarity contribution that was not retained by virtue of Item 3, para. 2, of the Transfer Agreement.

(E) The proceedings before the FIFA PSC

28. On 2 November 2021, Pyramids FC filed a claim before the FIFA PSC.

29. Pyramids FC claimed, in essence, the following:

a) By failing to pay the solidarity contribution amounts to the clubs entitled to receive them, Universidad Católica breached the Transfer Agreement;

b) As per the terms of the Transfer Agreement, Universidad Católica received the Transfer Fee in full (USD 5,000,000) without the legal deduction of 5% in the amount of USD 250,000, as solidarity contribution;

c) Universidad Católica shall be obligated to pay to the Appellant USD 146,700, plus interest of 5% on USD 89,125 from 2 September 2021, alternatively 22 September 2021, and on USD 57,575 from 22 September 2021;

d) Alternatively, Universidad Católica shall be obligated to pay to Pyramids FC the amount of USD 89,125, plus interest of 5 % from 2 September 2021, alternatively 22 September 2021;

e) In all cases, the costs and compensations shall be imposed on the First Respondent.

30. In its reply, Universidad Católica argued, in essence, the following:

a) Juventud Minera's right to claim solidarity contribution in light of the Transfer Agreement expired in full on 20 December 2020, and the Appellant failed to present such argument before the FIFA DRC in the TMS 6333 Case;

b) Pyramids FC accepted and made an improper payment; therefore, its negligence caused said payment and the alleged "damages", a behaviour which cannot be rewarded;

c) The requested reimbursement of USD 89,125 shall be rejected in full;

d) The event that triggers the obligation between the Contractual Parties is the payment of the Transfer Fee instalments. Therefore, the claim for the payment of USD 57,575 was generated when Pyramids FC paid the Transfer Fee without withholding the solidarity contribution and, in consequence, its claim is time-barred.

31. On 8 February 2022, after carefully considering the arguments laid out, the FIFA PSC issued the Appealed Decision, with the operative part reading as follows:

"*1. The claim of the Claimant, Pyramids FC, is partially accepted insofar it is admissible.*

2. The Respondent, Universidad Catolica, has to pay to the Claimant, the amount of USD 35,650 as outstanding amount plus 5% interest p.a. as from 2 November 2021 until the date of effective payment.

[...]".

32. On 21 March 2022, the grounds of the Appealed Decision were notified to the Contractual Parties. In essence, the FIFA PSC's grounds can be summarised as follows:

- The FIFA PSC is competent to hear the case, which concerns a contractual dispute between clubs belonging to different associations;

- The transfer of the Player occurred on 20 December 2018 and the Transfer Fee was paid in two instalments – First Instalment to be paid by 31 December 2018 and Second Instalment to be paid by 30 July 2019;

- The date to consider whether the claim falls under the statute of limitations shall be determined by taking into account the date of Pyramids FC's request for the reimbursement of the solidarity contribution from Universidad Católica during the TMS 6333 Case, which seems to be 10 February 2021;

- *In casu*, taking the above into account, the FIFA PSC decided that only the First Instalment which was due on 31 December 2018 would be time-barred and that the Second Instalment, which was due by 31 July 2019, is not affected by the statute of limitations and is thus not time-barred;

- In cases in which the player's new club does not withhold 5% of the agreed transfer compensation, but nevertheless is asked to distribute solidarity contribution to the player's training clubs, the player's new club is ordered to remit the relevant shares of the 5% solidarity contribution to the club(s) involved in the player's training and education in strict application of the FIFA Regulations, and as per jurisprudence of the Football Tribunal;

- Pyramids FC proved that it did not withhold the 5% as solidarity contribution but, following the TMS 6333 Decision, it made such payment to Juventud Minera. Therefore, Pyramids FC is entitled to request the reimbursement of the part of the solidarity contribution that it paid to Juventud Minera, which was not to be considered time-barred;

- Since only the Second Instalment is not time-barred (USD 2,000,000), the amount of USD 35,650 (40% of the solidarity contribution paid to Juventud Minera) shall be awarded to Pyramids FC, plus interest on the above amount at the rate of 5% *p.a.* as of date of claim, *i.e.* 2 November 2021, until the date of effective payment.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 11 April 2022, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed its Statement of Appeal with the CAS challenging the Appealed Decision and requesting that the matter be decided by a Sole Arbitrator.

34. On 19 April 2022, the Appellant provided the CAS with proof of payment of the Court Office Fee, after having been requested to do so on 14 April 2022.

35. On 21 April 2022, the Appellant requested a 20-day deadline extension to file its Appeal Brief.

36. On 25 April 2022, in accordance with Article R32 of the CAS Code, and on behalf of the Director General of the CAS, a 10-day deadline extension of the Appellant's deadline to file its Appeal Brief was granted. Furthermore, the CAS Court Office invited the Respondents to state whether they agreed or not with a further 10-day deadline extension.

37. On 28 April 2022, the Second Respondent stated that it agreed with a further 10-day deadline extension of the Appellant's deadline to file its Appeal Brief.

38. On the same date, the First Respondent informed that it did not agree that the case be decided by a Sole Arbitrator and nominated Prof. Massimo Coccia, Law Professor and Attorney-at-Law in Rome, Italy, as arbitrator. Furthermore, it requested the CAS to consider the Appeal withdrawn based on the following arguments:

- On 14 April 2022, the Appellant was granted a time-limit of 3 days to present its proof of payment of the Court Office fee, since it failed to do so with its Statement of Appeal;
- As time-limits include holidays and non-working days according to Article R32 of the CAS Code, the Appellant should have presented its proof of payment on 17 April 2022, but it only did so on 19 April 2022;
- The proof of payment presented by the Appellant proves that it did not initiate the payment on 11 April 2020 and that it failed to comply with the deadline granted by the CAS on 14 April 2022, as the Easter holiday argument is irrelevant in light of the CAS Code;
- As such, in accordance with Article R48 of the CAS Code, the Appeal should be rejected as the Court Office fee was not paid in due time.

39. On 29 April 2022, the CAS Court Office acknowledged the First Respondent's request and clarified the following:

- Article R32 of the CAS Code reads as follows: "(...) *The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location of their own domicile or,* ***if represented, of the domicile of their main legal representative, on the last day on which such time limits expire****.* ***If the last day of the time limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day***" [emphasis in the original];

- Considering the 3-day deadline granted by the CAS Court Office started running from the day the correspondence was received by e-mail by the Appellant (14 April 2022), it would have expired on 17 April 2022, which is a Sunday (non-business day). Moreover, 18 April 2022 is an official holiday at the Appellant's representative's location (Zurich, Switzerland) and also a non-business day;

- As a result, the last day of the deadline was indeed 19 April 2022, as it was the first subsequent business day in the sense of Article R32 of the CAS Code. Therefore, the Appellant's filing of the Court Office's fee proof of payment was timely.

40. In addition to the above, the CAS Court Office also informed the Parties that it would be for the President of the Appeals Division, or her Deputy, to decide on the number of arbitrators, invited the First Respondent to state on whether it would pay its share of the advance of costs and also granted an additional 10-day extension of the Appellant's deadline to file its Appeal Brief, until 12 May 2022, since none of the Respondents expressly objected to that request.

41. On 2 May 2022, the First Respondent informed that it would pay its share of the advance of costs.

42. On 6 May 2022, the CAS Court office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator pursuant to Article R50 of the CAS Code.

43. On the same day, the First Respondent objected to the decision of the Deputy President of the CAS Appeals Arbitration Division, arguing that:

- Article R50 of the CAS Code establishes that, as a general rule, cases should be submitted to a panel of three arbitrators. The only exceptions to said rule consist of (i) the parties' agreement to submit the case to a sole arbitrator or (ii) a decision of the President of the CAS Appeals Arbitration Division, which takes into account "*whether or not the Respondent pays its share of the advance of costs* [...]";

- In this case, no agreement between the Parties was reached and the First Respondent agreed to pay its share of the advance of costs with the objective of submitting this case to a panel of three arbitrators;

- As such, the First Respondent requests the submission of the case to a panel of three arbitrators.

44. On 9 May 2022, the CAS Court Office informed the Parties of the nomination as Sole Arbitrator of Mr. Edward Canty, Attorney-at-Law in Manchester, United Kingdom, and provided them with a copy of his acceptance and independence form.

45. On the same day, the CAS Court Office acknowledged receipt of the First Respondent's letter of 6 May 2022 and clarified the following:

- Article R50 of the CAS Code provides that "[t]*he appeal shall be submitted to a Panel of three arbitrators, unless the parties have agreed to a Panel composed of a sole arbitrator or, in the absence of any agreement between the parties regarding the number of arbitrators,* ***the President of the Division decides to submit the appeal to a sole arbitrator, taking into account the circumstances of the case****, including whether or not the Respondent pays its share of the advance of costs within the time limit fixed by the CAS Court Office.*" [emphasis in the original];

- The payment of the advance costs by the Respondent is only one of the circumstances considered by the Division President, or her Deputy, when rendering a decision on the number of arbitrators;

- The decision of the Deputy President of the CAS Appeals Arbitration Division took into account all the circumstances of the case, including the information that the First Respondent was going to pay its share of the advance of costs;

- Said decision cannot be revised since the First Respondent did not present any new elements that have not yet been appreciated by the Division President and which could justify a revision of said decision.

46. On the same day, the First Respondent submitted new arguments explaining the reasons why it considered the case should be submitted to a panel of three arbitrators, arguing in essence that it (i) was not aware that it had to provide reasons for its request for a revision of the Division President's decision and (ii) that the case involved complex matters, namely the assessment of issues regarding solidarity contributions and whether part of this case was or not time-barred.

47. On 12 May 2022, the CAS Court Office, on behalf of the Deputy Division President, invited the Appellant to provide its comments on the First Respondent's new considerations.

48. On the same date, in accordance with Article R51 of the CAS Code, the Appellant filed its appeal brief (the "Appeal Brief").

49. On 17 May 2022, the Second Respondent noted that the Appellant had yet to pay its share of the advance of costs and requested its time-limit to file its answer be fixed after said payment was made. On this same date, the CAS Court Office informed that the Second Respondent's time limit to file its answer would be fixed upon the Appellant's payments of its share of the advance of costs.

50. On 23 May 2022, the Appellant submitted its comments on the First Respondent's request for the case to be decided by a panel of three arbitrators, arguing, in essence, that the case under scrutiny does not present any abnormal complexity and that such a request aimed solely at burdening the Appellant with much higher procedural costs.

51. On 25 May 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division decided to revise her former decision of 6 May 2022 and submit the present case to a Panel of three arbitrators. The Appellant was accordingly invited to nominate an arbitrator by 6 June 2022.

52. On 7 June 2022, the Appellant nominated Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland, as arbitrator.

53. On 20 June 2022, the Second Respondent confirmed that it did not object to the First Respondent's nomination of Prof. Massimo Coccia as arbitrator. On this same date, the CAS Court Office confirmed the Respondents' joint nomination of Prof. Massimo Coccia as arbitrator.

54. On 28 June 2022, and in light of the payment of the Appellant's share of the advance of costs, the CAS Court Office invited the Respondents to file their answers within 20 days, pursuant to Article R55 of the CAS Code.

55. On 7 and 8 July 2022, the First Respondent provided proof of payment of its share of the advance of costs and requested an extension of the deadline to file its answer until 22 July 2022.

56. On 11 July 2022, in accordance with Article R32 of the CAS Code, the deadline extension requested by the First Respondent to file its answer was granted.

57. On 12 July 2022, the Second Respondent requested a 10-day extension of the deadline to file its answer.

58. On 13 July 2022, in accordance with Article R32 of the CAS Code, the 10-day deadline extension requested by the Second Respondent to file its answer was granted.

59. On 21 July 2022, the First Respondent filed its Answer, in accordance with Article R55 of the CAS Code.

60. On 27 July 2022, the Second Respondent filed its Answer, in accordance with Article R55 of the CAS Code.

61. On 28 July 2022, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held on the present matter or not. On this same date, the Second Respondent informed the CAS that it did not find it necessary to hold a hearing in the present matter.

62. On 29 July 2022, the First Respondent requested a hearing to be held in the present matter.

63. On 5 August 2022, the Appellant informed the CAS that it did not find it necessary to hold a hearing in the present matter.

64. On 15 August 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal had been constituted as follows:

President: Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

Arbitrators: Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland
Massimo Coccia, Law Professor and Attorney-at-Law, Rome, Italy

65. On 29 August 2022, the CAS Court Office invited the Respondents, on behalf of the Panel, to comment on the Appellant's request to be granted another time-limit to file its observations regarding the Respondent's Answers. The First Respondent was also invited to provide detailed reasons why it considered it necessary to hold a hearing.

66. On 16 September 2022, after consultation of the Parties, the Panel decided to hold a hearing by videoconference. The hearing was scheduled for 20 October 2022.

67. On 20 September 2022, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.

68. On 20 October 2022, a hearing was held by videoconference. The following persons attended the hearing in addition to the Panel and Ms Lia Yokomizo, as CAS Counsel:

1. For the Appellant
   - Mr Zani Dzaferi– Counsel
2. For the First Respondent
   - Mr Andrés Houguín Martínez – Counsel
3. For the Second Respondent
   - Mr Miguel Liétard – Director of Litigation
   - Mr Roberto Reyes – Senior Legal Counsel

69. As a preliminary remark, the Parties were requested to confirm not having any objection to the constitution and composition of the Panel, and they so confirmed.

70. At the beginning of the hearing, the Appellant stated that it had not been provided with the exhibits filed by the Second Respondent, since the download link had expired. However, the Panel did not consider the Appellant's remarks to deserve any merit, since:

i) The download link provided by the Second Respondent was still active and working normally;
ii) The main documents filed by the Second Respondent were already produced by the other parties in their submissions;

iii) The documents filed by the Second Respondent were already produced during the FIFA PSC proceedings;

iv) The Appellant had personal knowledge of the documents filed by the Second Respondent, namely (i) the Appealed Decision; (ii) the Transfer Agreement; (iii) the TMS 6333 Decision; (iv) the emails exchanged between the Contractual Parties; (v) the Appellant's answer filed in the TMS 6333 Case; (vi) the Appellant's claim filed in the FIFA PSC proceedings which gave rise to the present Appeal; (vii) the First Respondent's answer filed in the aforementioned FIFA PSC proceedings; (viii) a decision of the FIFA PSC, passed on 6 December 2021, in which the Appellant was the claimant and club Athletico Paranaense, from Brazil, was the respondent; and (ix) the International Transfer Certificate of the Player;

v) The Appellant had declared not to consider necessary to hold a hearing to discuss the present dispute; and

vi) The Appellant was given possibility, but was not able to substantiate any reason as to why a theorical lack of access of the aforementioned documents would be relevant for its legal position.

71. In light of the above, the Panel considered that the Appellant's arguments were contradictory and unreasonable.

72. In any event, when asked by the Panel if it wished to continue with the hearing, the Appellant did not raise any objection and all Parties agreed to proceed with the hearing as scheduled.

73. The Parties were given the opportunity to present their case and make their submissions and arguments. After the Parties' closing submissions, the hearing was closed, and the Panel reserved its decision to this Award.

74. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

V. THE PARTIES' SUBMISSIONS

75. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellant's submissions

76. The Appellant prayed the below reliefs in its Appeal Brief:

"1. In acceptance of the present Appeal, the decision FIFA Player' Status Chamber passed on 8th February 2022 (FPSD-4181), shall be annulled as far as the claim of the Appellant of the 2nd November 2021 was rejected and the Respondent 1 be obligated and judged to pay to the Claimant not only the already awarded USD 35'650,00 but additionally USD 53'475.00, so total USD 89'125.00, with a default interest of 5% from the 2nd of September 2021, [alternatively] *22nd of September 2021.*

2. [Alternatively] *to the Request No. 1, in acceptance of the present Appeal, the decision from the FIFA Player' Status Chamber, passed on the 8th of February 2022 (FPSD-4181), shall be annulled as far as the claim of the Appellant of the 2nd November 2021 was rejected, and the case referred back to the previous instance (FIFA) for a new evaluation and decision.*

3.In acceptance of the present Appeal, the Respondent 2 shall be obligated and judged to pay to the Appellant back the Advance of Costs in the amount of total USD 3'000.00 with a default interest of 5% from the 8th of February 2022.

4. The costs and compensations of the present procedure shall be imposed to the Respondents."

77. The Appellant advanced the following grounds in support of its appeal:

(A.1) The Claim presented before the FIFA PSC

78. The Contractual Parties entered into the Transfer Agreement on 20 December 2018. The 5% corresponding to solidarity contribution was not retained by Pyramids FC. Universidad Católica committed to distribute the solidarity contribution to the entitled clubs – otherwise, Pyramids FC would have only paid USD 4,750,000 which corresponds to the transfer fee with a 5% deduction.

79. On 10 February 2021, Pyramids FC informed Universidad Católica that Juventud Minera had filed a claim for solidarity contribution against it (the TMS 6333 Case) and asked Universidad Católica to settle and pay the respective amount. On the same day, Universidad Católica rejected such demand.

80. On 22 June 2021, the TMS 6333 Case ended with a decision favourable to Juventud Minera and the Appellant was ordered to pay USD 89,125. Pyramids FC forwarded this decision to Universidad Católica asking to settle the amount in dispute in accordance with Item 3, para. 2 of the Transfer Agreement.

81. Universidad Católica stated that it was conducting negotiations with Juventud Minera to reach a payment agreement, however, such agreement never materialised.

82. As a result of Universidad Católica's failure to pay the solidarity contribution to Juventud Minera, Pyramids FC was forced to make said payment, to avoid being sanctioned by FIFA. Therefore, on 2 September 2021 and 8 September 2021, Pyramids FC once more requested the reimbursement of the amount which had been paid to Juventud Minera – but that never occurred. By failing to reimburse Pyramids FC, Universidad Católica breached the Transfer Agreement.

(A.2) The solidarity contribution arising from the First Instalment is not time-barred

83. The Appealed Decision states that, regarding the First Instalment, the two-years' time-limit for FIFA to be able to hear a case started counting from 30 January 2019 and expired on 30 January 2021; however, this conclusion violates Article 23, para. 3 of the RSTP.

84. In another case which is pending before the CAS (CAS 2022/A/8682), concerning a payment made in a single instalment, FIFA considered that the two years' time-limit according to Article 23, para. 3 of the RSTP would start only 30 days after the registration of the respective player, which is contrary to what is stated in the Appealed Decision. Therefore, it appears that FIFA understands as follows in what concerns the claiming of solidarity contribution:

(i) If a transfer fee is paid in one instalment, the two-years' time-limit of the statute of limitation starts 30 days after the registration of the respective player; or

(ii) If a transfer fee is paid in two or more instalments, the two-years' time-limit of the statute of limitation starts 30 days after the due date of each instalment separately.

85. FIFA has an inconsistent opinion when the transfer fee is paid in full. There are no arguments to justify such arbitrary understanding when the payment of the transfer fee is made in instalments.

86. It would be much more consistent if FIFA always considered the same option to start the counting of the time-limit: the registration date plus 30 days or the due date of the Transfer fee plus 30 days, independent on the fact that said fee is paid all at once or in instalments.

87. In cases like the present one, the right manner to start counting the time-limit should actually be the moment when Pyramids FC paid the solidarity contribution to the clubs entitled to it, *i.e.* 1 September 2021 – this is the moment when Universidad

Católica got "released" from its obligation to pay the solidarity contribution to Juventud Minera, becoming unjustly enriched and causing damages to Pyramids FC.

88. FIFA's understanding might be adequate in what concerns the relation between the new club and the clubs entitled to the solidarity contribution, but not in the present case, which refers to a totally different situation: it is only the contractual relation between Pyramids FC and Universidad Católica that is being analysed.

89. In essence, Universidad Católica breached the Transfer Agreement when it failed to distribute the solidarity contribution to Juventud Minera. Because of this breach, the Appellant had a damage in the form of the payment which it had to make to Juventud Minera, in the amount of USD 89,125 and, at the same time, Universidad Católica was unjustly enriched. This damage arose on 1 September 2021, the date the payment was made and only in this moment did the dispute arise – and, as such, no amounts are time-barred.

90. Although Juventud Minera complied with the time-limit to claim its solidarity contribution, it is natural that the FIFA DRC could not immediately inform Pyramids FC of the claim. In fact, only 29 days later was Pyramids FC invited to react to this claim. By that time, it would only have three days to request the payment from Universidad Católica before the time-limit had elapsed, which is unacceptable.

91. It could also occur that a club claims the solidarity contribution just one day before the deadline and FIFA communicates it to the new club after the time-limit for it to ask for the reimbursement has already elapsed. In such cases, the new club would have to pay the requested amounts but would not be able to ask for the reimbursement, even if it had a contractual arrangement with the selling club.

92. In light of the above, it is obvious that the First Instalment is not time-barred, since the time-limit enshrined in Article 23, para. 3 of the RSTP only started running on 2 September 2021, when the Appellant paid the solidarity contribution, or, alternatively, on 22 September 2021, when it asked again the First Respondent to pay the relevant amount.

(B) The First Respondent's submissions

93. The First Respondent filed its Answer to the Appeal Brief and put forward the following prayers for relief:

"*2. PETITION. - In this sense, the first petition by the First Respondent is that the Panel considers that the appealed decision has been paid in full and, if the Panel considers an additional amount at the time of the award, to consider this payment already made and apply it to the total debt, only in the not accepted event that the Panel accepts the appeal.*

[...]

5. PETITION.- The First Respondent request the Panel to resolve that there are no causes to declare the annulment of the appealed decision and, since there are none, it cannot accept the Appellant's request that would be generated as a consequence of this annulment, which would be the payment of the amount that was declared time barred in the appealed decision or return the case to FIFA for ruling on the said amount.

[...]

19. PETITION.- In this sense, the First Respondent request the Panel to decide that the irresponsibility of the Appellant in agreeing to pay a time-barred amount is their absolute responsibility and it is not the First Respondent responsibility to pay for the Appellant's lack of diligence in Juventud Minera´s claim.

[...]

27. PETITION.- Based on the foregoing, I request the Panel to consider that the First Respondent should not be sentenced to pay US$53,475 for reimbursement to the Appellant of the amount paid to Juventud Minera, since it is a clearly time-barred amount. The Appellant acted irresponsibly and with lack of due diligence in not exercising any defense or notifying the First Respondent and that attitude should not be rewarded. The First Respondent should not be held responsible for the errors of the Appellant in their way to deal with Juventud Minera´s claim.

[...]

37. PETITION.- the First Respondent requests the Panel to not accept the Appeal and resolve that the reimbursement for the amount paid on December 30th, 2018 was barred by the statute of limitations.

38. ADITIONAL PETITION.- The First Respondent also requests that the Appellant be ordered to reimburse the amount of the costs of this appeal paid by the First Respondent and attorney's fees amounting to five thousand US Dollars".

94. The First Respondent advanced the following grounds in support of its position:

(B.1) Preliminary Remarks

95. The First Respondent started by pointing out that on 30 March 2022, it made the payment of the sum of USD 36,382.53 *"(...) which corresponds to the amount that was ordered on the* [Appealed Decision] *plus the interest according to the decision until the date of payment."*

(B.2) The annulment of the Appealed Decision

96. Pyramids FC has requested the annulment of the Appealed Decision, however, it failed to present any valid argument for its annulment. In fact, a decision may only be annulled if certain reasons, established by law, occur.

(B.3) Pyramids FC failed to present any arguments before the FIFA DRC (TMS 6333 Case)

97. On 10 February 2021, Pyramids FC requested the reimbursement from Universidad Católica in relation to the claim filed by Juventud Minera, however, said claim was not attached to the email sent by Pyramids FC. Moreover, Universidad Católica was only informed of the claim 2 days prior to the expiry of the deadline to present an answer.

98. Pyramids FC did not give Universidad Católica a chance to file any arguments to demonstrate that a part of the claim was time-barred; on the contrary, Pyramids FC accepted the debt despite considering it was not its obligation to pay it.

99. Pyramids FC failed to diligently defend itself from the claim filed by Juventud Minera and accepted the claim and the payment, even though it was time-barred.

100. Therefore, it was Pyramids FC's fault that it was ordered to make a payment. The Transfer Agreement does not establish the obligation of Universidad Católica to pay the solidarity contribution; however, if that were the case, it was Pyramids FC's obligation to report this to Universidad Católica and it failed to do so.

(B.4) The payment of the solidarity contribution is time-barred, and no illegal enrichment occurred.

101. The Appealed Decision establishes that the reimbursement of solidarity contribution on the First Instalment made by Pyramids FC to Universidad Católica was time-barred, in accordance with Article 23, para. 3 of the RSTP, which establishes that FIFA is not competent to decide disputes which began more than two years prior to the events that gave rise to the dispute.

102. Pyramids FC requested the reimbursement of a solidarity contribution claim that expired on 31 December 2020 by the statute of limitations. Moreover, the requested reimbursement is related to an amount that Pyramids FC should have deducted from the Transfer Fee.

103. While Pyramids FC maintains that there was illegal enrichment, following the same line of analysis as it does, this "illegal enrichment" allegedly occurred when Pyramids FC paid for the Player's transfer, and any claim for this illegal enrichment should

have been filed within the two years that said club had to do so – therefore, it is also time-barred.

104. Finally, at the time of the email sent by Pyramids FC requesting the reimbursement (10 February 2021), any amount relating to the Transfer Fee paid on 31 December 2018 was already time-barred for both Pyramids FC and Juventud Minera. Pyramids FC decided to assume – without any justification – the payment to Juventud Minera and, therefore, no illegal enrichment occurred.

(C) The Second Respondent's submissions

105. The Second Respondent filed its Answer to the Appeal Brief and made the following prayers for relief:

"*FIFA respectfully requests CAS to issue an award:*
(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;
(b) confirming the Appealed Decision in its entirety;
(c) ordering the Appellant to bear the full costs of these arbitration proceedings".

106. The Second Respondent set out the below grounds in support of its position.

107. The FIFA PSC "*shall not hear any case subject to* [RSTP] *if more than two years have elapsed since the event giving rise to the dispute.*"

108. It is also undisputed that the Transfer Fee had to be paid in two instalments: (i) the First Instalment on 31 December 2018, (ii) and the Second Instalment on 30 July 2019.

109. Since Pyramids FC and Universidad Católica agreed that the Transfer Fee would include the amount of 5% related to solidarity contribution, Pyramids FC argues that it was Universidad Católica who had the obligation to make the solidarity payments to training clubs entitled to them.

110. Pyramids FC, regardless of any agreement reached with Universidad Católica, had the regulatory obligation to pay the solidarity contribution to the entitled clubs by 30 January 2019 (*i.e.* 30 days after the First Instalment) and by 29 August (*i.e.* 30 days after the Second Instalment) – otherwise, it would be in default as of the following day, respectively.

111. Following Pyramids FC line of thought, Universidad Católica had to pay the solidarity contribution within the same deadline established by the RSTP (30 days after each instalment) – therefore, it breached the Transfer Agreement on 31 January 2019.

112. Pyramids FC had ample time to file a claim against Universidad Católica:

a) From 31 January 2019 until 31 January 2021, the reimbursement of the solidarity contribution related to the First Instalment could have been requested; and
b) From 30 August 2019 until 30 August 2021, the reimbursement of the solidarity contribution related to the Second Instalment could have been requested.

113. However, by the moment Pyramids FC requested Universidad Católica to pay the solidarity contribution to Juventud Minera (10 February 2021), the FIFA PSC was already prevented from hearing the case in what concerns the reimbursement of the solidarity contribution related to the First Instalment, since more than 2 years had elapsed from the moment the dispute arose.

114. Pyramids FC even argues that the Transfer Agreement was breached on 31 January, so it cannot pretend that the dispute started only on 2 September 2021 – this is a contradictory argument.

115. It is also clear that FIFA does not have any contradictory positions regarding the counting of the time-limits in cases like the present one, since it only follows the clear wording of Article 2 of Annexe 5 RSTP.

116. In the case at hand, two contingent payments were agreed. Consequently, in accordance with the RSTP, Pyramids FC (or Universidad Católica) had to pay Juventud Minera the solidarity contribution 30 days after each agreed instalment.

117. In any case, even if the dispute had arisen only 30 days after the Player was registered, as Pyramids FC appears to suggest, the reimbursement requested was equally time-barred. In fact, the Player was registered on 3 January 2019, so the solidarity contribution had to be distributed by 3 February 2019 – therefore, by requesting the reimbursement on 10 February 2021, Pyramids FC did so 2 years and 7 days after the dispute arose, meaning that it was beyond FIFA's statute of limitations.

VI. JURISDICTION OF THE CAS

131. Article R47 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

132. The jurisdiction of the CAS is based on Articles 56.1 and 57.1 of the FIFA Statutes and is not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

133. It follows that the CAS has jurisdiction to hear this dispute.

VII. APPLICABLE LAW

134. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

135. In addition, Article 56.2 of the FIFA Statutes stipulates the following:

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

136. The Transfer Agreement's Item 6, para. 2, states the following:

"*GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the FIFA Regulations, as well as the complementary rules enacted by FIFA from time to time*" [emphasis added by the Panel],

137. Considering the above, the Panel is satisfied that the various regulations of FIFA – in particular, the RSTP – constitute the applicable law to the matter in dispute and that, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

138. In accordance with Article 26, para. 1 RSTP (edition August 2021) and considering that the claim before FIFA was initiated on 2 November 2021, the August 2021 edition is applicable to the matter at hand as to the substance of the dispute. This finding is made having in mind the Panel's view in relation to the nature of the dispute, as presented in the chapter of the decision dedicated to the merits of the dispute.

VIII. ADMISSIBILITY

139. Article R49 of the Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late*".

140. Article 57.1 of the FIFA Statutes read as follows:

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

141. The grounds of the Appealed Decision passed on 8 February 2022 were notified to the Appellant on 21 March 2022 and the Statement of Appeal was filed on 11 April 2022, *i.e.* within the 21-day deadline fixed under Article 57.1 of the FIFA Statutes.

142. Despite the First Respondent's objections to the admission of the Appeal presented during the proceedings (see para. 38 above), it is clear that the Appellant complied with the deadline given by the CAS Court Office to pay the relevant fees and that it also filed the Appeal Brief in due time, considering the time-limit extensions granted.

143. It follows that the Appeal is admissible.

IX. MERITS

144. Prior to assessing the legal issues at stake, the Panel deems it useful to clarify the scope of the Appeal – what is this case about?

145. The present case, as framed by the Appellant, concerns a claim for reimbursement, made by the Appellant to the First Respondent, under the Transfer Agreement. This claim is based on the fact that (i) the Transfer Fee was paid in full, without the regulatory withholding of 5% prescribed in the RSTP, and (ii) the Appellant paid USD 89,125 to Juventud Minera, as solidarity contribution, which in its opinion should have been made, as per the Transfer Agreement, by the First Respondent.

146. Considering the above, the Panel is satisfied that the issues for determination consist of the following:

(A) What is the nature of the present dispute?

(B) When did the present dispute start?

(C) Depending on the answer to the previous issues, and considering the FIFA regulations, is Pyramids FC's claim time-barred?

(D) In result of the previous determination, what are the legal consequences?

147. The Panel will address the above issues below.

(A) What is the nature of the present dispute?

149. The Parties frame the nature of the present dispute in a different perspective:

(i) The Appellant defends that this case is a *contractual dispute*, because the First Respondent breached the Transfer Agreement by failing to distribute the solidarity contribution to the clubs which were entitled to it;

(ii) The First Respondent defends that this case is a *regulatory dispute*, because the Appellant was obliged to pay the solidarity contribution to Juventud Minera and by failing this obligation breached the RSTP; and

(iii) The Second Respondent does not set forth a clear understanding about the nature of the dispute; but it considers that the time-limits in the case at hand should follow Article 2, Annexe 5 of the RSTP.

150. In the Panel's view, there are some important remarks to make that can shed some light over the nature of this dispute.

151. Firstly, the Panel recalls the wording of Article 21 of the RSTP, which establishes the main principle of the solidarity mechanism:

"*If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations*" [emphasis added by the Panel].

152. *In casu*, the Contractual Parties are not clubs entitled to receive solidarity contribution under the RSTP's provisions, namely Article 21 and Annexe 5. On the contrary, the Contractual Parties are not claiming to have any right to receive solidarity contributions, since they have not contributed to the education and training of the Player in the sense of Article 1 of Annexe 5 RSTP.

153. What the Appellant is claiming is that, under the Transfer Agreement, it is entitled to receive a reimbursement in the same amount that it paid to Juventud Minera as solidarity

contribution, since it paid the Transfer Fee in full, *i.e.* without deducting 5% as solidarity contribution, as provided by Article 1 of Annexe 5 RSTP.

154. The Panel is therefore of the opinion that, unlike in the TMS 6333 Case, which concerned the payment of solidarity contribution to a training club that was entitled to receive those amounts (Juventud Minera), in this Appeal the issue actually at stake is a "claim for reimbursement".

155. In fact, the solidarity contribution payment was already made by the Appellant when it complied with the TMS 6333 Decision. In essence, this means that the "regulatory part" of the original dispute is already solved – the Appellant paid the solidarity contribution to which Juventud Minera was entitled as per Article 21 and Annexe 5 of the RSTP.

156. What remains to be decided is the disputed contractual liability of the First Respondent to reimburse the Appellant, and this matter assumes the nature of a horizontal dispute between the Contractual Parties.

(B) When did the present dispute arise?

157. The Appellant believes the dispute only started when it was forced to make the payment of solidarity contribution to Juventud Minera (*i.e.* on 2 September 2021). The Respondents consider the dates of 30 January 2019 and 29 August 2019 (*i.e.* 30 days after the due date of the First and Second Instalments respectively) as the moment when the dispute arose, pursuant to the wording of Article 2, para. 1 of Annexe 5 RSTP.

158. Article 2 para. 1 of Annexe 5 RSTP reads as follows: "*The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.*"

159. In light of the conclusions drawn in the previous section regarding the object and the nature of the dispute, the Panel is of the opinion that Article 2, para. 1 of Annexe 5 RSTP is not applicable to the present case, since the object of the dispute is a claim between Pyramids FC and Universidad Católica concerning the disputed contractual duty of reimbursement by Universidad Católica to Pyramids FC of a certain amount of money. Article 2 para. 1 of Annexe 5 RSTP refers to a regulatory deadline that is applicable only to the relationship between the club regulatorily obliged to pay solidarity contribution and the club entitled to receive it (*i.e.* here: Pyramids FC and Juventud Minera).

160. Considering the non-applicability of Article 2, para. 1 of Annexe 5 RSTP, one shall carefully review what exactly did the Contractual Parties agree.

161. The wording of Item 3, para. 2 of the Transfer Agreement clearly indicates that the Transfer Fee included the solidarity contribution amount of 5%. Based on all the submissions made and the evidence offered, the Panel is satisfied that the contractual acceptance by the First Respondent to receive the entire Transfer Fee "*inclusive of solidarity contribution*" (see *supra* at para. 12) had the clear legal consequence of assuming a contractual responsibility either to directly make the solidarity contribution payment to the clubs entitled to it or, alternatively, to reimburse the Appellant in case the latter was compelled to make any such payment.

162. The previous determination is reinforced by the behaviour of the First Respondent, which despite denying any responsibility at first, ended up acknowledging that it was indeed responsible for the payment of the solidarity contribution when it stated that it was actively trying to reach a payment agreement with Juventud Minera (see paras. 23-24 above).

163. Therefore, the Panel is comfortably satisfied that the true and common intention of the Contractual Parties was effectively to place the burden of paying the solidarity contributions to the Player's former training clubs, including Juventud Minera, on the First Respondent.

164. In addition, the Panel notes that this "internal agreement" between the Contractual Parties is acceptable (see CAS 2015/A/4105, paras. 38-40). In essence, clubs are free to agree who shall bear the "final" burden of paying solidarity contribution; however, such agreements only produce effects "*inter partes*" and do not affect the buying club's regulatory responsibility of paying the solidarity contribution amounts. To state anything different would give to parties of a transfer agreement the power to influence the creditor status of a third party, *i.e.* the training clubs. This is not provided for under the RSTP, for obvious policy reasons.

165. On the other hand, if a regulatorily obliged club (the buying club) is ordered to pay solidarity contribution to any other third club which is entitled to it, then it can request a reimbursement of said amount from its contractual counterparty (the selling club), if such a right for reimbursement was agreed between them. Such a reimbursement obligation does not have any negative impact on the training club that has, in the meantime, well received its share of the solidarity contribution.

166. Having reached the above conclusions regarding the agreement between the Contractual Parties, the Panel is now able to ascertain when the dispute between them effectively arose.

167. In principle, the event that would trigger the dispute should be the moment when the First Respondent refused paying the relevant amounts of solidarity contribution directly

to Juventud Minera or refused to reimburse the Appellant. Indeed, if the First Respondent had directly paid Juventud Minera or had not objected to the request for reimbursement, the dispute would have never arisen.

168. From the evidence produced in the file, it was not possible to determine (nor did the Panel consider it necessary) the exact time at which the First Respondent refused to make that payment. In any event, the Contractual Parties' discussion in this regard commenced on the occasion of the communication of 10 February 2021 (see para. 18 above).

169. The Panel draws the attention of the Parties to case CAS 2015/A/4105 (at paras. 42-44), which dealt with a similar issue where both parties had an "internal" contractual arrangement regarding who should bear the costs of the solidarity contribution. In that case the Sole Arbitrator considered that the event giving rise to the claim was the moment when the contractual dispute arose and not the 30-day deadline in which the solidarity payment should have been made.

(C) Was the Appellant's claim before the FIFA PSC time-barred?

170. Pursuant to Article 23, para. 3 of the RSTP, "[t]*he Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case*."

171. As set out above, the Panel finds that, in light of the contractual nature of the issue at stake, the dispute started, at the earliest, on 10 February 2021. No distinction must be made in relation to the maturity of the instalments, since Article 2, para. 1 of Annexe 5 RSTP is not applicable. It is not necessary to determine the exact moment in the year of 2021, in which the dispute arose, since any moment within that year effectively means that none of the reimbursements claimed by the Appellant was time-barred at the time the claim was filed before the FIFA PSC (2 November 2021).

172. In light of the above, the Panel finds that the Appellant's claim before the FIFA PSC was not time-barred.

(D) As a result of the previous determination, what are the legal consequences?

173. The Panel recalls that, as per Item 3, para. 2 of the Transfer Agreement, the First Respondent effectively undertook the obligation to distribute and pay the solidarity contributions due to the clubs entitled to them (see paras. 161-163 above). Any other interpretation of Item 3, para. 2 of the Transfer Agreement would render such contractual provision ineffective.

174. Since the First Respondent failed to pay the relevant amount of solidarity contribution to Juventud Minera (USD 89,125), the Appellant was compelled – in compliance with the FIFA RSTP and TMS 6333 Decision – to pay this amount to Juventud Minera. The First Respondent breached its contractual obligations under the Transfer Fee and must thus reimburse the Appellant of the incurred damages (based on the principle of *pacta sunt servanda* enshrined in the RSTP and as foreseen also by Article 97 *et seq.* of the Swiss Code of Obligations). This determination is in accordance with long-standing CAS jurisprudence (see, among others, CAS 2006/A/1018; CAS 2006/A/1158 & 1160 & 1161; CAS 2015/A/4105; CAS 2016/A/4518).

175. Therefore, the Panel considers that the Appellant is entitled to receive from the First Respondent the full amount which it was ordered to pay to Juventud Minera – USD 89,125, of which USD 35,650 (plus interest accrued on this amount, which amounted to USD 732.53) have already been paid by the First Respondent on 30 March 2022 (see para. 95 above). The payment of USD 36,382.53 (USD 35,650 + USD 732.53) was evidenced by the First Respondent through the transfer receipt from Banco Pichincha with the reference CNR9250 / 1734879250. This document has not been challenged by the Appellant and as such, the payment referred to therein is taken as proved by the Panel.

176. Accordingly, the Appellant is entitled to receive from the First Respondent USD 53,475 plus interest of 5% *p.a.*, as from 2 September 2021, *i.e.* the date when it made the payment to Juventud Minera to avoid being sanctioned, until the date of effective payment. 2 September 2021 is the date the Appellant has suffered the damage.

(E) Conclusions

177. The present dispute has a contractual nature and, as such, Article 2, para. 1 of Annexe 5 RSTP does not apply in determining if the Appellant's claim before FIFA PSC is time-barred.

178. The Transfer Agreement provides that the First Respondent receives the full amount of the Transfer Fee, including the solidarity contribution, with the implied commitment to distribute and pay the solidarity contribution among the relevant training clubs.

179. The present dispute started in an uncertain moment in the year 2021 when the Appellant and the First Respondent first began discussing Juventud Minera's claim.

180. The dispute did not start on 30 January 2019, the regulatory date on which the Appellant should have made the solidarity payment to Juventud Minera. Indeed, if the First Respondent had directly paid Juventud Minera or had not objected to the request for reimbursement, no dispute would have arisen.

181. On 2 September 2021, the Appellant paid to Juventud Minera the amount of USD 89,125 after being ordered to do so (TMS 6333 Decision).

182. As per the Transfer Agreement, the Appellant was entitled to request the First Respondent to pay Juventud Minera the solidarity contribution due to it.

183. The First Respondent breached the Transfer Agreement by not fulfilling its obligations and, in consequence, should compensate the Appellant for the payment incurred.

184. The Appealed Decision has wrongly determined that the reimbursement related to the First Instalment was time-barred.

185. Therefore, since the amount of USD 35,650 has already been awarded in the Appealed Decision, and the First Respondent has already paid this amount with the interest due, all totalling USD 36,382.53, the remaining amount of USD 53,475 – related to the First Instalment – shall be additionally awarded to the Appellant. This amount shall accrue interest of 5% *p.a.*, as from the date of 2 September 2021, the date when the payment to Juventud Minera was made.

186. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

X. COSTS

187. Pursuant to Article R64.4 of the CAS Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of this arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any.

188. Pursuant to Article R64.5 of the CAS Code, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them.

189. In principle, it is fair and appropriate to allocate the costs of an arbitration proceeding in accordance with the "loser pays" principle. However, CAS panels – depending on the individual circumstances of the case – also mitigate the "loser pays" principle with other considerations, such as the "causation principle", the procedural behaviour of the parties, the financial resources of the parties or whether a party could in good faith rely on its legal assumptions.

190. In consideration of the outcome of these arbitration proceedings and the financial resources of the Parties, the Panel finds that the "loser pays" principle should apply in

relation to arbitration costs. However, as the Second Respondent was involved in this arbitration proceedings for no material reason, it is the Panel's opinion that the arbitration costs should be attributed exclusively to the First Respondent, in an amount that will be determined and notified to the Parties by the CAS Court Office.

191. As a general rule, the award shall also grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with these arbitration proceedings. Considering the outcome of the proceedings, the behaviour of the Parties and the Panel's discretion in fixing the contribution of costs, it is the Panel's decision that the First Respondent must pay CHF 3,000 to the Appellant. The Panel does not require any contribution to be paid by FIFA to the Appellant since, as explained above, this party did not have any active role and was involved in the procedure for no material reason.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Pyramids Football Club on 11 April 2022 against the decision issued by the FIFA Football Tribunal Players' Status Chamber passed on 8 February 2022 is upheld.

2. Item 2 of the decision of the FIFA Football Tribunal of 8 February 2022 is amended as follows:
"*2. The Respondent, Universidad Catolica, has to pay to the Claimant [Pyramids FC], the amount of USD 89,125 plus 5% interest p.a. as from 2 September 2021 until the date of effective payment(s).*"

3. As the amount established under Item 2 above has already been partially paid, Club Deportivo Especializado de Alto Rendimiento Universidad Católica del Ecuador is ordered to pay to Pyramids Football Club only the outstanding amount of USD 53,475 plus interest of 5% p.a. as from 2 September 2021 until the date of effective payment.

4. The costs of these arbitration proceedings, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by the Club Deportivo Especializado de Alto Rendimiento Universidad Católica del Ecuador.

5. Club Deportivo Especializado de Alto Rendimiento Universidad Católica del Ecuador shall pay to Pyramids Football Club a contribution in the amount of CHF 3,000 (three thousand Swiss Francs) toward its legal fees and expenses incurred in connection with the present proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 21 July 2023

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Massimo Coccia
Arbitrator