

Decision of the Dispute Resolution Chamber

passed on 3 August 2023

regarding an employment-related dispute concerning
the player Juan Martin Lucero, Argentina

COMPOSITION:

Livia SILVA KÄGI (Brazil & Switzerland), Deputy Chairperson
Stella MARIS JUNCOS (Argentina), member
Jorge GUTIÉRREZ (Costa Rica), member

CLAIMANT:

Colo Colo, Chile
Represented by Senn Ferrero

FIRST RESPONDENT:

Juan Martin Lucero, Argentina
Represented by Ariel Reck

SECOND RESPONDENT:

Club Fortaleza – CE, Brazil
Represented by Felipe Macedo

I. Facts of the case

1. On January 4, 2022, the Chilean club Colo Colo (hereinafter: *the club* or *Colo Colo*) and the Argentine player Juan Martin Lucero (hereinafter: *the player*) entered into a set of contracts that include: an employment contract (hereinafter: *the Employment Contract*), a federative contract (hereinafter: *the Federative Contract*), and an “option to purchase rights contract” (hereinafter: *the Option Contract*), collectively referred to as “*the Contracts*”.
2. Art. 6 of the Employment Contract reads inter alia as follows:

Sexto: Duración. El presente contrato estará vigente desde la fecha de celebración del presente instrumento hasta el 31 de diciembre de 2023 (salvo ejercicio de la opción por el club o ejercicio de la salida anticipada por el Jugador conforme se regulan más abajo)

Asimismo, las Partes declaran y dejan constancia que el club Colo-Colo tiene una opción de compra preferente de los derechos federativos y el 80% de los derechos económicos del Jugador la que podrá ejercer hasta el 01 de diciembre de 2022. En el caso de ser ejercida por Colo-Colo, el contrato de trabajo del Jugador se prorrogará hasta el término de la Temporada 2025.

Para que se entienda ejercida la opción de compra, Colo-Colo deberá enviar un correo electrónico al correo señalado en la comparecencia del Jugador, a mas tardar con fecha 01 de diciembre de 2022.

Sin perjuicio de lo anterior, las Partes acuerdan que el Jugador podrá terminar anticipadamente su contrato sin pago de indemnización de alguna al club Colo Colo, única y exclusivamente en el caso que Colo-Colo no ejerciera la opción de compra acordada entre ambas partes, por los derechos federativos y el 80% de los derechos económicos del Jugador. (...)

Freely translated into English:

Sixth: Duration. This contract shall be in force from the date of execution of this instrument until December 31, 2023 (unless the club exercises its option or the Player exercises his early departure as regulated below).

Likewise, the Parties declare and place on record that the Colo-Colo club has a preferential purchase option of the federative rights and 80% of the economic rights of the Player, which may be exercised until December 1, 2022. If exercised by Colo-Colo, the Player's employment contract will be extended until the end of the 2025 Season.

In order for the purchase option to be deemed exercised, Colo-Colo must send an email to the email address indicated in the Player's appearance, no later than December 1, 2022.

Notwithstanding the foregoing, the Parties agree that the Player may terminate his contract early without payment of any indemnity to the Colo Colo club, solely and exclusively in the event that Colo Colo does not exercise the purchase option agreed between both parties, for the federative rights and 80% of the economic rights of the Player. (...)

3. Clause 5 of the Option Contract reads inter alia as follows:

5.- OPCIÓN PREFERENTE

El Club podrá ejercer una opción preferente por sobre cualquier otro club de fútbol profesional, para adquirir la propiedad del 80 % de los derechos económicos y los derechos federativos del Jugador, por las Temporadas 2024 y 2025 del fútbol profesional chileno. El ejercicio del uso de la opción de compra deberá ser comunicada al correo electrónico del Jugador señalado en la comparecencia, bastando la comunicación por correo electrónico para que se entienda ejercida por parte de Colo-Colo.

Las Partes acuerdan que el valor de la opción de compra del 80% de los derechos económicos derivados de los derechos federativos del Jugador por las Temporadas 2024 y 2025, ascienden a la suma neta o líquida de USD 900.000.- (novecientos mil dólares de los Estados Unidos de América).

El plazo límite para ejercer la opción aquí señalada es el 1 de diciembre de 2022. Si hasta esa fecha Colo-Colo no hubiera ejercido la opción, El Jugador tendrá la facultad exclusiva de decidir si quiere continuar en Colo-Colo en la temporada 2023 o si desea rescindir el contrato de trabajo que lo vincula al Club. De decidir no continuar con el vínculo, bastará su comunicación entre el 15 y el 31 de diciembre de 2022 para rescindir el vínculo sin sanciones e ninguna índole ni reclamo económico de ningún tipo (incluyendo indemnización por rescisión, reembolso por las sumas pagadas por derechos económicos y/o cualquier otro concepto).

(...)

En el caso que Colo-Colo ejerciera la Opción de Compra y el Jugador no firmara o suscribiera los contratos y documentos que lo habiliten como Jugador hasta el término de la Temporada 2025, en base a las condiciones contractuales establecidas en su contrato de trabajo, deberá indemnizar a Colo-Colo con la suma neta de USD 1.000.000.- (un millón de dólares de los Estados Unidos de América). Se deja constancia que los montos señalados corresponderán, a título de cláusula penal, a una evaluación anticipada y convencional de todos los perjuicios causados, sean éstos directos e indirectos, previstos e imprevistos, patrimoniales y morales, moratorias y compensatorios resultantes del no cumplimiento de la obligación

Freely translated into English:

5.- PREFERRED OPTION

The Club may exercise a preferential option over any other professional soccer club to acquire ownership of 80% of the economic rights and the federative rights of the Player for the 2024 and 2025 seasons of Chilean professional soccer. The exercise of the use of the purchase option must be communicated to the e-mail address of the Player indicated in the appearance, and the communication by e-mail is sufficient for it to be understood to have been exercised by Colo-Colo.

The Parties agree that the value of the option to purchase 80% of the economic rights derived from the Player's federative rights for the 2024 and 2025 Seasons, amount to the net or liquid sum of USD 900,000 (nine hundred thousand dollars of the United States of America).

The deadline for exercising the option set forth herein is December 1, 2022. If by that date Colo-Colo has not exercised the option, the Player will have the exclusive right to decide whether he wants to continue at Colo-Colo in the 2023 season or if he wishes to terminate the employment contract that binds him to the Club. If he decides not to continue with the contract, his communication between December 15 and December 31, 2022 will be sufficient to terminate the contract without sanctions of any kind or economic claim of any kind (including termination indemnity, reimbursement for sums paid for economic rights and/or any other concept).

(...)

In the event that Colo-Colo exercises the Purchase Option and the Player does not sign or subscribe the contracts and documents that qualify him as a Player until the end of the 2025 Season, based on the contractual conditions established in his employment contract, he shall indemnify Colo-Colo with the net sum of USD 1,000,000. It is hereby stated for the record that the aforementioned amounts shall correspond, as a penalty clause, to an anticipated and conventional assessment of all damages caused, whether direct and indirect, foreseen and unforeseen, patrimonial and moral, moratorium and compensatory resulting from non-compliance with the obligation.

4. On November 15, 2022, Colo Colo informed the player in the following terms (*freely translated into English from original in Spanish*):

Colo-Colo, by means of the present letter, comes to exercise, in due time and form, the right to purchase 80% of the Economic and Federative Rights of the player Juan Martín Lucero, established in the second clause of the framework agreement of December 31, 2021; fifth clause of the contract of assignment of Economic Rights dated January 4, 2021; and of the seventh clause of the Professional Soccer Player Employment contract of Mr. Juan Martín Lucero.

As also set forth in the aforementioned documents, the value of such purchase, amounting to US\$900,000, will be paid by Colo-Colo to Mr. Lucero in two equal installments of US\$450,000 each. The first installment will be paid in January 2023 and the second in December 2023.

5. Between December 26 and 28, 2022, the parties exchanged emails in which they disagreed on the interpretation of the various clauses of the Contracts.
6. On January 3, 2023, the player sent a communication to Colo Colo in the following terms (*freely translated into English from original in Spanish*):

I am writing to you in relation to the employment contract and the contract for the assignment of economic rights that binds us and in particular to the FIFTH clause of the latter agreement.

In this regard, I hereby inform you that I have decided to make use of the option provided for in said clause for the termination of the relationship between the parties against payment of the net amount of USD 1,000,000.

Consequently, I request you to inform me within the next 3 days of the bank account details where

the corresponding deposit can be made.

7. On January 4, 5 and 8, 2023, Colo Colo informed the player that his Contracts were still in full force and effect and requested him to rejoin the club.
8. On January 5, 2023, Colo Colo informed the Brazilian club Fortaleza (hereinafter *Fortaleza*) that the player had a valid contract and urged it not to sign the player.
9. On January 9, 2023, the player sent a communication to Colo Colo reiterating his position.
10. On the same day, Colo Colo asked the player to rejoin the discipline of the club.
11. On January 12, 2023, the player sent Colo Colo proof of payment of USD 1,000,000.
12. On January 17, 2023, the player and Fortaleza signed an employment contract valid until December 31, 2026.

II. Proceedings before FIFA

13. On March 22, 2023, Colo Colo filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of Colo Colo

14. Colo Colo argues that its employment relationship was valid and binding, in principle, until December 31, 2023. However, the Contracts also included a preferential option for Colo-Colo to unilaterally extend its term until December 31, 2025, provided that a number of formal requirements were met.
15. Colo Colo argues that clause 5 of the Option Contract "*only contemplates the economic consequences in the event that Colo-Colo correctly exercises the option right and the Player opposes such exercise, refusing to sign or subscribe all those contracts or documents that are necessary for such extension of the contractual relationship to be formalized*".
16. According to Colo Colo, the player "*is aware that he has breached the Contract and that he must compensate Colo-Colo for it, although he confuses the penalty provided for in the event that the Player refuses to extend the Contract for two (2) more years, with an alleged exit clause that would even allow him to contractually dissociate himself from Colo-Colo before December 31, 2023*".
17. Colo Colo argues that the player did not have just cause to terminate the contract and, therefore, should be held liable for such breach. Colo Colo therefore understands that it is entitled to compensation payable by the player and Fortaleza should be held jointly and severally liable.

18. In relation to the calculation of the compensation, Colo Colo Colo alleges that the direct damage suffered amounts to USD 1,200,000.00, corresponding to the amount of the transfer fee it had to pay for the acquisition of the Player's replacement, the Paraguayan striker Dario Lezcano Fariña (hereinafter: *Lezcano*).
19. Colo Colo also alleges a loss of profit in the amount of USD 913,384, "*which is the amount budgeted by Colo-Colo for the sale of the Player's jerseys during the year 2023*".
20. Therefore, Colo-Colo understands that it is entitled to receive compensation in the amount of USD 2,113,384.00 as a consequence of the termination of the Agreement without just cause.
21. In the alternative, Colo Colo understands that the indemnity should be calculated based on the DRC's practice of calculating the average between the value of the contract and the contract with Fortaleza.
22. Colo Colo understands that sporting sanctions should be imposed on the player and Fortaleza.
23. Colo Colo presented the following requests for relief:

I.- Declare that the present lawsuit is admissible;

II.- That this Claim filed by Colo-Colo against the Player and Fortaleza be fully upheld and it be declared that:

1. The Player unilaterally and prematurely terminated the Contract with Colo-Colo without just cause and during the Protected Period; and 2.

Fortaleza induced the Player to such unlawful termination of the employment relationship between the Player and Colo-Colo.

III.- Consequently, the Player and Fortaleza (jointly and severally) are ordered to pay Colo-Colo:

1. The amount of USD 2,113,384 with interest at 5% per annum as indemnification for damages caused by the unilateral and early termination of the Contract without just cause, being the result of adding the cost assumed by Colo-Colo to replace the Player and the lost profit from the sale of jerseys.

Or subsidiarily:

2. The amount of USD 1,200,000 with interest at 5% per annum³², being only the cost assumed by Colo-Colo to replace the Player.

Or subsidiarily:

3. The average between the six hundred thousand U.S. dollars (USD 600,000.00) net that remained

to be collected by the Player until December 31, 2023 in accordance with the Contract, and the proportional part of said season taking into account his current contract with Fortaleza (for which Colo-Colo kindly requests the DRC to require the Player and/or Fortaleza to provide the contract(s) on the basis of which said figure should be extracted), also with interest at 5% per annum.

IV.- Additionally, the most severe sporting sanctions are imposed:

To the Player for breach of contract during the Protected Period in accordance with Article 17(3) of the FIFA RETJ; and 2.

2. A Fortaleza for inducing a breach of contract during the Protected Period pursuant to Article 17(4) of the FIFA RETJ.

V.- Finally, the Player and Fortaleza are ordered to assume all the costs of the present proceeding.

b. Reply of the Player

24. In his reply, the player claims that Colo-Colo notified the exercise of the purchase option, but never paid the sum of USD 450,000.
25. The player understands that the clause 5 of the Option Contract was drafted by the club itself and its own text qualifies it as a "Penalty Clause" and compensates him over and above the player's residual wages until the end of the season.
26. The player insists that *"the text states that it covers any direct and indirect, foreseen and unforeseen, patrimonial and moral damages"*.
27. According to the player *"it could never be argued that he terminated his contract without cause. Much less could additional compensation and the application of sporting sanctions be claimed"*.
28. The player argues that there are two types of clauses:
 - *On the one hand, those of anticipated determination of the damage (liquidated damages) that must be balanced and proportional to the damage suffered.*
 - *On the other hand, those that establish the possibility for the player to pay a price to be released from the contract, which are defined by the commentary to the FIFA regulations as "buy-out clause":*
29. In the player's opinion, the nature of the clause 5 *"is unquestionable: not only does it expressly state that it is a penalty clause and nothing is said about the application of sports sanctions in case the player exercises it, but the amount of the clause (USD 1,000,000) bears no relation to compensation of the positive interest, in fact, it is equivalent to almost twice the salaries that the player had left to receive until the end of the contract"*.
30. Therefore, the player understands that since the player has paid the agreed price to be released,

the claim is unfounded and should be rejected.

31. In turn, the player argues that the clause is clear and unambiguous and does not require interpretation. However, should the Chamber consider so, the "*in dubio contra proferentem*" and "*in dubio pro operario*" principles should be applied.
32. The player claims that after the execution of the purchase option, Colo Colo Colo did not pay the USD 900,000 and "*placidly received the sum of USD 1,000,000. And when we use the term "placidly" it is because not only did it save the payment of the option price (it went from having to pay USD 900,000 to receiving USD 1,000,000) but it never offered the player to return the amount he received, nor did it impute it to the compensation claimed.*"
33. According to the player, "*the meaning that COLO-COLO is now trying to give to the FIFTH clause is so forced that in the event that its subsidiary claim is granted, i.e. that the player is ordered to pay his residual salaries until the end of the 2023 season for USD 600,000, COLO-COLO would succeed in its claim but would absurdly have to return the sum of USD 400,000 to the player*".
34. The player emphasizes that he "*complied with all his obligations, gave notice of the exercise of the buy-out clause and paid the price agreed in clause FIFTH*". On the contrary, Colo Colo Colo did not comply or offered to comply with the payment of the purchase option, so that in light of the principle "*non adimpleti contractus*" the claim must also be rejected.
35. As for the amounts claimed, the player claims that Colo Colo does not provide any supporting evidence.
36. In subsidiary form, the player asserts that any compensation eventually awarded to Colo Colo Colo should be deducted from the amount of USD 1,000,000 already paid by the player.
37. The player also refers to the contract provided by the alleged replacement, Lezcano. This contract in its art. 7.6 expressly states that there is no exit clause. In the player's opinion "*This clause added after the conflict with Lucero is the final proof that Lucero's contract DID have an exit clause and that, from now on Colo Colo has decided that its players' contracts no longer have it*".
38. On a subsidiary basis, the Player concludes that "*even if FIFA were to interpret CLAUSE FIVE as an advance determination of damages clause and not a "buy out clause", due to the special circumstances of the case, a sports sanction could not be applied to the Player either, given that:*
 - *The agreed price was paid.*
 - *The clause that compensates almost 2 times the positive interest rate*
 - *The Clause was drafted by the club*
 - *Should be interpreted against the drafter and in turn employer.*
 - *The good FAITH of the PLAYER,*
 - *The failure of Colo Colo to pay and/or even offer to pay the option price."*
39. The player presented the following request for relief:

1.- *That the claim be deemed to have been answered in due time and form.*

2.- *On the grounds stated above, the claim filed is rejected and FIFA's procedural costs are imposed on the claimant club.*

3.- *In the event that COLO-COLO's position is admitted, i.e. that it was a clause of anticipated determination of the damage, we request that it be considered paid with the payment made on January 12, 2023 and that no sporting penalty be applied.*

In this case, if the condemnation amounts for positive interest were lower than the amounts paid by the Player, Colo Colo Colo is ordered to reimburse the Player for the amounts paid in excess.

c. Reply of Fortaleza

40. In its reply, Fortaleza sustains that art. 6, 1° of the Employment Contract sustains that it starts on 4 January 2022 and ends on 31 December 2023, "EXCEPT in case the Club triggered an extension option until 2025 season, OR the Player decides to terminate it in the end of 2022".
41. In Fortaleza's view *"the parties' rights whether to extend (by the Colo Colo) or to terminate (by the Player) the Employment Contract are not subordinated, but on the opposite, they are completely independent from each other: "except exercise of the option by the club OR exercise of the early departure by the Player (...)" (emphasis added). In case the parties wanted to settle for a reciprocal clause (when both parties need to agree) and/or sub conditional clause (when one needed to be triggered first) they would have used the conjunction "y" (which in English is "and") in that sentence, however the parties used the conjunction "o" (which in English is "or") to demonstrate the independence between these rights that are evidently of unilateral nature (when does not require both parties to consent)."*
42. Fortaleza argues that the amount of USD 1.200.000,00 claimed by Colo Colo that was used to hire Mr. Lezcano is not a transfer fee, but it is an amount paid as economic rights directly to Mr. Lezcano. In other words, Colo Colo hired Mr. Lezcano as a free agent without any transfer costs.
43. Moreover, Fortaleza deems that Colo Colo has not provided any evidence substantiating that it suffered any loss as a result of the Player not being in its squad for the 2023 season. Furthermore, *"no evidence has been adduced of any ongoing or future marketing, merchandising or sponsorship contracts which Colo Colo had or would have signed with third parties in exclusive reliance on the Player's continuation at the club"*.
44. Fortaleza concludes that Colo Colo has not met its burden of proof; so, its request for a financial compensation of these amounts (i) USD 2,113,384.00; and (ii) USD 1,200,000.00; shall be dismissed.
45. Regarding the last alternative value requested by Colo Colo in the amount of USD 600,000.00, Fortaleza deems that Colo Colo has received USD 1,000,000 and has not paid USD 900,000 for the

extension of the contract for the 2024 and 2025 seasons. Thus, no damages have been suffered.

46. Fortaleza sustains that it hired the Player as a free agent as the Player "*was legally entitled to terminate the Contract without any payment or sanction. Alternatively, as the extensions of the Contract are null and void, it is clear that the Contract expired on 31 December 2022. Therefore, the Player does not owe any amount as compensation to Colo Colo*".
47. Fortaleza deems that the termination of the Contract was not during the protected period.
48. Fortaleza concludes that it could not suffer - in any case -, sporting sanctions because it is established that Fortaleza has not induced the Player to terminate the Contract.
49. Fortaleza filed the following requests for relief:
 - A) *Accept this response against the claim lodged by the Claimant;*
 - B) *Dismiss all claims presented by Colo Colo for the reasons exposed in this Answer;*
 - C) *Alternatively, to partially dismiss the claims of Colo Colo as requested above;*
 - D) *Eventually in the hypothetical scenario that the Player is condemned to pay compensation to Colo Colo, to do not consider Fortaleza jointly and severally liable to pay any amount to Colo Colo;*
 - E) *Do not impose sporting sanction on Fortaleza;*
 - F) *Order Colo Colo to bear any and all administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with these or future proceedings;*
 - G) *Order Colo Colo to pay any legal expenses or costs faced by the Second Respondent in an amount not less than USD 40,000.*

d. Replica of Colo Colo

50. Colo Colo claims that it did not pay USD 900,000 because the player terminated the contract prior to the accrual of the first installment (USD 450,000) in January 2023.
51. Colo Colo insists that what the player has indemnified with the payment of USD 1,000,000 "*are the 2024 and 2025 seasons (for forcibly preventing the extension of the Contract), and what is missing is precisely the 2023 season*".
52. In Colo Colo's opinion, the clause in question did not give the player the possibility to terminate the contract immediately or to terminate it before the originally foreseen duration (i.e. December 31, 2023).
53. Regarding Fortaleza's response, Colo Colo understands that the referenced clauses are not

abusive or contrary to FIFA regulations, which is why the player has not argued anything in that regard.

54. In turn, Colo Colo argues that *"the inducement (and bad faith) is undisputed"*.

55. Colo Colo emphasizes the following points:

- The player is not telling the truth when he says that Colo-Colo never objected to the Player's departure and *"placidly"* accepted the payment of USD 1,000,000.
- Clause 5 can never be interpreted as a *"buy-out clause"*, since it did not confer any contractual rights on the Player, but rather, on the contrary, it penalized him financially for the breach of the obligation provided for in that same stipulation.
- Fortaleza has not provided a single valid argument to exonerate itself of its responsibility.

56. Colo Colo argues that the player's actual remuneration with Fortaleza has to be higher than that set out in the contract available at TMS and that the parties have not provided all the documentation in this regard.

57. Colo amended its requests for relief as follows:

I.- Declare that the Complaint is admissible;

II.- The claim filed by Colo-Colo against the Player and Fortaleza be fully upheld and it be declared that:

1. The Player unilaterally and prematurely terminated the Contract with Colo-Colo without just cause and during the Protected Period; and 2.

Fortaleza induced the Player to such unlawful termination of the employment relationship between the Player and Colo-Colo.

III.- Consequently, the Player and Fortaleza (jointly and severally) are ordered to pay Colo-Colo:

1. The amount of USD 2,113,384.00 with interest at 5% per annum³ as compensation for damages caused by the unilateral and early termination of the Contract without just cause, being the result of adding the cost assumed by Colo-Colo to replace the Player and the lost profit from the sale of jerseys.

Or subsidiarily:

2. The amount of one million two hundred thousand U.S. dollars (USD 1,200,000.00) with interest at 5% per annum⁴, being only the cost assumed by Colo-Colo to replace the Player.

Or subsidiarily:

3. The amount of six hundred and seventy-eight thousand nine hundred and eighty-two U.S. dollars and eighty-six cents (USD 678,982.86) net, which corresponds to the average between the amounts that remained to be collected from the Player until December 31, 2023 in accordance with the Contract, and the proportional part of said season taking into account his current contract with Fortaleza5, also with interest of 5% per annum.

IV.- Additionally, the most severe sporting sanctions are imposed:

To the Player for breach of contract during the Protected Period in accordance with Article 17(3) of the FIFA RETJ; and 2.

2. To Fortaleza for inducing a breach of contract during the Protected Period pursuant to Article 17(4) of the FIFA RETJ.

V.- Finally, the Player and Fortaleza are ordered to assume all the costs of the present proceeding.

e. Duplica of the Player

58. The player insists that clause 5 *"is very clear and that it enshrines the player's right to be released from the contract against payment of the sum of USD 1,000,000, but even if its meaning could be doubted - as the CLUB pretends to do - it could never be interpreted against the player and in favor of the person who drafted it"*.

59. In the player's opinion, his failure to claim the USD 900,000 for the execution of the option by Colo Colo, *"does nothing more than evidence the player's good faith."*

60. The player claims that Colo Colo has not accredited that Mr Lezcano was hired as his replacement.

61. The player concludes that despite the *"effort made by the Claimant to increase the positive interest from USD 600,000 to USD 678,982.86, it can only be said that it serves again to confirm that never can CLAUSE FIFTH be a damages clause, because even on the basis of this new number (forcibly reached) it would still compensate almost twice the positive interest."*

62. The player requests that:

1.- The rejoinder be deemed to have been filed.

2.- The claim filed by the Club is rejected, in accordance with the arguments expressed in our answer to the claim and ratified in this document.

f. Duplica of Fortaleza

63. Fortaleza sustains that Colo Colo's request to have *"full disclosure"* should be dismissed since *"the "full disclosure" was already made by FIFA in this case."*

64. Fortaleza insists that *"no breach of contract occurred when the Player signed with Fortaleza neither an inducement to breach a contract with Colo Colo. As a result no compensation must be paid by the Player and Fortaleza to Colo Colo and no sporting sanction can be implemented against the respondents"*.
65. Fortaleza requests as follows:
- A) Accept this response against the claim lodged by the Claimant;*
 - B) Dismiss all claims presented by Colo Colo;*
 - C) Alternatively, to partially dismiss the claims of Colo Colo;*
 - D) Eventually in the hypothetical scenario that the Player is condemned to pay compensation to Colo Colo, to do not consider Fortaleza jointly and severally liable to pay any amount to Colo Colo;*
 - E) Do not impose sporting sanction on Fortaleza;*
 - F) Order Colo Colo to bear any and all administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with these or future proceedings;*
 - G) Order Colo Colo to pay any legal expenses or costs faced by the Second Respondent in an amount not less than USD 40,000.*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

66. First of all, the Dispute Resolution Chamber (hereinafter also referred to as Chamber or DRC) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 22 March 2023 and submitted for decision on 3 August 2023. Taking into account the wording of art. 34 of the March 2023 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.
67. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (March 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Argentina and a club from Chile.
68. 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

Regulations on the Status and Transfer of Players (March 2023 edition), and considering that the present claim was lodged on 22 March 2023, the March 2023 edition of said regulations (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

b. Burden of proof

69. 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).

c. Merits of the dispute

70. 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 acknowledging 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.

i. Main legal discussion and considerations

71. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute on the interpretation of clause 5 of the Option Contract.

72. In this context, the Chamber acknowledged in order to find a resolution in this case, it shall assess the following points:

- Has the player's contract been terminated with or without just cause?
- What is the nature of Clause 5 of the Option Contract?
- Based on the above, is any compensation due?
- If applicable, should sporting sanctions be imposed?

a) The termination of the contract by the player

73. Having established the above, the Chamber turned to the matter of the contractual termination.

74. In this regard, the Chamber observed that it is undisputed between the parties that the player terminated the Contract on January 3, 2023 and that on January 12, 2023 he paid USD 1,000,000 to Colo Colo.

75. The Chamber further observed that in his letter of January 3, 2023, in which he terminated the Contract, the player does not allege the existence of any just cause other than his own interpretation of the clause 5 of the Option Contract. More precisely, from the correspondence of the player, it appears that he perceives the clause as a buy-out clause that allows him to end the contractual relationship by fulfilling the payment obligation stated in the clause.
76. However, the Chamber took note of the position of Colo Colo, who was of the opinion that the referred clause was merely pre-estimating the payment of damages prior in case of the player's failure to complete the documents for extending the contractual relationship.
77. Within this context, the Chamber deemed it to be relevant to refer to the contents of art. 13 of the Regulations, according to which "A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.", as well as to art. 14 par. 1 of the same text, according to which "A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".
78. The foregoing having been said, the Chamber moved on to consider the legal consequences of said clause 5 of the Option Contract.

b) What is the invoked Clause 5 of the Option Contract?

79. Given the above, the Chamber focused on the literal wording of the clause at stake and observed that the relevant part of this clause establishes the following:

"In the event that Colo-Colo exercises the Purchase Option and the Player does not sign or subscribe the contracts and documents that qualify him as a Player until the end of the 2025 Season, based on the contractual conditions established in his employment contract, he shall indemnify Colo-Colo with the net sum of USD 1,000,000. It is hereby stated for the record that the amounts indicated shall correspond, by way of a penalty clause, to an anticipated and conventional assessment of all damages caused, whether direct and indirect, foreseen and unforeseen, patrimonial and moral, moratorium and compensatory resulting from the non-compliance with the obligation" (emphasis added).

80. In relation to said clause, and after duly taking into account the dissent between the parties as to its interpretation, the Chamber wished to recall its longstanding jurisprudence concerning the different nature of liquidated damages clause in contrast to buy-out clauses.
81. Indeed, the Chamber wished to emphasize, accordingly, that a liquidated damages clause operates as a pre-estimation for the payable compensation in case of breach, while a buy-out clause provides an exit option if certain conditions are met, thereby enabling contract termination without implying a breach of contract. As a result, liquidated damages clauses, which are linked to contractual breaches, can lead to both penalties in addition to the payment of the pre-defined compensation. Conversely, buy-out clauses, only focus on contractual termination without involving breaches, rendering them exempt from being subject to sanctions, since the parties had given (prior) consent to the termination.

82. The foregoing being said, and based on the literal wording of the aforementioned clause, the Chamber was convinced that clause 5 of the Option Contract was agreed and drafted as a penalty clause (i.e. liquidated damages clause) by means of which the parties pre-estimated the damage that Colo Colo would suffer in the event that, after the exercise of the option by Colo Colo (which undisputedly occurred in the case at hand) the player refused to conclude the necessary documents to maintain his relationship with the Colo Colo until the 2025 season.
83. The Chamber underlined that it can hardly be justified on the basis of the literal wording of the clause (*in claris non fit interpretatio*) that it was neither conceived as a buy-out clause nor parties could have meant said clause to be a "buy-out clause" entitling the player (or the club) to simply terminate the Contract at any point in time.
84. Based on the foregoing, the Chamber concluded that clause 5 of the Option Contract is a liquidated damages clause.
85. In other words, the fact that said clause is categorized as a liquidated damages clause implies that it does not grant the right to either party to terminate the contract based on just cause, as it primarily focuses on pre-estimating damages and providing a remedy in case of termination without just cause.
86. As a logical consequence of the above, the Chamber concluded that the contract was terminated without just cause.

c) Based on the above, is any compensation due?

87. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the 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.
88. 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.
89. At this point, the DRC recalled the wording of Clause 5 of the Option Contract which establishes that: *"the amounts indicated shall correspond, by way of penalty clause, to an anticipated and conventional assessment of all damages caused, whether direct and indirect, foreseen and unforeseen, patrimonial and moral, moratorium and compensatory resulting from the non-fulfillment of the obligation."*
90. After analysing the content of the aforementioned clause, the Chamber concluded that as it was

drafted and agreed between the parties, the clause covers all damages "*direct and indirect, foreseen and unforeseen, patrimonial and moral, moratorium and compensatory*" that Colo Colo could suffer for the player's failure to undertake all acts to remain employed for Colo Colo.

91. As a consequence of the above, the DRC concluded that after the payment of the pre-established compensation by the player on 12 January 2023, no additional compensation for breach of contract is due.

d) Should sporting sanctions be imposed?

92. In continuation, the Chamber focused on the further consequences of the breach of contract in question and, in this respect, it addressed the question of sporting sanctions against the player in accordance with art. 17 par. 3 of the Regulations. The cited provision stipulates that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any player found to be in breach of contract during the protected period.
93. In this respect, the Chamber referred to item 7 of the "*Definitions*" section of the Regulations, which establishes, inter alia, that the protected period shall last "*for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*".
94. In this respect, the Chamber took note that the player was born on 10 October 1991 and the relevant contract with the club was concluded on 4 January 2022. Furthermore, the Chamber noted that the player terminated the contract without just cause on 3 January 2023. The breach of contract by the player had therefore occurred within the protected period. Consequently, the Chamber decided that, by virtue of art. 17 par. 3 of the Regulations, the player had to be sanctioned with a restriction of four months on his eligibility to participate in official matches.
95. Subsequently, the Chamber recalled that, in accordance with art. 17 par. 4 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional player who has terminated his previous contract without just cause has induced that professional to commit a breach. Consequently, the Chamber pointed out that the party that is presumed to have induced the player to commit a breach carries the burden of proof to demonstrate the contrary. In this respect, the Chamber highlighted that the player's new club was not able to present enough evidence as to reverse the respective presumption contained and is, therefore, to be considered as having induced the player to commit a breach of contract.
96. Consequently, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the player's new club, Fortaleza, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

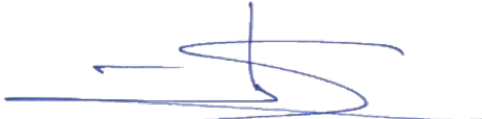
d. Costs

97. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *“Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent”*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
98. 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.
99. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Colo Colo, is partially accepted.
2. The First Respondent, Juan Martin Lucero, is imposed a **restriction of four months on his eligibility to play** in official matches. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.
3. The Second Respondent, Fortaleza, shall be **banned from registering any new players**, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.
4. Any further claim of the Claimant is rejected.
5. 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).

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