



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/9072 Leixões Sport Club SAD v. Barcelona SC & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Francisco Antunes Maciel Müssnich, Attorney-at-law, Rio de Janeiro, Brazil

in the arbitration between

Leixões Sport Club SAD, Matosinhos, Portugal

Represented by Mr. Luis Cassiano Neves, Mrs. Matilde Costa Dias, Mr. Kosmas Mitsios, 14 Sport Law, Porto, Portugal

– Appellant –

and

Barcelona Sporting Club, Guayaquil, Ecuador

Represented by Mr. Daniel Muñoz Sirera and Mr. Rodrigo Silva Batista, Muñoz & Arias Sports Lawyers, Valencia, Spain

– First Respondent –

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Ms. Cristina Pérez González and Mr. Miguel Liétard Fernández-Palacios, FIFA Litigation Department, Zurich, Switzerland

– Second Respondent –

I. THE PARTIES

1. Leixões Sport Club SAD (the “Appellant” or “Leixões”) is a Portuguese professional football club with its registered office in Matosinhos, Portugal. Leixões is affiliated with the Portuguese Football Association, which in turn is affiliated with Fédération Internationale de Football Association (FIFA).
2. Barcelona Sporting Club (“Barcelona”) is an Ecuadorian football club with its registered office in Guayaquil, Ecuador. Barcelona is affiliated with the Ecuadorian Football Association, which in turn is affiliated with FIFA.
3. FIFA is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It has regulatory, supervisory and disciplinary functions in connection with national associations, clubs, officials and football players worldwide.
4. Barcelona and FIFA are jointly referred to as the “Respondents”. The Appellant and the Respondents are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND: LEIXÕES’ SPECIAL REVITALIZATION PROCEEDINGS

5. On 7 June 2018, Leixões initiated a Special Revitalization Proceeding (Proceeding No. 1982/18.1T8ST, the “First PER”).
6. On 7 January 2019, the official website of the Portuguese courts announced that the Judicial Court of Porto (Santo Tirso Trade Court) had homologated the payment plan approved under the First PER.
7. On 30 July 2020, Leixões initiated a Second Special Revitalization Proceeding (Proceeding No. 2079/20.0T8STS, the “Second PER”), also before the Judicial Court of Porto (Santo Tirso Trade Court).
8. On 21 August 2020, the Judicial Court of Porto formally appointed Ms. Maria Clarisse da Silva Barros as the provisional PER administrator.
9. On 6 January 2021, the final version of the payment plan was announced.
10. On 8 February 2021, the Judicial Court of Porto (Santo Tirso Trade Court) approved and homologated the Second PER payment plan. Creditors appealed the decision and, on 29 September 2021, the 5th Section of Porto’s Court of Appeal confirmed the homologation of the plan.

11. On 3 November 2021, the Judicial Court of Porto (Santo Tirso Trade Court) then announced that the homologation decision had become final and it ordered the closure of the Second PER proceeding.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER AND THE FIFA DISCIPLINARY COMMITTEE

12. On 27 July 2021, the FIFA Dispute Resolution Chamber rendered a decision ordering Leixões to pay EUR 100.794,52 as training compensation with respect to the player Fulton Yorman Medina Valencia (the “Player”), plus 5% interest *per annum*, to Barcelona within 30 days (the “DRC Decision”). Its dispositive part provides as follows:

- 1. The claim of the Claimant, Barcelona SC, is accepted.*
- 2. The Respondent, Leixoes SC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, EUR 100,794.52 as training compensation, plus 5% interest p.a. on that amount as from 27 October 2019 until the date of effective payment.*
- 3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
- 4. The Respondent shall provide evidence of full payment to chhelpdesk@fifa.org. If applicable, the evidence shall be translated into an official FIFA language (English, French, German, Spanish).*
- 5. If the due amount (including all applicable interest) is not paid by the Respondent in accordance with the aforementioned point 2. within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
- 6. The final costs of the proceedings in the amount of CHF 11,000 are to be paid by the Respondent to FIFA with reference to case no. TMS 4942*

13. On 28 July 2021, the terms of the DRC Decision were notified to Leixões and Barcelona and neither of them asked FIFA to state the grounds for its decision.

14. On 9 August 2021, the DRC Decision became final and binding upon Leixões and Barcelona, as no appeal had been filed against the decision.
15. On 31 August 2021, Barcelona notified FIFA that Leixões had not complied with the DRC Decision and requested that disciplinary proceedings be opened against Leixões, pursuant to article 15 of the FIFA Disciplinary Code (2019 edition) (“FDC”).
16. On 1 September 2021, the disciplinary proceedings were opened (Ref. No. FDD-8932).
17. On 6 September 2021, Leixões notified FIFA that it could not pay the amounts stipulated in DRC Decision, given that it had initiated the Second Special Revitalization Proceedings (*Processo Especial de Revitalização*, the “Second PER”) in July 2020.
18. On 17 September 2021, the FIFA Disciplinary Committee informed the Parties that the disciplinary proceedings against Leixões had been declared closed as the club was undergoing insolvency proceedings in accordance with the applicable national legislation. The decision reads as follows:

In this regard, we must inform you that, as a general rule, and in accordance with article 55 of the FIFA Disciplinary Code, the FIFA Disciplinary Committee cannot deal with cases involving clubs that are undergoing insolvency proceedings.

Consequently, on behalf of the Chairman of the FIFA Disciplinary Committee, we regret having to inform you that the present disciplinary proceedings are declared closed, as a result of the fact that the club Leixoes SC is undergoing insolvency proceedings in accordance with the applicable national legislation.
19. On 3 November 2021, the Judicial Court of Porto (Santo Tirso Trade Court) issued an official announcement declaring the closure of the Second PER. Barcelona then requested the reopening of the disciplinary proceedings against Leixões on 10 February 2022, on the grounds that Leixões was “no longer undergoing insolvency proceedings”.
20. On 17 March 2022, FIFA launched an investigation in accordance with articles 27, paragraph 1, and 32, paragraph 5, of the FDC against Leixões into a possible breach of article 15 of the FDC. FIFA invited Leixões to submit its position on the dispute.
21. On 23 March 2022, Leixões submitted its position and requested that the disciplinary proceedings remain closed, given that no substantial change took place since the previous decision of the FIFA Disciplinary Committee.

22. On 19 April 2022, the FIFA Disciplinary Committee decided to reopen the disciplinary proceedings. After completion of the investigation, FIFA concluded that Leixões was no longer undergoing insolvency proceedings in accordance with the applicable national legislation.
23. On 25 April 2022, Leixões submitted its position as to the reopening of the disciplinary proceedings and the upcoming meeting of the FIFA Disciplinary Committee.
24. On 5 May 2022, the FIFA Disciplinary Committee issued Decision FDD-8932 (the “Appealed Decision”) in the following terms:
 1. *Leixoes SC is found responsible for failing to comply in full with the FIFA decision rendered on 27 July 2021 (Ref. TMS 4942).*
 2. *Leixoes SC is ordered to pay to Barcelona SC as follows: EUR 100,794.52 as training compensation, plus 5% interest p.a. on that amount as from 27 October 2019 until the date of effective payment.*
 3. *Leixoes SC is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. The transfer ban will be implemented automatically at national and international level by the Portuguese Football Federation and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. In addition, a deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*
 4. *Leixoes SC is ordered to pay a fine to the amount of CHF 15,000.*
 5. *The fine is to be paid within 30 days of notification of the present decision.*
25. On 8 July 2022, the FIFA Disciplinary Committee notified the Parties of the grounds of the Appealed Decision. In summary, the Committee concluded that:
 - Leixões was subject to a special revitalization proceeding.

- Regardless of whether or not the Second PER was in force, it was in any event not binding on Barcelona, because the Portuguese Courts homologated the plan of payments arising from the Second PER in February 2021, whilst the DRC Decision was only issued in July 2021, months after the homologation.
- Accordingly, Barcelona was not able to file proof of the debt held against Leixões under the Second PER, since the Second PER had been homologated before the issuance of the DRC Decision in which Barcelona's claim was recognized.
- Leixões was involved in a similar case and managed to pay the creditor even after the Second PER was homologated. As described by the Appealed Decision, on 6 April 2021 (after the homologation of the Second PER), the Players Status Committee issued a decision in case Ref. 20-01642, ordering Leixões to pay a sum of money to another creditor and Leixões settled its debt to that creditor, which contradicts Leixões' allegation that it could not freely dispose of its assets.
- In view of the above, the Disciplinary Committee concluded that Leixões was able to make payment of the overdue amounts to Barcelona and that Leixões failed to pay to Barcelona the overdue amounts in accordance with the DRC Decision. Thus, Leixões was in breach of article 15 of the FDC.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 29 July 2022, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code"), Leixões filed its Statement of Appeal before the Court of Arbitration for Sport (the "CAS") against Barcelona and FIFA with respect to the Appealed Decision. Leixões chose English as the language of these arbitration proceedings and appointed Mr. Rui Botica Santos as an arbitrator, in the event that the appeal was submitted to a Panel of three arbitrators. Nonetheless, Leixões reserved its right to request that the dispute be submitted to a Sole Arbitrator once the CAS Finance Director determined the amount of the advance of costs.
27. Also on 29 July 2022, Leixões requested that the CAS Court Office granted an extension of 30 days to file the Appeal Brief, counted from expiry of the initial deadline to file the brief.
28. On 4 August 2022, the CAS Court Office notified Barcelona that Leixões had filed a Statement of Appeal against the Appealed Decision.

29. On 9 August 2022, and considering the Respondents' agreement in that regard, the CAS Court Office extended Leixões' deadline for filing the Appeal Brief until 7 September 2022.
30. On 15 August 2022, Barcelona and FIFA agreed to jointly appoint Mr. Gustavo Albano Abreu as arbitrator in the matter.
31. On 7 September 2022, Leixões requested a short extension until 12 September 2022 to file its Appeal Brief. On 9 September 2022, the CAS Court Office extended Leixões' deadline for filing its Appeal Brief.
32. On 12 September 2022, Leixões filed its Appeal Brief with the CAS. Leixões submitted the following requests for relief:

... Leixões Sports Club Futebol SAD respectfully requests the Court of Arbitration for Sport to:

(i) Set aside the Decision FDD–8932 issued by FIFA Disciplinary Committee on 5 May 2022;

(ii) Determine that the disciplinary proceedings against Leixões Sports Club Futebol SAD shall be considered as closed;

(iii) Consequently, determine[e] that, due to the current PER Proceedings, no sanctions shall be imposed on Leixões Sports Club Futebol SAD;

(iv) Order FIFA and Barcelona SC to bear any and all costs incurred as to the present dispute.

33. On 13 September 2022, the CAS Court Office notified the Appeal Brief to the Respondents and fixed a deadline of 20 days for the Respondents to file their respective Answers.
34. Barcelona and FIFA then asked the CAS Court Office to suspend the deadline for filing their Answers until Leixões had paid the advance costs. The requests were granted by the CAS Court Office on 16 and 20 September 2022, respectively.
35. On 15 September 2022, Leixões reconsidered its position and requested that the case be submitted to a Sole Arbitrator instead of a Panel composed by three arbitrators.

36. On 20 September 2022, the CAS Court Office also informed the Parties that Leixões and FIFA had agreed to submit the case to a Sole Arbitrator, but Barcelona objected to the submission of the dispute to a Sole Arbitrator.
37. On 11 October 2022, the CAS Court Office advised that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator and to appoint as arbitrator Mr. Francisco Müssnich, pursuant article R50 of the CAS Code.
38. On 19 October 2022, the CAS Court Office informed the Parties that no challenge had been filed against the appointment of Mr. Francisco Müssnich by the deadline fixed in Article R34 of the CAS Code.
39. On 3 November 2022, the CAS Court Office notified the Respondents that Leixões had paid the whole of the advance costs and that a new deadline for the Respondents to file their respective answers would be set.
40. On 8 November 2022, the CAS Court Office notified the Respondents to file their respective Answers to the Appeal Brief within 20 days after the receipt of the notification. Requests for extensions were granted by letters dated 16 November, 22 November, 29 November, 2 December, 22 December and 29 December 2022.
41. On 9 January 2023, Barcelona filed its Answer to the Appeal Brief by the relevant deadline. Barcelona submitted the following requests for relief:

...We request this honourable Court of Arbitration for Sport:

1. To admit the present Answer to the appeal brief filed by LEIXÕES SPORT CLUBE FUTEBOL S.A.D. against BARCELONA SPORTING CLUB and FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION in relation to the Appealed Decision pronounced by the FIFA Disciplinary Committee on 5 May 2022, grounds of which were notified to the Parties on 8 July 2022 in the procedure with Ref. No. FDD-8932.

2. To dismiss in full the appeal filed by LEIXÕES SPORT CLUBE FUTEBOL S.A.D. against BARCELONA SPORTING CLUB and FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION in relation to the present appeal procedure.

3. To order LEIXÕES SPORT CLUBE FUTEBOL S.A.D. to pay the whole CAS administration and the arbitration fees.

4. To fix a minimum fee of CHF 10.000,00 (ten thousand Swiss francs) to be paid by LEIXÕES SPORT CLUBE FUTEBOL S.A.D. as a contribution to the legal fees and costs of BARCELONA SPORTING CLUB.

5. To order LEIXÕES SPORT CLUBE FUTEBOL S.A.D. the reimbursement of the costs borne by BARCELONA SPORTING CLUB for the translations provided and enclosed to this Answer, in the amount of \$605.10 (six hundred and five American Dollars with ten cents).

42. On 9 January 2023, FIFA also filed its Answer to the Appeal Brief by the relevant deadline. FIFA submitted the following requests for relief:

...FIFA requests the Sole Arbitrator: a. To reject the Appellant's appeal in its entirety;

b. To confirm the decision FDD-8932 rendered by the FIFA Disciplinary Committee on 5 May 2022;

c. To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure.

43. On 10 January 2023, the CAS Court Office informed the Parties that Mr. Francisco Müssnich had been appointed Sole Arbitrator to decide the case. On the same day, the CAS Court Office asked the Parties to state whether they wished a hearing to be held in this matter.
44. Leixões informed the CAS Court Office that it wished a hearing to be held. The Respondents preferred that the Sole Arbitrator issued an award based solely on the Parties' written submissions.
45. On 20 January 2023, the CAS Court Office informed the Parties that the Sole Arbitrator decided to hold a hearing by video conference, pursuant to Articles R57 and R44.2 of the CAS Code.
46. On 31 January 2023, the CAS Court Office informed the Parties that the hearing was scheduled for 20 March 2023, at 14:00 CET.
47. On 1 February 2023, the CAS Court Office forwarded to the Parties the Order of Procedure. On 1, 7 and 8 February 2023, the CAS Court Office acknowledged receipt

of the Order of Procedure duly signed by FIFA, Leixões and Barcelona respectively. The Parties also provided the CAS Court Office with a list of participants in the hearing.

48. On 20 March 2023, a hearing was held by video-conference (via Cisco Webex). In addition to the Sole Arbitrator and Ms. Lia Yokomizo, Counsel to the CAS, the following persons attended the hearing:
- a) On behalf of Leixões:
 - Mr. Luis Cassiano Neves, attorney.
 - Ms. Matilde Costa Dias, attorney.
 - Mr. Aakash Batra, legal intern.
 - Mr. Nuno Casanova Salazar, expert witness.
 - Ms. Maria Clarisse da Silva Barros, expert witness.
 - b) On behalf of Barcelona:
 - Mr. Rodrigo Silva Batista, attorney.
 - c) On behalf of FIFA:
 - Mr. Miguel Liétard, attorney.
 - Ms. Cristina Pérez González, attorney.
 - Ms. Beatriz Chevis, attorney.
49. At the hearing, the Parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the other Parties and the Sole Arbitrator.
50. At the closing of the hearing, the Parties expressly stated that they did not have any objections with respect to the procedure. The Parties further confirmed that they had been afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator and that their right to be heard had been respected.

V. SUMMARY OF THE PARTIES' POSITIONS

51. The following summary of the Parties' positions is an overview only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

A. Leixões

52. Leixões' submissions may be summarized as follows:

- The Second PER proceedings prevented Leixões from paying the training compensation to Barcelona. Thus, the FIFA Disciplinary Committee should not have reopened the disciplinary proceedings.
- The training compensation became due and payable in October 2019, before the Second PER was initiated. Consequently, the payment plan approved under the Second PER applies to Barcelona's claim, since the Second PER binds even creditors who did not submit proof of their debts or take part in the negotiations.
- Barcelona contends that the amount owed to it became due on 27 July 2021, when the DRC Decision was issued. However, the amount owed to Barcelona arose upon the registration of the Player with Leixões and became due 30 days after that, on 27 October 2019. No action, notification or request by either Party was required for the amount owed to Barcelona to become due and payable (FIFA RSTP, Annex 3, Article 3). Consequently, the debt owed to Barcelona became due long before the cut-off date.
- The Appealed Decision mistakenly concluded that the "*Second PER is not binding on the Claimant [Barcelona]*" exclusively because "*its credit became due long after the approval of the said payment plan*". However, as that is not the case, Barcelona must be deemed to have acknowledged that its claim was subject to the Second PER plan.
- Barcelona can still recover payment of its claim under the PER proceedings or before the Portuguese courts, even if Barcelona is not formally listed as a creditor in the Second PER. A creditor whose claim is not confirmed by its inclusion in the creditors' list can still initiate legal proceedings against the debtor to confirm the existence of the debt owed. However, once the claim is

confirmed by a court of law (or an arbitral court, or an adjudicative body of a federation or confederation), it can only be enforced in accordance with the terms of the PER agreement.

- It is untrue that “*it was impossible for [Barcelona] to register its credit in the Second PER, because at that moment its claim was simply not enforceable*”. On the contrary, the list of creditors includes claims that have been confirmed by a judicial authority or adjudicative body, along with debts that have not been the subject of any judicial or other adjudicative proceeding. Inclusion in the list means that creditors do not need to bring legal proceedings to confirm their claims, which is a significant advantage for any creditor that intends to recover the amount owed to it.
- It is untrue that Barcelona is in any way limited from seeking recognition of its claim against Leixões. In fact, Barcelona can seek confirmation and enforcement of the DRC Decision or, if that proves impossible, can initiate legal proceedings before the Portuguese Courts to confirm the existence of its claim. This would then allow Barcelona to enforce its claim in accordance with the payment terms agreed upon in the PER plan, which is the only way safeguard the fundamental principle of equal treatment of all creditors and to avoid criminal liability.
- Pursuant to Portuguese law, Leixões must comply with the conditions approved in the plan for all creditors. Barcelona cannot be treated more favorably in comparison to other employment-related claims. Article 194, paragraph 1, of the Portuguese Insolvency Code provides that “*the insolvency plan must respect the principle of equality of insolvency creditors without prejudice to differences in treatment that are justified for objective reasons*”. Moreover, favoring one creditor to the detriment of the other creditors constitutes a crime under article 229 of the Portuguese Penal Code, which provides that: “*a debtor who, knowing his situation of insolvency or foreseeing its imminence and intending to favor certain creditors to the detriment of others, settles debts not yet due or settles them in a manner different from payment in cash or usual amounts, or gives security for the debts that the debtor was not obligated to give, is punished by imprisonment for up to 2 years or by a fine of up to 240 days, if the insolvency is recognized by the courts*”.
- The special revitalization proceedings are overseen by a provisional judicial administrator appointed by the Court. Thus, the debtor cannot dispose of its assets without the judicial administrator’s authorization.

- This situation therefore falls within the scope of article 24*bis*, paragraph 3, section b, of the FIFA Regulations on the Status and Transfer of Players (2021 edition) – hereinafter referred to as the “FIFA RSTP”.
- On 3 November 2021, the Second PER was closed, and the provisional judicial administrator was relieved of her functions. Contrary to Barcelona’s allegations and to the conclusions of the Appealed Decision, the closing of the Second PER confirmed the payment terms and conditions agreed upon in the payment plan and, thus, the Second PER payment plan became final and binding on all creditors falling within the scope of the Second PER. In other words, the “closure” of the revitalization proceedings simply means the beginning of their effect: after the homologation of the plan, the plan becomes definitive and binding for all the creditors. The effects of the PER only terminate when the plan is fully complied with or if the court finds that the debtor has failed to comply with it. In essence, this effectively means that, according to Portuguese law, the plan is under full execution, and as such, Leixões cannot be considered to be infringing article 15 of the FDC.
- In other words, it is untrue that Leixões is “*no longer under insolvency proceedings in accordance with national legislation*”, as the Appealed Decision seems to have found. On the contrary, the notification of 3 November 2021 closed the judicial proceedings, thereby confirming the approval and enforcement of the PER payment plan and, as consequence, limiting Leixões’ ability to freely dispose of its assets in relation to all debts that became due on or before 10 September 2020.
- It is untrue that Leixões can freely make the payment as ordered by Decision FDD–8932 issued by FIFA Disciplinary Committee on 5 May 2022. In fact, if Leixões makes that payment, it will commit a criminal act punishable under Article 229 of the Portuguese Penal Code. This is a public crime, which can be prosecuted by the Portuguese public prosecuting authorities.
- As result, the FIFA Disciplinary Committee cannot enforce its decision against Leixões which, for the purposes of the FIFA regulations, cannot freely dispose of its assets or decide to pay debts that fall under a valid and effective PER plan on terms other than those stipulated in the plan.

B. Barcelona

53. Barcelona’s submissions may be summarized as follows:

- Leixões is in material breach of article 15 of the FDC because it failed to comply with the DRC Decision.
- The claim deriving from the DRC Decision was duly constituted by the DRC Decision, which had the effect of res judicata from 9 August 2021. At that time the DRC Decision became final and binding upon Barcelona and Leixões, finally resolved the dispute between them and generated a certain, liquid and fully enforceable debt held by Barcelona against Leixões. This understanding is further corroborated by a literal and teleological interpretation of article 15 of the FDC, which in para. 2 clearly states that a disciplinary procedure may only commence at the request of the creditor. In other words, under article 15 of the FDC, the underlying claim that the creditor holds (Barcelona) derives from a decision (the DRC Decision) pronounced by a competent adjudicative body.
- Barcelona could not have requested the provisional judicial administrator to include Barcelona's claim in the Second PER because the deadline for submitting claims expired before the DRC Decision was issued and notified to the Barcelona and Leixões. After the appointment of the provisional judicial administrator, the creditors have 20 days to present and file proof of debt with the court. However, Barcelona could not have presented a claim under the Second PER because it could not demonstrate the claim's origin, maturity date and its principal and interest amount. Barcelona's entitlement to the amount owed was not certain (given that neither Leixões nor the FIFA DRC had acknowledged its entitlement) or liquid (there was no principal amount) and, consequently, a provable debt did not exist for the purposes of the Second PER: the claim had not been constituted because there was no legal document that acknowledged Barcelona's right to receive a specific amount of training compensation. Thus, Barcelona could not have filed proof of debt, since its claim was not provable by any means that complied with the requirements established by Article 17-D(2) of the Portuguese Insolvency Code.
- The payment plan approved under the Second PER does not bind Barcelona, since the amount owed to Barcelona became due long after the approval of the plan. Claims that become due after the homologation of a PER are not subject to the terms of that plan, unlike those that existed before the beginning of the PER but were not submitted in the PER proceedings. The general rule under Article 17-F(11) of the Portuguese Insolvency Code therefore does not apply in the matter at hand.

- A PER is not an insolvency procedure under Portuguese law. The purpose of a PER is to allow a debtor who is in a difficult financial situation or in a merely imminent state of insolvency, from which recovery is possible, to obtain a plan of payment of its debts to its creditors, which will then be homologated by the competent court. As such, Leixões cannot be considered to be insolvent, but rather in a “difficult financial situation”. Thus, the Second PER falls outside the scope of article 55 FDC.
- Moreover, as a PER is not an insolvency or bankruptcy procedure pursuant to Portuguese law, the question of whether Barcelona’s claim falls within or outside the scope of the Second PER is irrelevant.
- Leixões resorted to the Second PER because it was found criminally liable for a match manipulation scheme. The criminal court decided that Leixões is subject to cumulative and accessory criminal penalties, of a ban from participating in professional football competitions in Portugal, and withdrawal of the State’s financial support, in the form of subsidies and all other kinds of incentives. Put another way, Leixões faces financial difficulties and resorted to the Second PER because it participated actively in a match manipulation scheme.
- Under Portuguese Law, Leixões had various obligations to provide information before presenting the request for the Second PER. Despite these obligations, Leixões did not present or refer to the debt allegedly owed to Barcelona when the request for the Second PER was filed or at any time while it was pending.
- Article 24 of the Portuguese Insolvency Code provides that, after the appointment of the provisional judicial administrator, the debtor must formally notify all its creditors, send them its financial documentation, and invite them to participate in the negotiations on the payment plan. Leixões, however, did not remit any correspondence by registered mail, or in any other manner.
- Leixões had several opportunities to refer to Barcelona’s alleged claim while the Second PER was pending. Leixões, however, never referred to Barcelona or to its alleged claim. This clearly demonstrates that Leixões did not acknowledge the existence of the claim because otherwise it would have presented the claim, as required by law.
- The principle of equality amongst creditors requires that creditors be treated equally, but the law excepts some situations. An example of such an exception is that described in article 17-F(11) of the Portuguese Insolvency Code, which

concerns claims that were not constituted before the date on which the provisional judicial administrator was appointed. Given that Barcelona's claim was constituted after the appointment of the provisional judicial administrator, it could not have registered the claim under the Second PER. Thus, if Leixões pays the amounts owed to Barcelona, that payment would not constitute a breach to the principle of equality amongst creditors.

- If Leixões' position and allegations (that Barcelona's claim is subject to the plan of payments under the Second PER) are accepted, then it was Leixões itself that caused a breach of the principle of equality amongst creditors by failing to present Barcelona's alleged claim when the request for the Second PER was made.
- Leixões is allowed to pay its creditors. Leixões' freedom to dispose its assets was restricted during the Second PER, but not removed completely.
- Leixões contradicts its own allegation: it asserts that Barcelona's claim is bound by the plan of payments homologated under the Second PER and that it cannot make payment of the amounts due and payable to Barcelona, but in August 2021 it settled a debt to another creditor in a case similar to the one at hand, whilst the Judicial Administrator was still performing her duties.
- The Second PER was closed on 3 November 2021. In any case, Leixões can no longer be considered to be subject to insolvency proceedings.

A. FIFA

54. FIFA's submissions may be summarized as follows:

- Barcelona correctly initiated its claim before the DRC, which is the only body that can make a judgement (or assessment) in connection with disputes relating to training compensation between clubs belonging to different associations. Leixões argues that in order to safeguard the fundamental principle of equal treatment of all creditors and to avoid incurring criminal liability, Barcelona can bring legal proceedings to confirm the existence of its claim before the Portuguese Courts. By making such statement, it appears that Leixões suggests that Barcelona's only alternative was to bring its claim before the Portuguese Courts. However, as the right to receive training compensation is a right that arises directly from the rules of FIFA, the DRC was the only body empowered to make a determination as to whether Barcelona was entitled to receive training compensation, in accordance with Articles 20 and 22(d) RSTP and the decisions issued by the CAS in CAS 2011/A/2586 and CAS 2012/A/2754.

Moreover, Leixões did not bother even to ask for the grounds of the DRC Decision, much less appeal that decision. Leixões is therefore estopped from challenging the DRC's jurisdiction at this stage, or suggesting that a different forum would have been more suitable to hear Barcelona's claim for training compensation.

- The Appealed Decision reached the conclusion that, regardless of whether or not the Second PER was in force, it was in any event not binding on Barcelona (§§ 29-30 of the Appealed Decision). Leixões has failed to provide any arguments at all in this respect.
- Leixões has failed to prove that its club has been dissolved and that its club no longer exists as a member of FIFA under the Disciplinary Committee's jurisdiction. Thus, FIFA finds that it must be assumed that Leixões has survived the insolvency proceedings or been restructured and the enforcement proceedings under article 15 of the FDC should be resumed.
- It remains uncontested that Barcelona's demand to enforce the DRC Decision was filed after the insolvency proceedings began. More specifically, while the proceedings were "formally initiated" on 21 August 2020, Barcelona did not file its claim before the Disciplinary Committee until 31 August 2021.
- Leixões has failed to prove, with appropriate support in the legislation or judicial precedents, that the Second PER and its effects would truly be binding on all creditors regardless of whether their debts were in fact proved under the PER proceedings and regardless of whether a specific debt is included in the creditors' listings for the purposes of the PER.
- FIFA submits that Leixões has failed to prove how the special revitalization process may affect this dispute. In reality, the fact that Barcelona is not included within Leixões' list of creditors gives even more uncertainty to the potential effects or consequences that the recovery plan might have on the present dispute.
- Leixões has also failed to provide decisive documentation proving that the Second PER and its effects are "*fully under execution*". The evidence in the record supports the opposite conclusion: unlike the First PER, the proceedings of the second special revitalization process were closed on 3 November 2021 and, to date, Leixões has not demonstrated that the effects of the Second PER are truly "under execution". This conclusion becomes even more evident if we consider the small amount of documentation produced by Leixões.

- Leixões did not bother even to request the grounds of the DRC Decision, much less appeal it. Leixões' passivity clearly demonstrates that it was not truly concerned with a potential breach of the principle of equal treatment of all creditors, and that it therefore did not see the DRC Decision as interfering with the Second PER, which was initiated on 30 July 2020. In other words, even though the DRC Decision was rendered and notified to Leixões and Barcelona after the Second PER had been initiated, Leixões decided to remain silent and did not even request the grounds of the DRC Decision or bother to challenge it.
- As a general principle, in determining whether or not the amounts fixed in a decision have been paid to the creditor or FIFA, or for any reason the amounts are no longer owed, the Disciplinary Committee has to – and can only – take into consideration facts arising after the date on which the relevant decision was rendered. Any other consideration would fall outside the scope of disciplinary proceedings under article 15 of the FDC.
- The Disciplinary Committee rightfully imposed disciplinary measures on Leixões (*i.e.* a fine and, subject to the persistent failure to pay within the period of grace, a transfer ban). That means that the conditions set out in article 15 FDC were met: failure to pay another person (a club in the case at hand) a sum of money even though instructed to do so by an instance of FIFA.

VI. JURISDICTION

55. The jurisdiction of the CAS, which is not disputed by the Parties, derives from article R47 of the CAS Code read together with article 49 of the FIFA Disciplinary Code (2019 edition) and articles 56, paragraph 1, and 57, paragraph 1, of the FIFA Statutes.
56. Article R47 par. 1 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.

57. Article 49 of the FIFA Disciplinary Code reads as follows:

Decisions passed by the Disciplinary and Appeal Committee may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes.

58. Article 56, paragraph 1, of the FIFA Statutes reads as follows:

FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents.

59. Article 57, paragraph 1, of the FIFA Statutes reads 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.

60. The jurisdiction of the CAS is not contested by the Parties and is confirmed by the execution of the Order of Procedure. It follows, therefore, that the CAS has jurisdiction in this appeal.

VII. ADMISSIBILITY

61. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.

62. As quoted above, article 57, paragraph 1, of the FIFA Statutes states that appeals against final decisions passed by FIFA's legal bodies must be lodged with the CAS within 21 days of notification of the decision in question.
63. The grounds of the Appealed Decision were notified to the Parties on 8 July 2022. Leixões' Statement of Appeal was filed on 29 July 2022. Both were therefore filed prior to the expiry of the 21-day deadline in the FIFA Statutes and the CAS Code. Both Statements of Appeal also complied with the requirements set out in articles R47, R48 and R64.1 of the CAS Code.
64. In addition, article R51 of the CAS Code reads as follows:
- Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely.*
65. On 29 July 2022, Leixões requested that the CAS Court Office grant an extension of 30 days to file the Appeal Brief, counting from the expiry of the initial deadline to file the brief.
66. On 9 August 2022, and in view of the Respondents' agreement in that regard, the CAS Court Office granted Leixões' request and notified Leixões to file its Appeal Brief no later than 7 September 2022.
67. On 7 September 2022, Leixões requested a short extension until 12 September 2022 to file its Appeal Brief. On 8 September 2022, the CAS Court Office extended Leixões' deadline to file its Appeal Brief until 12 September 2022, with the Respondents' agreement.
68. On 12 September 2022, Leixões filed its Appeal Brief with the CAS. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

69. Article R58 of the CAS Code reads as follows:

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.

70. Article 56, paragraph 2, of the FIFA Statutes provides as follows:

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

71. Article 5 of the FIFA Disciplinary Code (2019 edition) establishes the following:

The FIFA judicial bodies base their decision: a) primarily, on the FIFA Statutes as well as FIFA's regulations, circulars, directives and decisions, and the Laws of the Game; and b) subsidiarily, on Swiss law and any other law that the competent judicial body deems applicable.

72. In accordance with these provisions, the Sole Arbitrator must decide the present dispute in accordance with, primarily, the FIFA Regulations, and additionally, Swiss Law.

73. Leixões requested that Portuguese law should be also taken into consideration and in particular the relevant provisions on special revitalization proceedings, as those proceedings lie at the core of the dispute. Barcelona agrees that consideration may also be given to Portuguese law, given that the Second PER is governed by Portuguese law.

74. In light of the above and in accordance with article R58 of the CAS Code, article 56, paragraph 2, of the FIFA Statutes and Article 5 of the FDC, the merits of this appeal procedure will be governed primarily by the FIFA Regulations, secondarily by Swiss law and, when appropriate, due consideration may also be given to Portuguese law.

IX. MERITS

75. The Sole Arbitrator notes that it is undisputed that (a) Leixões has the obligation to pay Barcelona a specific amount as training compensation related to the Player; (b) Leixões did not pay such amount; (c) the Disciplinary Committee closed the disciplinary proceedings, as Leixões was undergoing the Second PER, but then reopened them after Portuguese Courts declared the closure of the Second PER; (d) FIFA then ordered Leixões to pay Barcelona the training compensation, plus interest and a fine, in 30 days, under penalty of successively suffering a transfer ban, deduction of points or relegation to a lower division.

76. The essential dispute between the Parties, however, is over two main points:
- Does the payment plan approved under the Second PER bind Barcelona?
 - Does the Second PER prevent Leixões from complying with the DRC Decision?

77. These issues will be considered in turn.

A. Does the payment plan approved under the Second PER bind Barcelona?

a. Remarks on the Special Revitalization Proceeding under the Portuguese Insolvency Code

78. As can be seen from the documents in the file, the Special Revitalisation Proceeding is provided for in the Portuguese Insolvency Code (*Código da Insolvência e da Recuperação de Empresas*), enacted by Decree-Law No. 53/2004.
79. According to article 17-A of the Portuguese Insolvency Code, the PER is a special procedure which allows a company that is demonstrably in a difficult financial situation or in imminent insolvency, but which is still recoverable from a financial standpoint, to open negotiations with its creditors with a view to achieving an agreement that facilitates the company's financial and economic recovery.
80. Article 17-C(1) of the Portuguese Insolvency Codes establishes that a PER is initiated by a joint statement of the debtor and part of its creditors (representing at least 10% of the company's non-subordinated debt) submitted to the relevant court, confirming that the parties have entered into negotiations regarding a revitalization process and the related payment agreement.
81. The company must file a request with the court to declare its insolvency, accompanied by a proposed recovery plan. When the court receives the request, it appoints the provisional judicial administrator (article 17-C(5)).
82. This order has two important effects on PER proceedings.
83. Firstly, it initiates the *stand still* period (article 17-E). The stand still period may last up to four months (although it can be extended for one additional month). During this period, (a) creditors cannot bring enforcement actions against the debtor, (b) pending enforcement actions against the debtor are also stayed, and (c) the running of the limitation period is interrupted, along with other consequences.

84. Secondly, the publication of the order that appoints the provisional judicial administrator serves as the cut-off date that defines the claims that will be subject to insolvency proceedings. Pursuant to article 17-F(11), all debts in existence (*créditos constituídos*) before the order is published, notified and registered are subject to the PER proceeding.
85. Article 17-D(2) provides that the creditors may send proof of debt to the provisional judicial administrator, who will then prepare a provisional list of claims and submit the objections presented by the creditors for decision by the court.
86. The creditors must conclude the negotiations within two months from the end of the objection period. The debtor must then deposit the final version of the recovery plan with the court. If the creditors approve the plan, the plan is submitted to the court, which may ratify or refuse the plan (article 17-F(4)).
87. If the court ratifies the plan, the homologation decision binds the company and the creditors, even if they have not submitted their claim or participated in the negotiations, according to article 17-F(11).
88. In the case at hand, Leixões' creditors approved the Second PER payment plan. On 5 February 2021, the Judicial Court of Porto homologated the plan and on 29 September 2021, the 5th Section of Porto's Court of Appeal confirmed the homologation of the plan.
89. However, the Respondents take the position that Barcelona's claim is not bound by the Second PER plan because (a) Barcelona's claim was "constituted" after the appointment of the provisional judicial administrator, and (b) Leixões neither listed the debt owed to Barcelona in the Second PER, nor invited Barcelona to take part in the negotiations, which prevented Barcelona from participating in the proceedings.
90. These arguments are addressed below.
- b. When should Barcelona's claim be considered "constituted", within the meaning of article 17-F(11) of the Portuguese Insolvency Code?*
91. At the heart of this dispute is an amount owed as training compensation.
92. According to article 3(2) of the Annexe 4 of FIFA RSTP, "*the deadline for payment of training compensation is 30 days following the registration of the professional with the new association*". It is undisputed that the Player was registered in September 2019 and the 30 days for Leixões to pay the training compensation expired on 26 October 2019.

93. As Leixões did not voluntarily pay the debt, Barcelona began proceedings before the FIFA DRC to compel Leixões to pay.
94. Meanwhile, on 30 July 2020, Leixões initiated the Second PER. On 6 January 2021, the final version of the payment plan was announced, and it was homologated by the court of first instance on 8 February 2021.
95. Five months later, on 27 July 2021, the FIFA Dispute Resolution Chamber rendered the DRC Decision, ordering Leixões to pay EUR 100.794,52 as training compensation related to the Player, plus 5% interest *per annum* as from 27 October 2019. On 28 July 2021, the terms of the DRC Decision were notified to the parties and none of them requested the grounds for the decision. On 9 August 2021, the DRC Decision became final and binding upon Leixões and Barcelona, as no appeal was filed against that decision.
96. In sum, in the case at hand, Barcelona’s right to seek payment of the training compensation arose prior to the PER proceeding, 30 days after the registration of the player with Leixões, but the DRC Decision ordering the debtor to pay the training compensation was issued after the plan was approved.
97. The parties dispute whether the debt for training compensation is subject to the payment plan approved under the Second PER.
98. Article 17-F(11) of the Portuguese Insolvency Code provides that “*the homologation decision binds the company and the creditors, even if they have not submitted proof of debt or participated in the negotiations, in relation to debts existing [créditos constituídos] on the date on which the decision provided for in no. 4 was issued in accordance with article 17-C, and notified, published and registered by the court secretariat*”.
99. The main controversy rests on the interpretation of what is considered to be a debt (*crédito constituído* or “constituted credit”) for the purposes of article 17-F(11).
100. According to Nuno Salazar Casanova, an expert witness in Portuguese Law, it is necessary to determine when the debt starts to *exist*:
 - Some debts may arise directly from contractual obligations or other sources. Thus, a decision ordering the debtor to comply with its obligation would be merely declaratory and the debt would be considered to exist even before the judicial decision. This reasoning was adopted, for example, by the Porto Court of Appeals in case number 2629/18.1T9VLG-A.P1.

- Other debts only come into existence after a judicial decision is rendered, such as a debt arising from a divorce action. The debt does not exist before the decision, thus it is constituted judicially. This reasoning was adopted, for example, by the Lisbon Court of Appeals in case number 9264/18.2T88NT-A.L1-7.
101. According to the expert’s opinion, the DRC Decision would be considered merely declaratory under Portuguese law: it simply acknowledges that a debt already in existence should have been paid and was not. This is confirmed by the fact that the interest fixed by the DRC Decision runs from 27 October 2019, when payment should have been made, recognizing that the debt existed from that date.
102. Thus, the debt that Barcelona seeks to enforce falls within the concept of “*crédito constituído*” prior to the appointment of the provisional judicial administrator and, in principle, should be subject to the payment plan approved under the Second PER.
- c. Does the payment plan approved under the Second PER bind Barcelona if Leixões did not list the debt to Barcelona in the Second PER, and did not invite Barcelona to take part in the negotiations?*
103. Barcelona argues that it could not have participated in the Second PER proceeding or in the negotiations that culminated in the homologated plan of payments because Leixões’ debt to Barcelona came into existence after the appointment of the judicial administrator.
104. In addition, Barcelona contends that Leixões had several opportunities to refer to its debt to Barcelona during the Second PER, but it did not. In Barcelona’s view, this proves that Leixões did not acknowledge the existence of the debt. FIFA also highlights that the fact that Barcelona is not included in Leixões’ list of creditors gives even more uncertainty to the potential effects or consequences that the recovery plan might have for this dispute.
105. Moreover, Barcelona asserts that Leixões did not invite Barcelona to take part in the negotiations of the Second PER and therefore breached article 17-D(1) of the Insolvency Code, which provides that “*as soon as it is notified of the order referred to in paragraph 5 of the preceding article, the company shall immediately inform, by registered mail, all its creditors that did not sign the statement referred to in paragraph 1 of the same article, that it has initiated negotiations with a view to its revitalization, inviting them to participate, if they so wish, in the negotiations underway and informing them that the documentation referred to in paragraph 1 of article 24, the proposed plan and, if*

applicable, the proposed classification of claims, are available at the office of the court secretariat for consultation”.

106. As a result, Barcelona argues that it could not have listed its claim in the Second PER or participated in the negotiations – and that Leixões itself did not list its debt to Barcelona in the Second PER. Thus, Barcelona contends that it is not bound by the payment plan approved under the Second PER.
107. However, article 17-F(11) of the Portuguese Insolvency Code provides that “the homologation decision binds the company and the creditors, even if they have not claimed the debts owed to them [reclamado os seus créditos] or participated in the negotiations, in relation to debts existing [créditos constituídos] on the date on which the decision provided for in paragraph 4 was issued in accordance with article 17-C and it is notified, published and registered by the court secretariat”.
108. On 8 February 2021, the Judicial Court of Porto (Santo Tirso Trade Court) homologated the Second PER payment plan and confirmed that “[t]his decision is binding on all creditors, even if they did not participate in the negotiations – Article 17-F/10 of the Insolvency and Corporate Reorganization Code”.
109. Moreover, as explained by Mr. Nuno Salazar Casanova, the expert witness in Portuguese Law, a creditor is still bound by the payment plan, even if the debtor does not notify the creditor of the PER Proceeding and the creditor so fails to become aware of the proceeding and does not list its claim. However, in such cases, the creditor may be entitled to reparation for losses and damage.
110. In this regard, article 17-D(13) of the Portuguese Insolvency Code provides that “the company, together with its legal or de facto members of management [administradores], if the company is a legal entity, are jointly liable for losses caused to its creditors by reason of any lack of, or incorrectness in, communications or information provided to them, and the action to determine such liability is processed separately from the [revitalization] proceeding”.
111. Thus, the Sole Arbitrator concludes that Barcelona’s claim is bound by the payment plan.

B. Does the Second PER prevent Leixões from complying with the DRC Decision?

112. According to article 24bis of the FIFA RSTP and article 15 of the FDC, clubs are subject to penalties, such as fines, transfer bans, deduction of points or relegation to a lower division, if they fail to pay the amounts ordered by a Football Tribunal when due. As

one CAS decision puts it, the purpose of the sanctions “*is to put pressure on the debtor so that he will comply with his (payment) obligation*” (CAS 2015/A/4162).

113. However, both the RSTP and the FDC provide for an exception: if the debtor is under an insolvency proceeding that prevents it from complying with the decision.
114. In this regard, article 24*bis*, paragraph 3, of the RSTP excludes the penalties if the “*debtor club was subject to an insolvency-related event pursuant to the relevant national law and is legally unable to comply with an order*”. In addition, article 55 FDC provides that FIFA may close the disciplinary proceedings when “*a party is under insolvency or bankruptcy proceedings according to the respective procedures provided for by the relevant national law*”.
115. The reasoning behind these provisions is that the penalty becomes moot “*if the debtor is under some impossibility to comply with the obligation from the outset*” (see, for example, CAS/A/4162 and CAS 2012/A/2750).
116. Based on these provisions, Leixões argues that the FIFA disciplinary proceedings should be closed and Leixões should not be subject to any penalty while undergoing the Second PER.
117. In response, Barcelona argues that the Second PER is not an insolvency proceeding under Portuguese law, but merely a procedure that allows a debtor who is in a difficult financial situation or in a merely imminent state of insolvency, from which it might recover, to establish a plan of payment of its debts to its creditors. As such, according to Barcelona, Leixões cannot be considered to be insolvent, but rather in a “difficult financial situation”. Thus, the PER should be considered to fall outside the scope of article 55 of the FDC.
118. However, from the evidence presented in the case, the Sole Arbitrator concludes that PER Proceedings do fall under the exceptions provided for in 24*bis*, paragraph 3, of the RSTP and article 55 of the FDC, as they meet the two requirements established in FIFA's regulations.
119. The first requirement is that the debtor is subject to an “*insolvency-related event*” or “*insolvency or bankruptcy proceedings*” according to the respective procedures provided for by the national law.
120. Therefore, it is important to analyze the provisions of the national law in each case carefully.

121. According to CAS precedents, article 55 of the FDC is “*concerned with collective enforcement proceedings, i.e. proceedings that – in principle – prevent creditors to individually pursue / enforce their individual claims against the debtor, provide for the seizure of the debtor’s assets, are triggered by financial difficulties of the debtor and foresee for some kind of supervision by state authorities*” (CAS/A/6900 & 6902). In the case at hand, the evidence produced by Leixões, remarkably the testimony of Mr. Nuno Salazar Casanova, pointed out that these are precisely the circumstances surrounding the Second PER.
122. The second requirement is that the insolvency-related event makes the debtor “*legally unable to comply*” with an order issued by FIFA.
123. It is possible to argue that, when drafting a recovery plan, the club may, in some cases, choose between (a) listing the claims deriving from the DRC decisions exactly as ruled by FIFA, or (b) proposing discounts or grace periods. Since the club has these alternatives when negotiating with creditors, it is possible to argue that the club is *legally able to comply with an order*”.
124. But that is not the situation discussed in the case at hand. In this case, the plan has already been approved under the Second PER and it is final and binding.
125. Under these circumstances, Leixões has proved that it is prevented by law from complying with the DRC Decision. If it does so, it will be in breach of the payment plan approved under the Second PER and will be subject to sanctions under Portuguese law.
126. As confirmed by the expert witness, article 194, paragraph 1, of Portuguese Insolvency Code provides that “*the insolvency plan must respect the principle of equality of insolvency creditors without prejudice to differences in treatment that are justified for objective reasons*”. Moreover, favoring one creditor to the detriment of the others is a crime under article 229 of the Portuguese Penal Code, which provides that “*a debtor who, knowing his situation of insolvency or foreseeing its imminence and intending to favor certain creditors to the detriment of others, settles debts not yet due or settles them in a manner different from payment in cash or usual amounts, or gives security for the debts that the debtor was not obligated to give, is punished by imprisonment for up to 2 years or by a fine of up to 240 days, if the insolvency is recognized by the courts*”.
127. Accordingly, if Leixões pays the debt to Barcelona without considering the payment plan approved under the Second PER, Leixões can be held civilly and criminally responsible for favoring a creditor.

128. Barcelona and FIFA contend that Leixões settled a debt to another creditor in a similar situation in August 2021, despite the legal restrictions alleged by Leixões. However, the Respondents did not present evidence to support this allegation, and thus the Sole Arbitrator was unable to examine the circumstances of the debt allegedly settled by Leixões.
129. The Respondents also contend that Leixões failed to provide decisive documentation proving that the Second PER and its effects are “*fully under execution*”, as the Second PER was declared closed on 3 November 2021 and the provisional judicial administrator was relieved of her functions.
130. Despite the arguments raised by the Respondents, the Sole Arbitrator concludes that Leixões has proven that it remains bound to comply with the plan, even though the Second PER is considered formally closed. According to the evidence provided by the Appellant, remarkably the testimony of Mr. Nuno Salazar Casanova, the PER proceedings are formally closed when creditors and debtor jointly approve a payment plan, which is homologated by the court and becomes definitive and binding for all the creditors. Even though the proceeding is considered closed, the debtor must comply with the payment plan, subject to the penalties under Portuguese Law.
131. The Sole Arbitrator points out that this conclusion is consistent with the decision issued in CAS 2015/A/4162, when the Panel decided to close the disciplinary proceedings against another club because that club was under an obligation to comply with a payment plan negotiated with the creditors and homologated by the judicial courts, even though the club was once again entitled to dispose of and manage its property.
132. The Sole Arbitrator therefore finds that, in this case, and given the specific circumstances surrounding it, Leixões can be considered to be subject to an insolvency-related event under the relevant national legislation and is legally unable to comply with an order. Thus, the disciplinary proceedings against Leixões must be closed and no sanctions may be imposed on Leixões while the payment plan is under execution.

X. COSTS

133. The Appealed Decision concerns the imposition of sanctions as a consequence of a dispute of an economic nature, therefore, article R65 of the CAS Code does not apply and the present arbitration proceeding is subject to the provisions on costs set out in Article R64 of the CAS Code. Article R64.4 of the CAS Code provides that:

At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.

134. Furthermore, Article R64.5 of the CAS Code provides that:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

135. In this arbitration proceeding, the appeal filed by Leixões has been granted in full, and the Sole Arbitrator therefore decides that the costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne entirely by the Respondents, in equal parts.

136. Finally, with regard to the legal fees and other expenses incurred by the Parties in connection with this proceeding, taking into account the outcome of the proceedings, the financial resources of the Parties, and the complexity and the specific circumstances of this case, the Sole Arbitrator considers it fair and appropriate that each Respondent pays Leixões a contribution towards its expenses of CHF 2,500 (two thousand five hundred Swiss francs), corresponding to a total amount of CHF 5,000 (five thousand Swiss francs).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

- 1.** The appeal filed by Leixões Sport Club SAD, against the Appealed Decision rendered by the FIFA Disciplinary Committee on 5 May 2022 (FDD–8932) is upheld.
- 2.** Decision FDD–8932 issued by the FIFA Disciplinary Committee on 5 May 2022 is set aside and the disciplinary proceedings against Leixões Sport Club SAD must be closed while the payment plan approved under the Second PER is in force.
- 3.** Barcelona Sporting Club and FIFA shall each bear 50% of the costs of the arbitration, to be determined and served on the Parties by the CAS Court Office.
- 4.** Barcelona Sporting Club and FIFA shall each pay Leixões Sport Club SAD a contribution towards its expenses of CHF 2,500 (two thousand five hundred Swiss francs) corresponding to a total amount of CHF 5,000 (five thousand Swiss francs).
- 5.** All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 November 2023

THE COURT OF ARBITRATION FOR SPORT

Mr. Francisco Antunes Maciel Müssnich
Sole Arbitrator