FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 18 October 2023

regarding an employment-related dispute concerning the player Caio Eduardo de Souza Germano

COMPOSITION:

Frans DE WEGER (The Netherlands), Chairperson
Khalid AWAD ALTHEBITY (Saudi Arabia), member
Peter LUKASEK (Slovakia), member

CLAIMANT:

CR Vasco da Gama SAF, Brazil

RESPONDENT 1:

Shabab Al Ahli Dubai, UAE

RESPONDENT 2:

Caio Eduardo de Souza Germano, Brazil
Represented by PVBT Law

FIFA FOOTBALL TRIBUNAL

I. Facts of the case

1. The parties to the dispute are:

   a. The Brazilian club, CR Vasco da Gama SAF (hereinafter: *Vasco*, *Claimant* or *club*). Vasco is headquartered in Rio de Janeiro, Brazil and affiliated to the Brazilian Football Confederation (CBF).

   b. The Emirati club, Shabab Al Ahli Dubai (hereinafter: *Shabab* or *Respondent 1*). Shabab is headquartered in Dubai, UAE and affiliated to the United Arab Emirates Football Association (UAEFA).

   c. The Brazilian player, Caio Eduardo de Souza Germano (hereinafter: *player* or *Respondent 2*), born on 9 April 2003.

2. Shabab and the player are hereinafter jointly referred to as *the Respondents*.

3. On 1 August 2018, Vasco and the player, assisted by his mother, entered into a contract titled *"Sports Training Contract with the Provision of an Apprenticeship Scholarship – Football"*, valid until 31 July 2021 (hereinafter: *the Training Contract*). The player was contextually registered with Vasco as an amateur.

4. On 29 July 2019, Vasco and the player, again assisted by his mother, signed a first professional work contract (hereinafter: *the Contract*), valid as from 10 July 2019 until 10 July 2022.

5. Clause 9 of the Contract reads as follows (freely translated to English):

> *"In accordance with article 28. paragraph I, sections "a" and "b", of Law 9.615/98, modified by Law 12. 395/2011, this contract shall contain a Sports Indemnity Clause, owed by the PLAYER in favour of the CLUB, in the event of the transfer of the PLAYER to another national or foreign team, during the term of this contract, or, on the occasion of the return of the PLAYER to professional activities in another sports practice entity (club), within a period of up to 30 (thirty) months. In accordance with article 28, §1º of the aforementioned Law, the Sports Compensation Clause, for national transfers, must be stipulated up to a maximum limit of 2,000 (two thousand) times the average value of the contractual salary (clause I), without limitation for international transfers (clause II). When, in accordance with § 1 of art. 40, § 1 of Law 9.615/98, the stipulation of the respective value in foreign currency is permitted, it shall always be settled in national currency (Reais). In accordance with article 28, § 2º of Law 9.615/98 modified by Law 12.395/2011, the PLAYER and the new sports practice entity that employs him (new club), are jointly and severally liable for the payment of the Sports Compensation Clause referred to in paragraph I of the same article".*

6. Clause 11 of the Contract reads as follows (freely translated to English):

> *"The contracting parties expressly acknowledge that the employment contractual relationship established between them is subject to a special legal regime, with the general rules of labour and social security legislation applying to the professional PLAYER, with the exception of the peculiarities contained in this contract and in Law 9.615/98, amended by Law 12.395/2011."*

7. Clause 14 of the Contract reads as follows (freely translated to English):

> *"International Transfer. The parties establish that the basic condition for the transfer of the* [player] *abroad is the payment by the club that intends to acquire the* [player]*, or by the* [player] *himself, of the amount equivalent in reais to the amount stipulated in field 18 from the sports compensation clause, established for international transfers.*

8. Field 18 of the Contract contains an amount of EUR 30,000,000 regarding the player's international transfer.

9. On 3 December 2021, Vasco presented a renewal proposal to the player, which contained *inter alia* the following conditions (hereinafter: *the Formal Offer*):

- New contractual term until 31 December 2024.
- Salaries as follows:
  - BRL 15,000 per month for the first year.
  - BRL 20,000 per month for the second year.
  - BRL 25,000 per month for the third year.

10. On 27 December 2021, Vasco sent a formal notification to the player's agents, reiterating the Formal Offer and informing them of the right of first refusal under Brazilian law.

11. On 10 January 2022, the player replied to the club and while denying having received the Formal Offer, it informed Vasco of the offer he received from the club NK Lokomotiva Zagreb, which had better financial conditions then the Formal Offer.

12. During the month of April 2022, Vasco and NK Lokomotiva Zagreb discussed the possibility to transfer the player, to no avail.

13. On 24 August 2022, Shabab entered a transfer instruction in the FIFA Transfer Matching System (TMS) to engage the player. The instruction type chosen was "Engage permanently (out of contract)". The International Transfer Certificate (ITC) of the player was delivered by the CBF on 25 August 2022, without distinctive issues.

14. Also on 25 August 2022, Shabab and the player signed an employment agreement, binding them as from the same date until 30 June 2024, with a potential option to extend said contract (hereinafter: *the Shabab Agreement*). Under the Shabab Agreement, the player was entitled *inter alia* to a sign-on fee of USD 15,000, monthly salaries of USD 12,000 during the first contractual year, monthly salaries of USD 14,000 during the second contractual year, accommodation, and flight tickets.

15. The player was registered by the UAEFA on 31 August 2022, without distinctive issues.

16. In accordance with the information on file, art. 29 of the Brazilian Federal Law no. 9815/98 (as amended) reads as follows (freely translated to English, emphasis added):

> *"Art. 29 - The sports organisation that trains the athlete will have the right to sign the athlete's first special sports employment contract from the age of 16 (sixteen), the term of which may not exceed 5 (five) years.*
>
> *§ Paragraph 2. An athlete training organisation is considered to be one which:*
>
> *I - provides athletes with training programmes in the basic categories and educational complementation; and*
>
> *II - cumulatively fulfil the following requirements:*
>
> *a) the athlete in training has been registered by it with the respective regional sports administration body for at least 1 (one) year;*
>
> *b) prove that the athlete in training is actually registered for official competitions;*
>
> *c) guarantee educational, psychological, medical and dental assistance, as well as food, transport and family life;*
>
> *d) maintain adequate accommodation and sports facilities, especially in terms of food, hygiene, safety and health;*
>
> *e) maintaining a team of professionals specialised in technical sports training;*
>
> *f) adjust the time allocated to the athlete's effective training activity, not exceeding 4 (four) hours per day, to the timetable of the school curriculum or vocational course, in addition to providing school enrolment, with attendance and satisfactory performance requirements;*
>
> *g) the athlete's training is free of charge and at the expense of the sports organisation;*

h) prove that they participate annually in competitions organised by a sports administration body in at least 2 (two) categories of the respective sport; and

i) ensure that the selection period does not coincide with school hours.

§ Paragraph 3 The national sports administration body will certify as a training sports organisation the one that demonstrably meets the requirements set out in this Law.

§ Paragraph 4 The non-professional athlete in training, over fourteen and under twenty years of age, may receive financial assistance from the training sports organisation, in the form of an apprenticeship grant freely agreed through a formal contract, without any employment relationship being created between the parties.

§ Paragraph 5 - The training sports organisation will be entitled to compensation if it is unable to sign the first special sports employment contract due to the athlete's opposition, or when the athlete joins another sports organisation in any form without the express authorisation of the training sports organisation, subject to the following conditions:

I - the athlete must be regularly registered and must not have been disconnected from the training sports organisation;

II - the indemnity will be limited to the amount corresponding to 200 (two hundred) times the proven expenses incurred in training the athlete, specified in the contract referred to in § 4 of this article;

III - payment of the indemnity amount can only be made by another sports organisation and must be made directly to the training sports organisation within a maximum of 15 (fifteen) days from the date the athlete joins the new sports organisation, in order to allow new registration with a sports administration body.

§ Paragraph 6 - The sports training contract referred to in Paragraph 4 of this article must include:

I - identification of the parties and their legal representatives;

II - the duration of the contract;

III - the rights and duties of the contracting parties, including a guarantee of life and personal accident insurance to cover the activities of the contracted athlete; and

IV - specification of the items of expenditure for the purposes of calculating the indemnity for sports training.

§ Paragraph 7 - The training sports organisation holding the first special sports employment contract with the athlete it has professionalised shall have the right of first refusal for the first renewal of this contract, the term of which may not exceed 3 (three) years, unless it is to match a third party's proposal.

§ Paragraph 8 - In order to ensure its right of first refusal, the training sports organisation holding the first special sports employment contract must submit a proposal to the athlete no later than 45 (forty-five) days before the end of the current contract, the content of which must be notified to the corresponding regional sports administration body, The athlete must submit a response to the training sports organisation, the content of which must be notified to the aforementioned administration body within 15 (fifteen) days of receiving the proposal, under penalty of tacit acceptance. (Included by Law no. 12.395, 2011).

§ Paragraph 9 - In the event that another sports organisation decides to offer a more advantageous proposal to an athlete linked to the sports organisation that trained him, the following must be observed:

I - the proposing organisation must submit a proposal to the training organisation, including all the remuneration conditions;

II - the proposing organisation must inform the corresponding regional administration body of the proposal; and

III - the training sports organisation may, within a maximum period of 15 (fifteen) days from receipt of the proposal, communicate whether it will exercise the right of preference referred to in § 7, under the same conditions offered.

§ Paragraph 10 - The sports administration body must publish the receipt of the proposals referred to in §§ 7 and 8 in its official means of publicity within 5 (five) days of receipt.

§ Paragraph 11 - If the training sports organisation offers the same conditions, and the athlete still objects to renewing the first special sports employment contract, it may demand compensation from the new contracting sports organisation corresponding to a maximum of 200 (two hundred) times the value of the monthly salary contained in the proposal.

§ Paragraph 12 - The training athlete shall be contracted directly by the training sports organisation, and may not be contracted through third parties.

§ Paragraph 13 - The training organisation must register the training contract of the athlete in training with the administration body of the respective sport".

II. Proceedings before FIFA

17. On 16 August 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

18. According to the Claimant, the Respondent 1 and the Respondent 2 signed the Shabab Agreement without respecting the right of preference that the Claimant had to renew the Contract. To this end, the Claimant recalled it had signed the Contract with the player in 2019, with a clause that established compensation for contractual termination without justified cause. The Contract was also governed by Brazilian law, which granted Vasco as training club a right of preference for the first renewal of the Contract, as well as compensation for violation of this right.

19. Vasco equally recalled that it presented a renewal proposal to the player in December 2021, i.e., the Formal Offer, with monthly salaries and performance bonuses. The player did not respond to it or communicated any other offers from third parties. In August 2022 however, the Claimant argued it had learned that the player had signed with the Respondent 1, without giving it the opportunity to match the offer from said club.

20. Accordingly, the Claimant claims to the Football Tribunal that it recognizes its right of preference and grants it compensation for its violation, in accordance with Brazilian law and FIFA regulations.

21. As to the jurisdiction, the Claimant argued that FIFA is competent to hear the claim based on art. 22 par. 1 lit. a) and art. 23 par. 1 of the Regulations on the Status and Transfer of Players (RSTP).

22. As to the substance, the Claimant advances six questions and corresponding answers in support of its claim:

(1) What does the Contract and Brazilian Law say about the general indemnity for unjustified breach of contract by the player?

23. Vasco asserts that Brazilian Law and the Contract require the player and their new club to pay a sports indemnity clause in case of unjustified termination. This penalty is outlined in art. 28, I of Federal Law no. 9615/98, and must be included in the professional contract per said law. By the same token, this penalty is related to the player's destination market: if foreign, the amount can be unlimited; if national, it must be up to 2,000 times the average contractual salary. In both cases (national or international), the new club and the player are jointly responsible for the sports indemnity clause (art. 28, par. 2, of Law no. 9.615/98), a provision which Vasco deems coherent with art. 17 par. 2 of the RSTP.

24. The Claimant further explained that even though the Federal Law no. 9615/98 allows for a sports indemnity clause of up to BRL 8,000,000 based on the average salaries of the Contract for a termination resulting from a national transfer, Vasco and the player agreed to set an amount of BRL 6,000,000 in the Contract.

(2) What do the Contract, the Brazilian Law and the FIFA Regulations say in relation to the right of first refusal/pre-emption referred to in the facts of this claim?

25. Vasco contended that the Federal Law no. 9615/98 grants the club that signs the first professional contract with a football player the right of first refusal for the first renewal of that contract. This is a hybrid and personal right derived from the law and the employment contract. The law outlines a procedure for exercising this right, which involves the club presenting a renewal proposal to the player and the regional federation affiliated with the CBF 45 days before the end of the contract. The player then has 15 days to respond. If the player does not respond, it is considered as an implicit acceptance of the proposal.

26. If another club wishes to offer a more advantageous proposal to the player, it must send its proposal to the original club and the regional federation. The original club then has 15 days to match this proposal.

27. If this right of first refusal is violated, i.e., if the player and/or new club prevent its exercise, the original club has a right to financial compensation from the new club. This compensation is not a right of withdrawal but an indemnity for violation of preferential rights. It can be up to 200 times the salaries contained in the renewal proposal offered to the player.

28. Vasco is of the opinion that this right of first refusal does not conflict with FIFA regulations, which apply to professional clubs and players.

(3) Is there a conflict between Brazilian (national) law and FIFA regulations in the present case?

29. Vasco deems that the right of first refusal under Brazilian Law and its corresponding financial compensation are not in conflict with FIFA regulations since these require the application of national laws in cases of contractual breach. In this respect, Vasco deems that the RSTP respects and values the specificity of national public law, especially when it represents a unique evolution, innovation, and adaptation to the reality of a particular market.

30. To this effect, Vasco recalled that the Brazilian market is the largest exporter of football talent. The right of first refusal under Brazilian law aims to allow Brazilian clubs to retain their players in the domestic market for as long as possible before they move to the international market.

31. Equally, Vasco highlighted that the right of first refusal under Brazilian law is distinct from the FIFA training compensation because it is a financial compensation for the unjustified breach of contract under the logic of art. 17 par. 1 of the RSTP.

(4.1) Would the Claimant have a right of first refusal/pre-emption for the first renewal of the [Contract]?

32. Vasco submitted that it met the national law conditions per art. 29 par. 7 of the Federal Law no. 9815/98, and therefore it has a right of first refusal to renew the Contract.

(4.2) If so, did the player and Shabab violate such right?

33. Vasco deems that the answer to the above is yes, because the player did not allow the Claimant to match the offer of Shabab, nor did Shabab make any effort to facilitate the exercise of that right by Vasco. Vasco further submitted that the player tried to simulate a simple contractual proposal, but in reality it was a transfer proposal sent by the club NK Lokomotiva Zagreb.

34. Vasco concludes that, by signing the Shabab Agreement, both the player and Shabab risked paying the compensation of up to 200 times the average salaries of the Formal Offer submitted by Vasco in accordance with Brazilian Law.

(4.3) Should the Player and Shabab pay compensation to the Claimant for the violation of the right of first refusal? How much?

35. Vasco answers the above in the affirmative, because it deems that the player and Shabab are responsible for paying the compensation according to Brazilian law. The compensation is calculated based on the salary offered in the Formal Offer and can be up to 200 times that amount.

36. In the matter at hand case, Vasco argues that the average salary under the Formal Offer was BRL 15,000. Therefore, the compensation is calculated by multiplying this amount by the legal multiple of 200, thus arriving at BRL 3,000,000.

(4.4) Should the Player and Shabab suffer sporting sanctions for the violation of Vasco's right of first refusal/pre-emption?

37. Even though Brazilian law states that Shabab should only pay the compensation for the violation of the right of first refusal, Vasco submitted that the RSTP provide that sanctions are also applicable since Shabab did not respect the Contract with Vasco.

38. Vasco furthermore averred that it is known that sports sanctions are the main means of coercion to ensure clubs and players fulfil their economic obligations. Therefore, Vasco claims that sporting sanctions should also be applied against Shabab, as it induced the

player to violate the right of first refusal with Vasco without presenting a contractual proposal that would allow Vasco to match the conditions.

39. In other words, at the time of execution of the Shabab Agreement, Vasco's right of first refusal under Brazilian law and under the Contract was still valid and effective. The joint and colluded action between the Respondents made it impossible for Vasco to exercise this right, and therefore, the consequence should result in monetary and sports sanctions, jointly, according to art. 17 par. 1, 2 and 5of the RSTP.

40. Vasco requested the following relief (freely translated to English):

> *"The facts and basis of the claim lead the claimant,* [Vasco]*, to respectfully request the Football Tribunal to issue a decision jointly condemning the defendants to pay, within the regulatory period, the following concepts and values:*
>
> *Compensation for violation of the right of preference/option (IVDP) for the first renewal of the professional contract under Brazilian National Law (articles 28, I, paragraphs 1st and 2nd and 29, paragraphs 7th to 11th) and articles 17.1 and 17.2 of FIFA RSTP - BRL 3,000,000 (three million reais);*
>
> *Vasco also requests that any compensation be added with interest of 5% per year from the end of the contract (July 10, 2022).*
>
> *Vasco also requests the imposition of sports sanctions, mainly the prohibition of registration of new players and suspension, to* [Shabab] *and the player, respectively, for violating Vasco's right of preference.*
> *(...)*
> *The total amount claimed is BRL 3,000,000.00 (three million reais), which converted at present corresponds to USD 623,960.10 (six hundred twenty-three thousand nine hundred sixty US dollars and ten cents)."*

b. Joint position of the Respondents

41. The Respondents filed a joint statement of defence, detailed in continuation. In doing so, they characterized the claim of the Claimant as "delusional" and "frivolous".

42. The legal arguments of the Respondents were as follows:

- there was no valid contract between the player and Vasco at the time he signed with Shabab, as the Contract expired on 10 July 2022 and there was no contractual provision for a unilateral extension by Vasco.

- Brazilian law, which grants Vasco the right of first refusal to renew the Contract for another three years, is not applicable or opposable to the Respondents, as Shabab is not affiliated to the CBF nor under the jurisdiction of the Brazilian legal system.

- Brazilian law is also contradictory and in breach of the RSTP, which take precedence over national laws and regulations in cases of international transfers. The Respondents cited art. 18 par. 2 of the RSTP in this respect, which prohibits players under the age of 18 from signing a professional contract for a term longer than three years. The Respondents claimed that the player was 16 years old when he signed the Contract, which means that he could not agree to any provision that would extend the contract duration beyond three years.

- There was no breach or unjustified termination by the player or Shabab, as they only engaged in negotiations after the expiration of the Contract. They claimed that art. 17 of the RSTP, which establishes the consequences of terminating a contract without just cause, does not apply to their case, as there was no existing contract to be terminated. They also claimed that even if there was a breach, it would have occurred outside the protected period, preventing any sporting sanctions from being applicable.

43. The Respondents filed the following request for relief:

> *"Based on the facts, arguments, legal grounds, and evidence brought herein, the Respondents hereby request the honorable DRC to admit this Response and pass a decision:*
>
> *a. Recognizing that: (i)* [the Contract] *expired on its term, on 10 July 2022; (ii) Brazilian law is not opposable to Shabab; (iii) Article 29, §7 from Pelé Law, which contravenes article 18 of the RSTP is unapplicable to this matter; and (iv) there was no existing (or valid) contractual relationship between Vasco and Player after 10 July 2022;*
>
> *b. As consequence, establishing there was no breach by the Player (or Shabab) that could entitle Vasco to any compensation and, as result, entirely rejecting the tortuous claim presented by Vasco and dismissing its frivolous requests for relief; and*
>
> *c. condemning Vasco to support all costs associated with this dispute".*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

44. 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 16 August 2023 and submitted for decision on 18 October 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.

45. In doing so, 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 TMS.

46. Subsequently, the Chamber referred to art. 2 par. 1 of the Procedural Rules as well as art. 23 par. 1 in combination with art. 22 lit. a) and b) of the RSTP (May 2023 edition), and noted that even if the parties do not dispute if the Chamber is competent to entertain the claim at hand, the jurisdiction has to be examined *ex officio*, especially because the Claimant and the Respondent 2 share the same nationality.

47. The DRC remarked that in accordance with art. 22 par. 1 lit. b) in combination with art. 23 of the RSTP, FIFA is competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level. The wording of the article in question clearly implies that the first condition that needs compulsorily to be fulfilled in order for FIFA to be competent to hear an employment-related dispute between a club and a player is that said dispute has an "international dimension". This means that FIFA is only competent to hear an employment-related dispute between of such kind when the parties have different nationalities. In the matter at hand, both the Claimant and the Respondent 2 are of Brazilian nationality, and thus art. 22 par. 1 lit. b) of the RSTP cannot apply.

48. As such, and moving on to the analysis of art. 22 par.1 lit. a) of the RSTP, the Chamber recalled that such provision reads as follows:

> *"1. Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

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

49. Article 22 par. 1 lit. a) of the RSTP gives FIFA the authority to decide on disputes between players and clubs that affect the maintenance of contractual stability, especially when they involve a request for an ITC (and a related claim by a party interested in that request for compensation or sporting sanctions). This means that FIFA can intervene when a player wants to transfer to a club in another member association and there is a conflict with the former club over the contract previously concluded between them.

50. When a player moves from one club to another in different member associations, like in the matter at hand, the player's registration also needs to be transferred between the two associations. This is done by issuing an ITC, which is a certificate that confirms the player's registration with the new club and association. According to Annexe 3, art. 11 par. 8 and Annexe 3, art. 11 par. 3 lit. b) of the RSTP, there is only one valid reason to deny an ITC: when the former club and the player have a contractual dispute connected to the issuance of the ITC.

51. However, in this case, the DRC was not convinced that such a dispute existed in relation to the player's engagement with the Respondent 1, which happened after the natural expiry of the original Contract.

52. On this note, the DRC underlined that the lack of a dispute is further confirmed because the CBF did not reject the issuance of the ITC. If it had done so, the UAEFA could have asked FIFA to step in and allow the player's registration according to Annexe 3, art. 11 par. 8 lit. b) of the RSTP, and then the Players' Status Chamber (PSC) would have had to determine whether the player could be registered with the Respondent 1 despite the ongoing contractual dispute between the player and the former club (as per art. 23 par. 4 of the RSTP).

53. Per Annexe 3, art. 11 par. 8 lit. b) of the RSTP, it must be noted that any such decision by the PSC in cases like this one are made without prejudice to any claim that may be filed with FIFA regarding the underlying contractual dispute between the player and the former club.

54. The DRC equally underscored that these decisions by the PSC have an international impact, which is why FIFA has the power to authorize registrations for a player to with a (foreign) new club. This also explains why FIFA has jurisdiction over employment-related disputes where the player and the club concerned have the same nationality. If a player wants to transfer to a club in another member association (that is, an international transfer) and this leads to a contractual dispute with his (old) club, it would not make sense for FIFA's

decision-making bodies to decide on the registration of a player, but not on the underlying contractual dispute.

55. Similarly, when the player and the club have the same nationality as in this case, the player's potential new club (in this case, the Respondent 1) is outside of the jurisdiction of the member association/national court of the former club. The involvement of a foreign club in the dispute because it is trying to register the player creates the international dimension. This is particularly important because the potential new club could be held jointly and severally liable for paying compensation if a breach of contract without just cause is found according to art. 17 par. 4 of the RSTP, as well as because sporting sanctions may be imposed on the new club if it induced a breach.

56. However, according to article 22 par. 1 lit. a) of the RSTP, the contractual dispute between the player and their former club must be related to an ITC request. This means that if a player and a club have an employment dispute that does not involve any international aspect (e.g., if both parties are, for example, Brazilian as in this case), and the player decides to transfer internationally to a club affiliated to another member association only after the original dispute occurs, the international transfer cannot be the cause of the underlying contractual dispute. Therefore, the original contractual dispute has no international element, and the competent authority to deal with it is the relevant national one.

57. In this case, the player's transfer to the Respondent 1 is not connected to the contractual dispute that is the basis of the Claimant's claim, which is based solely on national law. In other words, the mechanism established by art. 22 par. 1 lit. a) of the RSTP to prevent foreign influence on domestic players cannot be applied in these proceedings because the player's new registration in the UAE has nothing to do with the right of first refusal between the player and the club, seemingly established by national law.

58. Indeed, the Chamber was furthermore comforted with this reasoning because the Claimant's claim is entirely based on a right conferred by national law, which constitutes yet another confirmation that the dispute does not seem do enjoy international status for it to be entertained by FIFA, even more so given that the issue at hand does not concern a prematurely terminated contract, but an alleged tort/damage arising out of an employment contract which undisputedly expired naturally.

59. Moreover, the Chamber once again underlined that the Claimant (or the CBF on its behalf) did not challenge the issuance of the player's ITC from the CBF to the UAEFA. It seems that the Claimant waited until the player had found new (international) employment with the Respondent 1 and then involved this club in these proceedings, seeking the consequences provided by art. 17 par. 4 of the RSTP.

60. For the sake of completeness, the Chamber remarked that the Claimant's behaviour by now lodging a claim in front of FIFA even touches upon the *venire contra factum proprium* doctrine with regards to the legitimate expectations towards the new club. After having

read the submissions of the parties and having closely looked at the course of actions in the matter, the Chamber equally concluded that the behaviour of the Claimant could also be interpreted as an abuse of right/law: the Claimant simply waited until the player signed with a new foreign club to try to enjoy the benefits of the jointly liability and sporting sanctions foreseen in the FIFA dispute resolution system.

61. In parallel, the Chamber stressed that for the purposes of these proceedings in light of art. 22 par. 1 lit. a) of the RSTP the presence of a national arbitration body is not relevant, but in light of *forum shopping* it could be. In this regard, the Chamber posed the question as to why the Claimant did not sue the player before a national body or court? Moreover, why did the Claimant not follow such route but waited until the player had a new foreign club under the presumption that FIFA would be competent?

62. The answer, in the Chamber's view, is clear: the benefits of FIFA's dispute resolution system. All the more so, because the Contract expired on 10 July 2022, but the Claimant decided not to follow a different route other than filing a claim with the FIFA Football Tribunal until 16 August 2023. It seemed to the DRC that the Claimant had found it thus far more beneficial (in terms to financial gain and sporting consequences) to wait until the player signed a contract with a new foreign club. Put differently: it seemed that the Claimant selected a forum of convenience by addressing FIFA.

63. Simply put, the DRC found that the dispute is of a national dimension only between a Brazilian player and a Brazilian club on the basis of national law: even if Vasco tries to frame it as if the case concerned a breach of contract and the corresponding duty to compensate it, together with the possibility of imposing sporting sanctions (akin to the Respondent 1 having committed inducement for breach of contract), the reality is that the (domestic) Contract expired naturally, and the additional right of first refusal (which is not established in the Contract) has no international element to it which allows FIFA to intervene.

64. Therefore, the DRC ruled that the Football Tribunal is not competent to hear the Claimant's claim.

b. Costs

65. 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.

66. 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.

67. 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 Football Tribunal does not have jurisdiction to hear the claim of the Claimant, CR Vasco da Gama SAF.

2. This decision is rendered without costs.

For the Football Tribunal:

Emilio García Silvero
Chief Legal & Compliance Officer

FIFA FOOTBALL TRIBUNAL

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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