CAS 2023/A/9512 Cruzeiro Esporte Clube Sociedade Anônima Do Futebol v. Alejandro Ariel Cabral and Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Leanne O'Leary, Solicitor in Liverpool, United Kingdom

Arbitrators: Mr Efraim Barack, Attorney-at-Law in Tel Aviv, Israel

Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

Cruzeiro Esporte Clube Sociedade Anônima Do Futebol, Brazil

Represented by Mr Javier Ferrero Munõz, Mr Álvaro Martinez San Segundo and Mr Ignacio Triguero Gea, Attorneys-at-Law in Madrid, Spain

Appellant

and

Mr Alejandro Ariel Cabral, Argentina

Represented by Mr Alexandre Miranda and Mr Bruno Soares, Attorneys-at-Law in Rio de Janeiro, Brazil

First Respondent

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Ms Erika Montemor Ferreira, Head of Players' Status and Ms Christina Pérez González, Senior Legal Counsel, FIFA Litigation Department

Second Respondent

I. PARTIES

1. Cruzeiro Esporte Clube Sociedade Anônima Do Futebol (the "Appellant" or "Cruzeiro SAF") is a professional football club situated in Belo Horizonte, Brazil. It is affiliated to the Confederação Brasileira de Futebol, which, in turn, is a member association of the *Fédération Internationale de Football Association*.

2. Mr Alejandro Ariel Cabral (the "First Respondent" or the "Player") is a professional football player of Argentinian nationality.

3. The *Fédération Internationale de Football Association* ("FIFA" or the "Second Respondent") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is recognised as the international federation for football by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

4. The Appellant, the First Respondent and the Second Respondent are collectively referred to as the "Parties"; the First Respondent and Second Respondent are collectively referred to as the "Respondents".

II. AMICUS CURIAE

5. The Confederação Brasileira de Futebol (the "CBF") is the national governing body for football in Brazil and has its registered office in Rio de Janeiro, Brazil. It is a member association of FIFA. The CBF is not a party to these proceedings but is granted limited rights as an *amicus curiae*.

III. INTRODUCTION

6. This is an appeal against a decision of the FIFA Dispute Resolution Chamber dated 24 November 2022 (the "Appealed Decision") that found the Appellant liable to pay outstanding remuneration of USD 378,959.94 and BRL 2,294,613.26, plus interest, to the Player. The remuneration was owed under two agreements between the Player and the professional football club, Cruzeiro EC. Cruzeiro EC is a sports club situated in Brazil that has the legal form of a not-for-profit association and competes in a number of different sports, including football. It employed the Player in its football team between 2015 and 2022. The Appellant was found liable for the debt as the sporting successor of Cruzeiro EC.

7. Brazilian football clubs have traditionally organised as not-for-profit associations and their legal form has made them less attractive to third party investors. It is also disputed as to whether Brazilian bankruptcy law permits not-for-profit associations to utilise insolvency procedures for the purpose of restructuring their debts. It is widely known in Brazil that professional football clubs have struggled financially, accruing significant debt, and that their solvency could be improved if third party investment were available.

8. In 2021, Brazilian Federal Law n. 14.193/2021, which is otherwise known as the "SAF Law", was enacted specifically to address the above described structural difficulties in Brazilian football. The SAF Law now permits professional football clubs to organise as a new type of business entity with the title in Portuguese of Sociedade Anônima do Futebol or "SAF" (in English, "Football Corporation"). The SAF Law also permits not-for-profit association football clubs to utilise insolvency procedures to restructure their debts. Over 40 Brazilian football clubs have incorporated SAFs since the enactment of the SAF Law.

9. Pursuant to the SAF Law, Cruzeiro EC incorporated the Appellant, a new business entity, and transferred certain assets and liabilities of its football department to Cruzeiro SAF. At the time of writing this Award, Cruzeiro EC is the subject of a judicial reorganisation process under Brazilian bankruptcy law, and in accordance with the requirements of the SAF Law, Cruzeiro SAF is contractually obliged to provide a percentage of its profits and future revenue to Cruzeiro EC in order to pay the debts of Cruzeiro EC outlined in the Judicial Reorganisation Plan (the "Plan") negotiated by Cruzeiro EC and its creditors and confirmed by the Brazilian Bankruptcy Court during the judicial reorganisation process.

10. It is against this national context that the Panel considers whether the Appellant is liable for a debt owed by Cruzeiro EC to the Player which the Appealed Decision directed the Appellant to pay as sporting successor.

IV. FACTUAL BACKGROUND

11. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing on 29 November 2023. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

12. On 4 August 2015, the Player entered into a one-year employment contract with Cruzeiro EC. It is undisputed that the contract was subsequently renewed for the period between 3 August 2016 and 28 August 2020 (the "First Employment Contract").

13. On 28 July 2020, Cruzeiro EC and the Player agreed to a 25% reduction in his salary as a consequence of the COVID-19 (the "Private Agreement").

14. On 10 August 2020, Cruzeiro EC and the Player entered into a second employment contract for the period between 10 August 2020 and 9 January 2022 (the "Second Employment Contract"), and which included the following terms:

"***Clause 2 – Remuneration***

2.1 For the rendering of services as a professional soccer athlete, CRUZEIRO will pay to the Player, in the period from 8/10/2020 to 01/09/2022, the gross monthly remuneration of BRL 150,000.00 (one hundred and fifty thousand reais), which will be comprised as follows:

a) BRL 75,000 (seventy-five thousand reais) – referring to the base salary.

b) BRL 60,000.00 (sixty thousand reais) – referring to the right to exploit his image

c) BRL 15,000.00 (fifteen thousand reais) – as a remuneration increase pursuant to item III of Paragraph 4 of art.28 of Law 9.615/98, for the purposes of remuneration for periods referring to concentration, travel, pre-season, and participation of the athlete in a match, test, or equivalent;

2.2 The remuneration will always be paid on the 5th working day after the rendering of services [...]"

Clause 3 - Effectiveness

3.1 The employment contract will begin on 08/10/2020 and will end, regardless of notice or notification, on 01/09/2022, except in the cases of extension contemplated herein or by law.

...

Clause 11 – Venue and General Provisions

...

11.3 The Parties, by mutual agreement and by free expression of their will, expressly elect the venue of the National Chamber for Dispute Resolution of CBF ("CNRD/CBF") as the only competent forum to process and judge any dispute arising exclusively from the present Instrument, to the detriment of any other forum, however privileged it may be, based on Article 3, item II of the CNRD/CBF Regulations.

..."

15. On 28 August 2020, Cruzeiro EC and the Player entered into an agreement to terminate the First Employment Contract (the "Termination Agreement") under which Cruzeiro EC agreed to pay all outstanding wages due to the Player, which at that time totalled BRL 4,244,351.12 (net) and social security payments of BRL 621,572.22 (gross). The Termination Agreement included the following dispute resolution clause:

" ***Clause 4 – Venue***

4.1 The parties elect the venue of the Dispute Resolution Chamber/FIFA to settle any dispute that may arise under this contract, whether for collection of fines or

fulfilment of obligations, expressly waiving any other jurisdiction, however privileged it may be.[...]"

16. Between 15 October 2020 and 28 February 2021, the Player provided services on loan to Goiás Esporte Clube. Pursuant to the loan agreement, Goiás Esporte Clube agreed to pay the monthly amount of BRL 100,000 to the Player and Cruzeiro EC agreed to cover the remaining remuneration of BRL 50,000. At the end of the loan period, the Player returned to Cruzeiro EC.

17. On an unknown date in November 2021, Cruzeiro EC signed an investment agreement with Tara Sports Brazil Participações.

18. On 21 November 2021, the Player played his last game for Cruzeiro EC.

19. On 6 December 2021, Cruzeiro SAF was incorporated and registered as a legal entity under the SAF Law.

20. On 9 January 2022, the Second Employment Contract terminated by effluxion of time, with the Player owed all wage payments due under the Second Employment Contract.

21. On an unknown date in January 2022, Cruzeiro SAF paid a significant sum to Cruzeiro EC as part payment to settle some of Cruzeiro EC's debts.

22. On 4 February 2022, Cruzeiro SAF appointed its management board.

23. On various dates in February 2022, the assets of Cruzeiro EC's football activities, such as existing player contracts, were transferred to Cruzeiro SAF. The Player did not transfer to Cruzeiro SAF because his employment with Cruzeiro EC had previously terminated on 9 January 2022.

24. On 2 April 2022, the Player sent a demand to Cruzeiro EC and Cruzeiro SAF requesting payment of a total of USD 1,272,875.24 that was due under the Termination Agreement and the Second Employment Contract. Neither Cruzeiro EC nor Cruzeiro SAF paid the amount demanded.

25. On 11 May 2022, the FIFA Transfer Matching System was updated to substitute Cruzeiro SAF for Cruzeiro EC.

26. On 11 July 2022, the judicial reorganisation application for Cruzeiro EC was filed in the Brazilian Bankruptcy Court.

27. On 13 July 2022, the judicial reorganisation proceedings were stayed under Brazilian bankruptcy law for a mandatory 149-day period in order for Cruzeiro EC to negotiate a judicial reorganisation plan with creditors.

28. On 5 April 2023, Cruzeiro SAF issued a statement confirming that it would provide the financial assistance required to enable Cruzeiro EC to meet its obligations to creditors under the Plan.

29. Still on 5 April 2023, the Plan was submitted to the Brazilian Bankruptcy Court.

30. On 21 June 2023, the Plan was approved at a meeting of creditors.

31. On 21 August 2023, the Brazilian Bankruptcy Court confirmed the Plan.

32. In November 2023, Cruzeiro SAF transferred the first payment to Cruzeiro EC for Cruzeiro EC to distribute to labour and sport-related creditors in accordance with the payment schedule agreed as part of the Plan.

V. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

33. On 6 May 2022 and before the judicial reorganisation application for Cruzeiro EC was filed, the Player lodged a claim for all outstanding wages with the FIFA Dispute Resolution Chamber (the "DRC") plus interest. The claim was filed against Cruzeiro EC and Cruzeiro SAF.

34. On 13 May 2022, the FIFA administration sent a letter to the CBF requesting that the CBF confirm: (i) if Cruzeiro SAF was the legal/sporting successor of Cruzeiro EC; (ii) if Cruzeiro EC was still affiliated to the CBF and/or participating in any organised competition under the auspices of the CBF; and (iii) if Cruzeiro SAF was affiliated to the CBF and/or participating in any organised competition under the auspices of the CBF.

35. On 17 May 2022, the CBF provided written confirmation that:

    i) "*Yes. The legal entity [Cruzeiro SAF] is a sporting successor of the private association [Cruzeiro EC]*"

    ii) "*No. [Cruzeiro EC] is no longer an active affiliated football club to the CBF, and do not participate in any competition organised under the auspices of CBF.*"

    iii) "*Yes. [Cruzeiro SAF] is a football club presently affiliated to the Football Federation of the State of Minas Gerais and to the CBF, and it is currently participating in competitions organised under the auspices of CBF.*"

36. On 23 May 2022, FIFA wrote to the Player and confirmed that it was not in a position to commence proceedings against Cruzeiro EC and requested that the Player amend his claim in accordance with Article 18(1) of the Procedural Rules Governing the Football Tribunal (the "Procedural Rules").

37. On 27 May 2022, the Player lodged an amended statement of claim before the FIFA DRC against Cruzeiro SAF only. The prayer for relief was the same as that of his original statement of claim save that it was made against Cruzeiro SAF only. The Player requested the:

    - payment of USD 220,056.42 being past instalments due under the Termination Agreement;

- payment of USD 547,386.58 being future instalments due under the Termination Agreement;

- payment of USD 121,131.11 for social security payments;

- payment of USD 384,302.13 for remuneration due under the Second Employment Contract; and

- imposition of a sanction against Cruzeiro SAF pursuant to Article 12bis of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

38. On 30 May 2022, the FIFA administration, in accordance with Article 10(7) of the Procedural Rules requested through the CBF that Cruzeiro SAF provide its comments on the Player's claim. The letter to the CBF enclosed a copy of the Player's claim and supporting documentation, a copy of the FIFA letter dated 23 May 2022 to the Player, and expressly requested that the CBF forward a copy of the claim and the supporting documentation to Cruzeiro SAF.

39. On 30 June 2022, Cruzeiro SAF filed a Reply to the Player's claim.

40. On 4 July 2022, the FIFA administration invited the Player to provide his comments on Cruzeiro SAF's Reply and the Player duly filed a Replica on 21 July 2022.

41. On 22 July 2022, the FIFA administration invited Cruzeiro SAF to provide its comments on the Player's Replica, which Cruzeiro SAF duly filed by way of a Duplica on 8 August 2022.

42. Before the DRC, the Player submitted in his Claim and Replica that:

- The First Employment Contract was terminated in 2020 due to a 5-year limitation period under Brazilian law and the First Employment Contract and the Second Employment Contract could be considered as a whole under the principle of unicity.

- It was clear that Cruzeiro SAF was the sporting successor of Cruzeiro EC. Cruzeiro EC and Cruzeiro SAF had the same headquarters, same name, same team colours, same players, same stadium, used the same logo and social media accounts and fulfilled many of the criteria of the FIFA RSTP to regard Cruzeiro SAF as the sporting successor of Cruzeiro EC (*cf*: CAS 2013/A/3425 and CAS 2016/A/4576). The only difference between Cruziero EC and Cruzeiro SAF were the words that referenced the form of the new organisation i.e. SAF – Sociedad Anônima do Futbol.

- Accordingly, the amount of USD 1,272,876.24 net plus 5% interest was due to the Player and Cruzeiro SAF should be ordered to pay the costs of the proceedings and be sanctioned in line with Article 12bis of the FIFA RSTP.

- The FIFA DRC was competent to determine the case. The First Employment Contract contained a jurisdiction clause in favour of the FIFA DRC, which should also apply to the Second Employment Contract bearing in mind the principle of unicity.

- Cruzeiro SAF's submission regarding the Player tacitly accepted non-payment of the remuneration was "*absurd*" and should be set aside.

43. Before the DRC, Cruzeiro SAF submitted in its Reply and Duplica that:

- The DRC did not have jurisdiction to determine the dispute. Pursuant to Clause 11.3 of the Second Employment Contract, the *Câmara Nacional de Resolução de Disputas of the Confederação Brasileira de Futebol* (the "Brazilian NDRC") had the exclusive competence to determine the dispute.

- Clause 11.3 of the Second Employment Contract "*was clear and exclusive*" and the Brazilian NDRC fulfilled the criteria of FIFA Circular no. 1010 and the FIFA NDRC Guidelines as an independent tribunal. As the Player alleged that the Second Employment Contract and the Termination Agreement were to be entertained together, FIFA lacked jurisdiction to adjudicate the dispute. In the alternative, the Player's claim was at least partially inadmissible insofar as it referred to the Second Employment Contract.

- The Player's claim should be rejected because it infringed the principle of *venire contra factum proprium* as the Player had delayed lodging his claim thereby inducing a legitimate expectation that he would not avail himself of the right to claim anymore.

- Regarding the outstanding remuneration under the Termination Agreement, the Player should not be entitled to amounts that had not yet fallen due because there was no acceleration clause included in the Agreement. The Player's claim for social payments should be dismissed or, alternatively, the amounts awarded should be gross amounts and calculated in national currency rather than USD. No interest should apply because no date of payment was specified.

- Regarding the outstanding remuneration under the Second Employment Contract, the total amount owed was BRL 1,673,041.04 because: the Player's remuneration was to be paid gross and in national currency; the Player had been paid BRL 274,072 so was not entitled to the full amount claimed; and the remuneration due between 30 July 2020 and 28 August 2020 was reduced by 25% because of the Private Agreement.

44. In the Appealed Decision, the DRC partially accepted the Player's claim as follows:

"*1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Alejandro Ariel Cabral.*

2. The claim of the Claimant is partially accepted.

3. The Respondent, Cruzeiro Esporte Club, has to pay to the Claimant the following amount(s):

- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 June 2021 until the date of effective payment;*

- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 July 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 August 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 September 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 October 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 November 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 December 2021 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 January 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 February 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 March 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 April 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 May 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 June 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 July 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 August 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 September 2022 until the date of effective payment;*
- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 October 2022 until the date of effective payment;*

- *USD 21,053.33 net as outstanding remuneration plus 5% interest p.a. as from 16 November 2022 until the date of effective payment;*

- *BRL 1,673,041.04 as outstanding remuneration plus 5% interest p.a. as from 6 May 2022 until the date of effective payment; and*

- *BRL 621,572.22 as outstanding remuneration plus 5% interest p.a. as from 6 May 2022 until the date of effective payment.*

4. *Any further claims of the Claimant are rejected.*

5. *A **reprimand** is imposed on the Respondent.*

6. *Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

7. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

   1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the band shall be of up to three entire and consecutive registration periods.*

   2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

8. *The consequences **shall only be enforced at the request of the Claimant** in accordance with art .24 par. 7 and 8 and art. 25 of the Regulations on the status and Transfer of Players.*

9. *This decision is rendered without costs.*"

45. On 28 February 2023, the FIFA DRC notified the reasons for its decision, under cover of a letter that included the following note:

"*Please find attached the grounds of the decision passed in the aforementioned matter. In this respect, we wish to inform you that, regretfully, a clerical mistake has occurred in the findings of the decision. Accordingly, after having reviewed the matter, the members of the Dispute Resolution Chamber came to the unanimous conclusion that the decision had to be rectified (art. 15, par 8 of the Procedural Rules Governing the Football Tribunal). Such rectification has been made and is consequently encompassed in the enclosed grounds.*"

46. The amendment to points 2 and 3 of the operative part of the Appealed Decision confirmed Cruzeiro SAF as the sporting successor of Cruzeiro EC as follows:

> *"1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Alejandro Ariel Cabral.*
>
> *2. The Respondent, Cruzeiro Esporte Clube SAF, is the sporting successor of Cruzeiro Esporte Clube.*
>
> *3. The claim of the Claimant is partially accepted.*
>
> ..."

47. The reasons for the Appealed Decision were as follows:

- Regarding the competence of the DRC to consider the matter, the DRC noted that the dispute was submitted to FIFA on 6 May 2022 and submitted for decision on 24 November 2022 and, applying the relevant provisions, determined that the October 2022 edition of the Procedural Rules applied to the matter at hand.

- On the basis of Article 2 par 1 of the Procedural Rules (October 2022 edition), Article 23 par 1 and Article 22 par 1 lit. b) of the FIFA RSTP (October 2022 edition), the DRC considered that it was, in principle, competent to deal with the dispute because it concerned an employment-related dispute with an international dimension between an Argentinian player and a Brazilian club.

- The applicable law was the FIFA RSTP (March 2022 edition) because the claim was lodged on 6 May 2022 and pursuant to Art. 26 par.1 and 2 of the FIFA RSTP (July 2022 edition) those regulations applied.

- Regarding Cruzeiro SAF's objection to FIFA's jurisdiction on the ground that the Brazilian NDRC had the exclusive competence to determine the dispute, the DRC noted that while it was in principle competent to deal with the dispute, Article 22 par.1 lit. b) of the FIFA RSTP permitted parties to a dispute to expressly opt for such dispute to be decided by an independent arbitration tribunal that is established at a national level within the framework of a national association and/or a collective bargaining agreement by including an arbitration clause in favour of that independent arbitration tribunal in the contract or a collective bargaining agreement. The independent arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs.

- The DRC noted the conflicting dispute resolution clauses in the Termination Agreement and the Second Employment Contract and also noted that while the parties under both agreements were the same, the two agreements served different purposes, related to different time periods, and that neither document referred to the other or demonstrated the parties' intention for the documents to be considered together or that the Termination Agreement, which was signed after the Second Employment Contract, amended or superseded the Second Employment Contract. Therefore, the DRC concluded that the agreements were to be assessed separately.

- The DRC noted that the dispute resolution clause in the Termination Agreement provided exclusive jurisdiction to FIFA and determined that it had jurisdiction to rule on the part of the Player's claim that fell for consideration under the Termination Agreement.

- The DRC noted that the parties had expressly reserved jurisdiction for disputes under the Second Employment Contract to the Brazilian NDRC. The DRC considered whether the Brazilian NDRC fulfilled the prerequisites outlined in Article 22 par.1 lit. b) of the FIFA RSTP, including that of equal representation and based on the available information, the DRC concluded that the Brazilian NDRC did not comply with the principle of equal representation because: i) the number of Brazilian NDRC members nominated by the CBF and the clubs (4) was higher than the number of members nominated by the players (2); ii) in respect of individual cases in which a three-person panel presided, there was an absence of equal influence of the players and the clubs on the nomination of the CBF member to hear the dispute; iii) there was an absence of equal influence of the players and the clubs to nominate the Brazilian NDRC chairperson; and iv) the information on file did not show players or their union affiliated as members to the CBF, while the state federations for football were members of the CBF and clubs also had a voting right. Accordingly, the DRC determined that pursuant to Article 22 par 1 lit. b) of the FIFA RSTP, it had jurisdiction to decide the entirety of the Player's claim.

- Regarding the merits of the dispute and on the issue of sporting succession, the DRC noted that Cruzeiro SAF had an almost identical name to Cruzeiro EC; shared the same history as Cruzeiro EC as noted on their websites; used the same stadium as Cruzeiro EC; used the same uniform with the same colours as Cruzeiro EC; and used the same logo as Cruzeiro EC. The DRC confirmed that Cruzeiro SAF was the sporting successor of Cruzeiro EC and was liable for any potential financial obligation that Cruzeiro EC owed to the Player.

- On the issue of quantum, the DRC noted Cruzeiro SAF's submissions that the Player's claim should be dismissed because i) he had delayed pursuing the debt and ii) the quantum claimed was excessive.

- As to i), the DRC concluded that there was no evidence on file to show that the Player had delayed pursuing the claim especially since the Player was employed by Cruzeiro EC/Cruzeiro SAF until 2022, had put the Cruzeiro SAF on notice of the default, and filed his claim within the two year deadline set out in Article 23. par 3 of the FIFA RSTP, and accordingly rejected Cruzeiro SAF's submission.

- As to ii), the DRC noted that it was undisputed that no amount was ever paid to the Player under the Termination Agreement. The DRC concluded on the basis of *pacta sunt servanda* that the Player was entitled to all sums due under the Termination Agreement that had already fallen due but not future sums yet to fall due because there was no acceleration clause in the Termination Agreement. The Player would be able to claim those amounts that had not yet fallen due in the future. The DRC directed a reduced amount to be paid under the Second Employment Contract on the basis that Cruzeiro SAF submitted evidence showing that some amounts had been

paid to the Player, which was not challenged by the Player and which the DRC accepted. The DRC directed that interest should be paid from the date of the claim *i.e.*, 6 May 2022 because the dates on which the remuneration under the Second Employment Contract fell due could not be ascertained from the documents.

- The DRC imposed a sanction under Article 12bis of the FIFA RSTP on account of the fact that the payments due to the Player were delayed for more than 30 days without a contractual basis, the Player had put Cruzeiro SAF on notice of the default, and had provided ten days for Cruzeiro SAF to remedy the breach. The DRC decided to reprimand Cruzeiro SAF because it was Cruzeiro SAF's second offence within the last two years. It also imposed a ban on registering any new players for three entire and consecutive registration periods and declined to award costs.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

48. On 21 March 2023, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") against the Respondents and regarding the Appealed Decision. In its Statement of Appeal, the Appellant nominated Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel as an arbitrator.

49. On 3 April 2023, the First Respondent nominated Mr Lars Hilliger, Attorney-at-Law in Denmark as arbitrator and the Second Respondent agreed with the nomination on 5 April 2023.

50. On 3 May 2023, in accordance with Article R51 of the Code and within a previously granted extension of time, the Appellant filed its Appeal Brief. The Appeal Brief included a request for the Second Respondent to produce certain documents and to request certain information from the CBF (the "Disclosure Request").

51. On 11 July 2023, in accordance with Article R55 of the Code and within a previously granted extension of time, the Second Respondent filed its Answer.

52. On 14 July 2023, in accordance with Article R55 of the Code and within a previously granted extension of time, the First Respondent filed its Answer.

53. On 17 July 2023, the CAS Court Office invited the Parties to confirm whether they preferred a hearing to be held or preferred the Panel to issue an Award based solely on the Parties' written submissions. Pursuant to Article R56, the Parties were also invited to inform the CAS Court Office whether they requested a case management conference to discuss procedural issues relevant to the proceedings.

54. On 24 July 2023, the Appellant informed the CAS Court Office of its preference for a hearing to be held. It also made an application under Article R41.4 of the Code for the Panel to allow the Brazilian NDRC to file an *amicus curiae* brief (the "*Amicus Curiae* Brief Request").

55. Still on 24 July 2023, the First Respondent expressed its preference for neither a case management conference or a hearing to be held and for the Panel to decide the dispute based solely on the Parties' written submissions.

56. Also on 24 July 2023, the Second Respondent informed the CAS Court Office that neither a case management hearing nor a hearing were required.

57. On 27 July 2023, the CAS Court Office informed the Parties that pursuant to Article R54 of the Code, the Panel appointed to consider the procedure was constituted as follows:

President: Dr Leanne O'Leary, Solicitor in Liverpool, United Kingdom

Arbitrators: Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel

Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark

58. On 25 August 2023, the CAS Court Office informed the Parties of the Panel's decisions not to hold a case management conference and to hold an in-person hearing. The Parties were further invited to confirm whether they preferred the hearing to be held in Brazil or in Lausanne, Switzerland. Regarding the *Amicus Curiae* Brief Request, the CAS Court Office invited the Appellant to provide further information regarding the steps that it had taken to obtain information from the Brazilian NDRC, and if it had taken no steps to obtain the information, to do so and revert to the Panel with a request for the information to be accepted onto the file. The Appellant was also invited to confirm whether it maintained the Disclosure Request in light of the Second Respondent's Answer and the exhibits filed in support.

59. On 31 August 2023, the Second Respondent confirmed its preference for a hearing to be held in Lausanne, Switzerland.

60. On 1 September 2023, the Appellant confirmed its preference for a hearing to be held in Lausanne and requested permission under Article R43 of the Code to share details of the proceedings with the Brazilian NDRC to obtain information in support of its case (the "Request to Share Information with a Non-Party"). It also confirmed that it maintained the Disclosure Request.

61. Still on 1 September 2023, the First Respondent informed the CAS Court Office of its preference for a hearing to be held in Brazil, and if the hearing were to be held in Lausanne, for it to be provided with the opportunity to attend by videoconference.

62. On 12 September 2023, the CAS Court Office informed the Parties of the Panel's decision to hold the hearing at the CAS Court Office's Headquarters in Lausanne, Switzerland and informed the First Respondent that he could attend the hearing remotely. The CAS Court Office also invited the Respondents to comment on the Request to Share Information with a Non-Party, and invited the Second Respondent to comment on the Disclosure Request.

63. On 13 September 2023, the Second Respondent informed of its objection to the Appellant's Request to Share Information With a Non-Party. It also informed that it had partially complied with the Appellant's Disclosure Request by providing a document with its Answer, but it objected to the remainder of the Disclosure Request which in its view was a "*fishing expedition*" and sought documents that did not exist.

64. On 19 September 2023, the First Respondent confirmed that it would attend the hearing by videoconference and objected to the Request to Share Information With a Non-Party.

65. On 25 September 2023, the CAS Court Office informed the Parties of the Panel's decision to reject the Disclosure Request on the basis that: i) the Request had been complied with in part; ii) the Request was too broad; and, iii) it was not for the Second Respondent to seek documents on behalf of the Appellant from the CBF. It also informed of the Panel's decision to grant leave under Articles R57 and R44.3 of the Code for the Appellant to Share Information With a Non-Party, *i.e.*, the CBF, in order to seek certain information. The Panel further directed that the Appellant could share with the CBF the fact that the proceedings existed, the Parties' names, and certain questions that it had provided in its Appeal Brief but except as outlined, it was not permitted to disclose any submissions, correspondence or any other elements of the file.

66. Still on 25 September 2023 and following consultation with the Parties, the CAS Court Office informed the Parties that the hearing would be held at the CAS Court Office Headquarters in Lausanne, Switzerland on 28 November 2023.

67. On 4 October 2023 and following a request from the CAS Court Office for the Parties to notify of their attendees at the hearing, the First Respondent informed that, amongst others, Messrs Fabio Deivson Lopes, Leonardo Renan Simões de Lacerda and Róbson Michael Signorini would be attending on its behalf as witnesses.

68. On 9 October 2023, the Appellant submitted a copy of a letter from the CBF dated 6 October 2023 (the "CBF Letter") which contained the information sought by the Appellant.

69. Still on 9 October 2023, the CAS Court Office invited the Appellant and Second Respondent to comment on the First Respondent's list of hearing attendees.

70. On 11 October 2023, the CAS Court Office invited the Respondents to comment on the CBF Letter and invited the Appellant to confirm whether it maintained its *Amicus Curiae* Brief Request.

71. On 13 October 2023 and 16 October 2023, the Second Respondent and Appellant, respectively, notified of their objections to the First Respondent's witnesses attending the hearing.

72. On 18 October 2023, the Appellant informed the CAS Court Office that it maintained the *Amicus Curiae* Brief Request.

73. Still on 18 October 2023, the Respondents each provided their comments on the CBF Letter and of their objection to the *Amicus Curiae* Brief Request.

74. Also on 18 October 2023, the CAS Court Office informed the Parties of the Panel's decision not to admit the First Respondent's witnesses to the hearing. The reasons for the Panel's decision are provided in paragraphs 126 to 136 of this Award.

75. On 25 October 2023, the CAS Court Office informed the Parties that having considered the Parties' positions, the Panel had decided to allow the *Amicus Curiae* Brief Request subject to maintaining confidentiality and certain other conditions. The reasons for the Panel's decision are provided in paragraphs 116 to 125 of this Award.

76. Still on 25 October 2023, the CAS Court Office invited the Parties to sign the Order of Procedure, which was returned in duly signed copy by the Second Respondent on 26 October 2023, by the Appellant on 31 October 2023 and by the First Respondent on 1 November 2023.

77. On 27 October 2023, the CAS Court Office wrote to the CBF inviting it to submit an *amicus curiae* brief, which it duly filed on 6 November 2023.

78. On 10 November 2023, the CAS Court Office invited the Parties to provide their comments on the *amicus curiae* brief.

79. On 10 November 2023, the CAS Court Office wrote to the CBF requesting confirmation that it would maintain the confidentiality of the proceedings and seeking confirmation of its attendance at the hearing, to which the CBF duly responded on 16 November 2023 that it would participate in hearing and, on 22 November 2023, that it would maintain the confidentiality of the proceedings.

80. On 20 November 2023, the Parties separately provided their comments on the *amicus curiae* brief.

81. On 28 November 2023, a hearing was held at the CAS Court Office Headquarters in Lausanne, Switzerland. Besides the Panel and Ms Lia Yokomizo, CAS Legal Counsel, the following people attended:

For the Appellant:
Ms. Joana Bontempo - Legal Counsel
Mr. André Sica - Legal Counsel
Mr. Pedro Henrique Mendonça - Legal Counsel
Mr. Ignacio Triguero Gea - Legal Counsel
Ms Danielle Mendes – Legal Counsel

For the First Respondent (via videoconference)
Mr. Alejandro Ariel Cabral - Player
Mr Alexandre Miranda - Legal Counsel
Mr Bruno Pinto Soares – Legal Counsel
Mr Daniel Veloso Dos Santos – Interpreter

For the Second Respondent
Ms Erika Montemor Ferreira - Head of Players' Status
Ms Cristina Pérez González - Senior Legal Counsel
Ms Beatriz Chevis - Legal Counsel (via videoconference)
Mr Pierre Llamas - Intern

For the *Amicus Curiae* – Brazilian Football Confederation (CBF) (via videoconference)
Mr Rafael Fachada – CBF NDRC General Secretary
Mr João Paulo Conde Perez – CBF Legal Counsel
Mr Bichara Abidão Neto – Legal Counsel
Mr Victor Eleuterio – Legal Counsel
Mr Felipe Pestana – Legal Counsel

82. At the outset of the hearing, the Parties confirmed that they had no objections with respect to the Panel. The Parties also confirmed that they accepted the jurisdiction of the CAS to decide the dispute.

83. As a preliminary matter, the Second Respondent objected to a Power Point presentation that the CBF intended to use during the hearing. A copy of the presentation had been submitted to the CAS Court Office on the morning of the hearing. Specifically, the Second Respondent objected to two slides in the presentation that it argued included additional information not provided in the *amicus curiae* brief and which the CBF had had the full opportunity to include in the *amicus curiae* brief. The Appellant and the First Respondent did not object to the presentation. Following submissions from the CBF regarding the purpose of the presentation and confirmation that two of the Power Point presentation slides included information not previously provided in the *amicus curiae* brief, the Panel partially upheld the Second Respondent's objection and admitted the Power Point presentation save for the two slides that contained the additional information.

84. The hearing continued with the Parties' opening statements and the Parties reiterated the arguments already put forward in their respective written submissions. The Player was heard with respect to the circumstances specified in the written submissions already submitted and to the other circumstances related to the dispute and the Parties and the Panel had the full opportunity to examine the Player. The CBF attended only that part of the hearing for when it made oral submissions to complement the *amicus curiae* brief and the Parties and the Panel each had the opportunity to question the CBF.

85. The Parties presented their closing submissions orally, during which the Appellant requested leave to submit a copy of the Plan that Cruzeiro EC's creditors had agreed as part of the judicial reorganization process. The Respondents agreed to its submission and the Panel granted leave for the Appellant to submit the document after the hearing, although it notes that the Appellant did not provide a copy for the file.

86. Before the hearing concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

87. On 29 March 2024, the Appellant made an application under Article R56 of the Code to admit to the file a decision of the Brazilian Bankruptcy Court dated 16 February 2024 which concerned the amount of the Player's claim under the Plan and the Appellant's liability for that claim under Brazilian bankruptcy law. The Panel rejected the Appellant's application and communicated its decision to the Parties on 3 April 2024. The reasons for the Panel's decision are provided in paragraphs 137 to 142 of this Award.

VII. SUBMISSIONS AND EVIDENCE OF THE PARTIES AND SUBMISSION OF THE CBF AS AMICUS CURIAE

88. The following outline is a summary of the Parties' arguments, submissions and oral witness testimony, and a summary of the CBF's *amicus curiae* brief, all of which the Panel considers relevant to decide the present dispute. It does not necessarily comprise each and every contention put forward by the Parties. The Panel has, nonetheless, carefully considered all the submissions made, even if no express reference is set out in the following summary. The Parties' written and oral submissions, the CBF *amicus curiae* brief, documentary and oral evidence, and the content of the Appealed Decision, were all taken into consideration.

A. The Appellant's Position

89. The Appellant's submissions, in essence, may be summarized as follows:

i) Breach of ne ultra petita and the right to a fair hearing

- The Player's prayer for relief in his original claim to the FIFA DRC did not include a request for recognition of Cruzeiro SAF as the legal successor of Cruzeiro EC, and the original findings of the Appealed Decision issued on 28 November 2022 did not include a ruling to that effect. FIFA unilaterally amended the operative part of the Appealed Decision to include a direction that Cruzeiro SAF was the sporting successor of Cruzeiro EC and justified the amendment because of a "*clerical mistake*" which violated the Appellant's procedural rights, specifically the principle of *ne ultra petita* and the right to due process and to be heard.

- The right to be heard "*is a fundamental right and one of the most important elements of the right to a due process that must be respected in the course of the proceedings in front of any judicial body*" (CAS 2012/A/2740, para 78). Cruzeiro SAF was never afforded the opportunity to react to the request to be recognized as the sporting successor of Cruzeiro EC or to present a reasoned defence against such recognition. The DRC addressed the issue only briefly in the Appealed Decision and without providing reasons.

- The principle of *ne ultra petita* is recognised in CAS jurisprudence (*cf*: CAS 2015/A/4057 and CAS 2016/A/4384) and provides that a judge may not award a party anything more than or different from that which has been requested. Moreover, a deciding body cannot adopt a narrow interpretation of the content of a specific

claim and must abide by the parties' requests for relief (*cf*: CAS 2017/A/5086). The DRC violated the principle by including the finding that Cruzeiro SAF was the sporting successor of Cruzeiro EC, without any specific petition being included by the Player in his prayer for relief in the DRC claim.

ii) DRC jurisdiction: conflicting dispute resolution clauses and the independence of the Brazilian NDRC

- The DRC erred in assuming jurisdiction when it is evident that the parties had decided to submit any dispute between them to the Brazilian NDRC. The FIFA DRC ought to have declined jurisdiction to hear the Player's claim (*cf*: CAS 2013/A/3172, para 54 and CAS 2014/A/3854), or in the alternative, refused to consider the claim arising under the Second Employment Contract because the parties agreed under that contract to submit disputes to the exclusive jurisdiction of the Brazilian NDRC.

- The labour relationship between Cruzeiro EC and the Player needs to be assessed as a whole and the document that governed the employment relationship was the Second Employment Contract, with the effect that Clause 11.3 of the Second Employment Contract, in favour of the Brazilian NDRC as the dispute resolution forum, was the prevailing dispute resolution clause. This is confirmed by: the limited scope and purpose of the Termination Agreement which was to comply with national regulations regarding contract length; the different references in the Second Employment Contract to national law in Brazil which shows the parties' willingness to submit a potential dispute to the Brazilian NDRC and not the FIFA DRC; the absence of a clause in the Termination Agreement that establishes the novation and replacement of the Second Employment Contract or any of its clauses; and the fact the Second Employment Contract was signed prior to the Termination Agreement thereby superseding the Termination Agreement.

- The Brazilian NDRC complies with each of the minimum procedural and constitutional requirements outlined in FIFA Circular 1010 and the NDRC Standard Regulations. The minimum requirements set out in FIFA Circular 1010 are: i) the principle of parity in the constitution of the arbitral tribunal, ii) the right to an independent tribunal, iii) the principle of a fair hearing, iv) the right to contentious proceedings, and iv) the principle of equal treatment.

- The Brazilian NDRC complies with the principle of parity. Article 5 of the Brazilian NDRC Regulations (2020 edition), which are the relevant regulations for consideration in this dispute, records that the Brazilian NDRC consists of 10 members, with the CBF, clubs, players, intermediaries, and coaches each appointing two members. The corresponding union entities appoint the representatives of players and coaches which guarantees that the clubs have no interference over those appointments. At least four members of the Brazilian NDRC are appointed by employees – the players and the coaches. If the CBF is considered to be more closely aligned to the clubs, then there are also four members linked to employers – the clubs and the CBF. Therefore, there are equal numbers of employer and employee members in the composition of the Brazilian NDRC's membership.

- The Brazilian NDRC is divided into different divisions which each have their own competences. The Labour Division is competent to hear disputes between clubs and players or coaches. Article 8.2(II) of the Brazilian NDRC Regulations provides that any claim submitted to the Labor Division is decided by three members: one appointed by the player (or coach), one appointed by the club, and one neutral member appointed by the CBF. The players and the clubs exercise the same influence over the panel that is competent to decide an employment-related dispute.

- The Brazilian sport system is organized in a different way to some other countries, with entities managing football in each state. Brazilian clubs are not affiliated to the CBF. Pursuant to Article 14 of the CBF Statutes the regional football federations, which are responsible for the administration of organized football in their respective territories, are the only entities affiliated to the CBF. It is erroneous to conclude that a member appointed by the CBF would imbalance the influence exercised by clubs and players in a Brazilian NDRC panel that is constituted to hear an employment dispute between a player and a club. Considering that non-compliance with the principle of parity was the only reason provided in the Appealed Decision for rejecting the Brazilian NDRC's competence, the Appellant's demonstration of compliance is sufficient for the Panel to set aside the Appealed Decision and declare that the FIFA DRC was not competent to determine the Player's claim.

- For the sake of completeness, the Appellant also submits that the Brazilian NDRC complies with all remaining minimum procedural and constitutional requirements outlined in FIFA Circular 1010 and the NDRC Standard Regulations.

- CAS jurisprudence confirms that the FIFA NDRC Standard Regulations are not legally binding and must be considered as recommendations only (*cf*: CAS 2012/A/2983, para 8.25 and CAS 2020/A/6830, para 160).

iii) Concept of sporting successor

- The specific context of Brazilian football is important for the determination of this dispute. It is widely known that Brazilian football has been struggling for decades because of a lack of investment and insolvent football clubs. Brazilian football clubs have traditionally assumed the legal form of a non-profit organisation, primarily to benefit from tax laws. A non-profit organisation is self-regulated, with little or no transparency and an undefined capital structure, which makes such a legal entity unattractive to third party investors. It is also disputed as to whether a non-profit organisation, and therefore a football club, is entitled to restructure its debts under Brazilian bankruptcy law, specifically Federal Law n 11.101/2005.

- Federal Law n. 14.193/2021, which is otherwise known as the "SAF Law", was enacted in 2021 to remedy the financial situation in Brazilian football. The SAF Law applies exclusively to football clubs and enables third-party investment in football clubs. It permits a football club to incorporate a new type of business entity with the title in Portuguese of *Sociedade Anônima do Futebol* or "SAF" (in English, "Football Corporation"), establishes specific rules that govern the SAF's incorporation, governance, transparency, provides a special tax regime, and permits

a football club to restructure its debts with the financial assistance of a SAF by imposing a legal obligation on the SAF to transfer a percentage of its revenues to the football club when the football club chooses to address its debts through a restructuring option created by the SAF Law and referred to as the "Centralized Execution Regime". The SAF Law also permits a football club to be subject to a judicial reorganisation process under Brazilian bankruptcy law.

- The purpose of the SAF Law is to make football clubs more attractive for investment, which could not be achieved if a SAF were liable for all debts of the football club and there are provisions in the SAF Law that limit a SAF's liability for the football club's debts before the SAF's incorporation. The SAF is obliged to transfer a significant portion of its profits to the football club (and eventually a portion of its revenues) to support the payment of the football club's debts. The creation of a SAF benefits a football club and its creditors because it provides the additional revenue needed to pay the football club's debts.

- The Appellant is a football corporation duly incorporated as a SAF by Cruzeiro EC pursuant to the SAF Law and Cruzeiro EC is subject to a judicial reorganization process pursuant to Brazilian bankruptcy law to address its debts. The proceedings are continuing before the State Courts of Minas Gerais under the case number n.514674-43.2022.8.13.0024 and the Player is participating in the proceedings. The judicial reorganisation process differs to the Centralized Execution Regime provided in the SAF Law and for which the obligation to transfer a percentage of revenues arises for a SAF. Cruzeiro SAF has contractually agreed, however, to transfer resources to Cruzeiro EC for the payment of Cruzeiro EC's debts when the Judicial Reorganisation Plan is approved by creditors and confirmed by the bankruptcy court. Cruzeiro SAF is not obliged under national law to pay Cruzeiro EC's creditors directly; it is only contractually obliged to transfer a percentage of revenues to assist Cruzeiro EC to pay its debts.

- Article 25.1 of the FIFA RSTP and Article 21.4 of the FIFA Disciplinary Code refer to the concept of sporting successor. FIFA Circular no.1681 makes clear that the purpose of the concept is to deter clubs using corporate arrangements to avoid their financial responsibilities to other clubs, players, coaches, and organized football stakeholders. CAS jurisprudence establishes that the concept requires an abuse committed by the old club to avoid paying its creditors (*cf*: CAS 2020/A/7183, paras 112-113). It is undisputed that Cruzeiro EC never intended to avoid paying its debts; on the contrary, it applied for judicial reorganisation as permitted by the SAF Law for the purpose of addressing those debts, adhering to the requirements of the SAF Law and subject to the scrutiny of the national courts in Brazil. The incorporation of Cruzeiro SAF was not harmful to Cruzeiro EC's debtors; by incorporating a SAF, Cruzeiro EC was able to access third party investment for its football activities and obtain resources to pay its debts.

- Cruzeiro SAF is not the sporting successor of Cruzeiro EC because it is a different legal entity. Both entities are active with management autonomy of their respective businesses, have distinct founders, shareholders, management, executive bodies, different registration no. in the mercantile registry, and a different registered

address. The entity name is different, and the Mineirão Stadium is not the property of Cruzeiro SAF or Cruzeiro EC but of the Minas Gerais government.

- Article 9 of the SAF Law provides that, generally, a SAF is not liable for any obligations of the football club prior to the SAF's incorporation and Article 10 of the SAF Law provides that the football club is the only entity liable for paying debts which precede the SAF's incorporation. The Player's claim relates to a period prior to Cruzeiro SAF's incorporation; Cruzeiro SAF is not liable under the SAF Law to pay the amount owed by Cruzeiro EC to the Player. It could potentially be liable to pay the Player's debt under the Plan should Cruzeiro EC fail to comply with the Plan, but the possibility is remote.

- CAS 2011/A/2646 and CAS 2020/A/7424 impose a duty on the creditor to pursue a debt diligently in insolvency proceedings before using the FIFA dispute resolution mechanism. The Player has a duty to pursue the recovery of the debt against Cruzeiro EC as part of the judicial reorganisation process and to exhaust all legal remedies available under Brazilian bankruptcy law. The Player is attempting to receive his alleged credits from two different entities through two simultaneous proceedings, namely a claim through the FIFA dispute resolution mechanism and a claim in Cruzeiro EC's judicial reorganisation process. Upholding the Appealed Decision would lead to *bis in idem* as the Player would receive payment twice: from Cruzeiro EC under the judicial reorganisation process and from the FIFA proceedings. Also, money owed to the Player from the judicial reorganization process will be paid in accordance with the terms of the Plan. An immediate payment to the Player to satisfy the Appealed Decision would provide the Player with an undue advantage and an unfair enrichment and would violate the principle of *par conditio creditorium* under Brazilian bankruptcy law.

- If the Panel were to conclude that the Appellant is liable for the amount claimed and relying on CAS 2020/A/6831, the Appellant submits that it should not be directed to make an immediate full or partial payment within a 45-day deadline. Under penalty of criminal sanction, a debtor cannot prefer one creditor ahead of other creditors in a Brazilian insolvency process, and item 9 of the Appealed Decision should be set aside and replaced by a direction that the amounts claimed by the First Respondent shall be paid in accordance with the payment schedule of the Plan determined and confirmed under national law. The sporting sanctions should be annulled or at least suspended.

iv) Breach of the principles of verwirkung and venire contra factum proprium

- As an alternative argument, the First Respondent's claim should be rejected because of the application of Brazilian law and the principles of *verwirkung* and *venire contra factum proprium*. The *verwirkung* principle considers a debt to be waived if: i) a creditor fails during a significant period to claim the debt; and ii) the debtor had reasonable grounds to assume that the creditor would not avail themselves of the right in the future. The First Respondent failed to claim his wages during a significant period, continued to provide services to Cruzeiro EC, even though he could have terminated the Second Employment Contract. These actions demonstrate

the First Respondent's tacit acceptance to limit the collection of the debt to the judicial reorganization process.

The First Respondent has also infringed the principle of *venire contra factum proprium.* The principle is well-established in CAS jurisprudence and provides that where a party's conduct has induced a legitimate expectation in another party, the first party is estopped from changing its course of action to the detriment of the second party (*cf*: CAS 2015/A/4195, para 42; CAS 2008/A/1699, para 33; and CAS 2008/O/1455, para 21). The Player has always been aware of Cruzeiro EC's judicial reorganization process and the requirement to claim his wages as part of that process and has submitted a claim as part of that process. The Player is now estopped from bringing a claim before the FIFA DRC because he induced a legitimate expectation that he would respect Brazilian law and the judicial reorganization process.

v) Request for relief

- In the Appeal Brief, the Appellant submitted the following requests for relief:

"On the basis of the foregoing, the Appellant hereby respectfully requests the COURT OF ARITRATION FOR SPORT - APPEALS DIVISION to deem this APPEAL BRIEF to be filed on behalf of CRUZEIRO ESPORTE CLUBE SAF together with the copies thereof and documents and close thereto, and following the appropriate procedures, to rule in due course as follows:

1. *To deem admissible and uphold in its entirety the Appeal filed by CRUZEIRO SAF;*

2. *To annul in its entirety and set aside the Appealed Decision of 24 November 2022 (Ref. no. FPSD-5957).*

3. *In doing so, hold that the FIFA DRC did not have jurisdiction to entertain the claim of the Player;*

4. *In the further alternative, should the panel deem that the FIFA DRC did have jurisdiction to entertain the whole claim (or part of the claim of the Player arising from the Termination Agreement), set aside the Appealed Decision.*

5. *In the further alternative, should this H. Panel deem that the FIFA DRC did have jurisdiction (totally or partially) and that the FIFA DRC Decision, (i) do not contravene the right to be heard and the ne ultra petita principle, and (ii) concludes that the Appellant shall be considered the sporting/legal successor of Cruzeiro Esporte Clube, to rule that:*

   5.1 *The Player is not entitled to receive any of their requested amounts from the Appellant.*

   5.2 *In the alternative, the amounts granted to the Player in accordance with the FIFA DRC Decision shall be paid to the Player (i) only if the player is not capable of receiving such amounts within the ongoing Judicial*

Reorganisation process of Cruzeiro EC, and/or, (ii) in the same conditions and deadlines as applicable to the rest Cruzeiro EC creditors under the Judicial Reorganisation in Brazil, and;

5.3 In all events, all disciplinary sanctions under points IV./7 IV./9 of the Appealed Decision shall be annulled, or at least suspended, until the end of the payment schedule set forth in the reorganisation Plan.

6. Order any other remedy that the Panel deems appropriate.

7. In all cases, to condemn the PLAYER and FIFA:

7.1 To bear all the arbitration and administrative costs pertaining to these appeal proceedings before the CAS including the CAS Court Fee in the amount of CHF1,000.00; and

7.2 To pay CRUZEIRO SAF a significant contribution towards its legal fees and other expenses incurred in connection with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R65(3) off the CAS Code."

B. The First Respondent's Position

a. Submissions

90. The First Respondent's submissions may be summarized as follows:

i) Breach of ne ultra petita and the right to a fair hearing

- The First Respondent rejects the Appellant's submission that the DRC violated the Appellant's procedural rights or the principle of *ne ultra petita*. The First Respondent's claim was initially filed in the DRC against Cruzeiro EC and Cruzeiro SAF. After FIFA confirmed with the CBF that Cruzeiro EC was not affiliated to the CBF and FIFA informed the First Respondent that it could not initiate proceedings against Cruzeiro EC, the First Respondent withdrew the claim against Cruzeiro EC and re-submitted it against Cruzeiro SAF. Cruzeiro EC was never summoned and did not take part in the DRC proceedings and Cruzeiro SAF was the only Respondent before the DRC. Cruzeiro SAF participated in the proceedings, and no material error occurred by including the sporting succession finding in the operative part of the Appealed Decision.

ii) DRC jurisdiction: conflicting dispute resolution clauses and the independence of the Brazilian NDRC

- The First Respondent was within his rights as an Argentinian player employed by a Brazilian club to lodge a claim with the FIFA Tribunal. The FIFA RSTP and Procedural Rules establish the DRC's competence to determine the present dispute. When analysing the relation between the parties, the principal document is the Termination Agreement which was signed after the Second Employment Contract

to settle the amounts owed and avoid litigation. The dispute resolution clause in the Termination Agreement shows that the parties freely elected the FIFA DRC as the competent dispute resolution forum. The First Employment Contract also identifies the FIFA DRC as the competent forum.

- According to well-established FIFA practice and CAS jurisprudence, the general rule is that the FIFA DRC is competent to resolve employment-related disputes of an international dimension between players and clubs (*see* Commentary of the FIFA Regulations on the Status and Transfer of Players Edition 2021). If there is a clause that grants jurisdiction to a national dispute resolution chamber or a contradiction between two clauses, the FIFA DRC is not prevented from entertaining the case (*cf.* CAS 2016/A/4846).

- The requirements for a national dispute resolution chamber to be considered able to settle a specific employment-related dispute of an international dimension are the following: (i) there is an independent arbitral tribunal established at the national level; (ii) its jurisdiction derives from a clear reference in the employment contract; and (iii) it guarantees fair proceedings and respects the principle of equal treatment of players and clubs. The Brazilian NDRC does not comply with the principle of parity when considering the representation of players, clubs, and federations in the Brazilian NDRC's membership as the players comprise only two of 10 or 20% of the Brazilian NDRC's members. It does not guarantee equal influence over the appointment of arbitrators between clubs, players and the CBF, and it does not guarantee that the chairperson and the deputy chairperson are chosen by consensus of the player representatives and club representatives from a list of at least five persons drawn up by the association's executive committee, as required pursuant to Article 3.1 of the FIFA NDRC Standard Regulations.

- The chairperson of the Brazilian NDRC is chosen by the CBF President, without any election between representatives of the clubs or players. The deputy chairperson is selected by the player representatives and club representatives, although the procedure for election is unclear. The First Respondent is Argentinian and if he were to file his claim in the Brazilian NDRC, his rights would be assessed by a Panel consisting of a majority of representatives appointed by clubs and federations and of the same nationality as the club involved in the dispute which contravenes the principles of parity and fair proceedings.

iii) Concept of sporting successor

- The Appellant is the sporting successor of Cruzeiro EC. Cruzeiro SAF was constituted to run the football department of Cruzeiro EC and is led by a well-known former Brazilian player, Mr Ronaldo Nazário. Cruzeiro SAF assumed all the debts and assets from Cruzeiro EC. Cruzeiro SAF was constituted in December 2021, with Brazilian media reporting that Mr Nazário had signed a contract between both entities in April 2022 that legally formalized the acquisition of 90% of the shares in Cruzeiro SAF. During the period between December 2021 and April 2022, the new administration of Cruzeiro SAF undertook actions to prepare the future of the

football club as a for-profit corporation *e.g.* it influenced the termination of goalkeeper Fábio Deivson in January 2022.

- The DRC was correct to find that the Appellant is the sporting successor of Cruzeiro EC. Cruzeiro EC and Cruzeiro SAF have their sports facilities at the same address, have the same headquarters, have the same name, use the same logo, have won exactly the same trophies and championships, use the same team colours and uniform, use the same X (formerly Twitter) account, the same Facebook account and the same Instagram account, and they have the same players (*cf*: CAS 2016/A/4576 and CAS 2013/A/3425). Cruzeiro SAF exploits the history and commercial value of the club. There are financial links between Cruzeiro EC and Cruzeiro SAF because the latter is capitalising on the club's history, identity, fan base and legacy. Article 2 of the SAF Law provides that a SAF, in this case Cruzeiro SAF, is the successor of the obligations relating to the football activities of a club.

iv) Breach of the principles of verwirkung and venire contra factum proprium

- The First Respondent rejects the Appellant's "*absurd*" allegations regarding the principles of *verwirkung* and *venire contra factum proprium*, which allege that Cruzeiro EC's failure to comply with its financial obligations is a consequence of the Player's reputed fault. Cruzeiro EC is a large Brazilian football club founded in 1921. It is considered one of the biggest clubs in Brazil and in South America, being a two-time champion of the *Copa Libertadores da América*, four-time Brazilian champion, and six-time champion of the Brazilian Cup. It is undisputed that Cruzeiro EC failed to comply with the Termination Agreement and has not paid the total amount owed under the Second Employment Agreement. The First Respondent attempted to receive his amounts in an amicable way before lodging the claim in the DRC. His claim is not time barred. The suggestion that the Player tacitly consented to obtain his outstanding amounts from the judicial reorganization process is not credible or reasonable and does not apply in this case.

vi) Request for relief

- In the Answer, the First Respondent submitted the following requests for relief:

  "*Therefore, the First Respondent respectfully request to this r. Court to reject all arguments and prayers for relief brought on the Statement of Appeal and Appeal Brief lodged before CAS, in order to uphold the FIFA DRC decision as its proper own terms.*"

b. Evidence

91. The main points of the Player's evidence, which are relevant to this Award, may be summarised as follows:

- The Player explained that he had endured hardship during the relevant period, including through COVID-19 and that he had continued to train and do everything that he needed to do. When Cruzeiro EC requested that the players lower their salary,

the players complied because they had no other options. The Player explained that he chose to bring a claim through FIFA because he wished to assert his rights. He had always considered FIFA to be the appropriate chamber to bring his claim and he wanted to claim for the salary that he was owed. The Player emphasized that he was a foreign player in Brazil, with his family, and that during the time he was at Cruzeiro EC he went through several personal hardships. Besides the lower salary, he had to cover for the high living costs in Brazil, provide for his family, and his father also passed away. The Player gave evidence that no one at Cruzeiro EC talked to him or reached out to inform him of the situation, and that he knew many of Cruzeiro EC's employees were in the same situation, but as a foreigner he also knew that he could resort to FIFA. The Player confirmed that when he filed his claim at FIFA, he did not know about the bankruptcy proceedings.

- Under cross-examination by the Appellant, the Player confirmed that he was employed at Cruzeiro EC between August 2015 and November 2021 and that he played his last match in 2021. He explained that when Cruzeiro EC lowered everyone's salaries, he and some senior players who had played for Cruzeiro EC for a longer time decided to pay some of the family and food expenses of these other players. Although knowing Cruzeiro EC's situation, the Player renewed his contract because the manager with whom he had a good relationship asked him to stay and because he wanted to play. He loved Cruzeiro EC, he did not want to see it in that way and so even having no salary he decided to use his own resources to keep going. The Player also explained that he had heard of the judicial reorganization through the media; no one had reached out to tell him about it. He was aware that he was represented by a lawyer in the judicial reorganization, that his debt was listed as a credit in the judicial reorganization procedure and that he voted against the judicial reorganization. In reply to a question regarding the preferential status of his credit (*i.e.* debt) in the judicial reorganization, the Player confirmed that he was aware that his credit was different to others but that he did not know why. The Player also confirmed that in relation to the Second Employment Contract, he was represented by an intermediary from Argentina and that he did not accept the dispute resolution clause in the Second Employment Contract. He explained that it had been a tough year, that he had to make some quick decisions and that he thought FIFA was the appropriate chamber in which to bring the dispute, as it was in the other contracts.

- In response to questions from the Panel, the Player recalled signing the Second Employment Contract, but could not recall the dispute resolution clause or reading the Second Employment Contract, as he normally does. The Player explained that he was unaware that the Brazilian NDRC was the appropriate forum to bring a dispute in the Second Employment Contract and reiterated that he thought the appropriate forum to resolve the dispute was FIFA, "*just like the other ones*". The Player further explained that he did not agree with the Judicial Reorganization Plan because the amount offered was "*different to what we had agreed*" and so that is why he had pursued a claim through FIFA. The Player confirmed that he disagreed with the amount of BRL 4,865,923.34 recorded as the credit due to him under the Judicial Reorganization Plan because it was lower than what Cruzeiro EC owed him.

C. The Second Respondent's Position

92. The Second Respondent's submissions may be summarized as follows:

i) Breach of ne ultra petita and the right to a fair hearing

- The Appellant's procedural rights were always respected. The Player's claim was lodged against the Appellant, the Player argued the concept of sporting succession, the Appellant received all correspondence in the context of the FIFA DRC proceedings, and it had two opportunities to comment on the Player's allegations that a sporting succession had occurred. Even if the Appellant's procedural rights were infringed, which the Second Respondent denies, the Panel's *de novo* power of review under Article R57 of the Code cures any procedural failings of the DRC (*cf*: CAS 2016/A/4387, para 148).

ii) DRC jurisdiction: conflicting dispute resolution clauses and the independence of the Brazilian NDRC

- The Second Respondent rejected all the Appellant's arguments and submitted that the DRC rightly concluded that it had jurisdiction to determine the dispute. There was no clear and exclusive jurisdiction clause withdrawing FIFA's competence and even if there was (*quod non*), the Brazilian NDRC did not comply with FIFA Circular no 1010. It was not independent or impartial because, i) the players had no ability to influence the nomination and composition of said body and, ii) the costs charged hindered access to justice and infringed a party's right to be heard.

- The general rule established in Articles 22 and 23(1) RSTP conferring jurisdiction to the FIFA DRC applies automatically when an employment-related dispute of an international dimension arises between a club and a player. A deviation from this rule is permitted when the parties have opted out of the FIFA dispute resolution system. The parties may opt out if they have confirmed in writing their desire for: i) a competent national labour or civil court to decide on the dispute or have sought redress from these courts priors to a claim before the FIFA DRC; or ii) an independent national arbitration tribunal to decide the dispute pursuant to a valid arbitration agreement. If the latter, the national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs (FIFA Circular no 1010).

- The Second Respondent rejected the Appellant claims that the document that really governed the employment relationship was the Second Employment Contract and that it prevailed over any of the other documents. The Second Employment Contract was concluded on 10 August 2020 before the Termination Agreement on 28 August 2020 and the only possible conclusion was that the Termination Agreement prevailed as it was signed later. The parties' intentions were expressly stipulated in each of the documents. The Termination Agreement contained a clear and exclusive jurisdiction clause in Article 4.1 in favour of FIFA and therefore FIFA had jurisdiction to decide on issues relating to the Termination Agreement. If the argument that the two contracts were to be considered as one employment

relationship were accepted, there were two conflicting dispute resolution clauses and in the absence of a clear and exclusive jurisdiction clause, the Football Tribunal was competent.

- FIFA provides a specialized, effective, and free service for employment-related disputes of an international dimension as an alternative to ordinary courts. It is based on the principle of equal representation of clubs and players, amongst others. FIFA encourages national associations to establish their own national dispute resolution chamber and issued FIFA Circular no 1010 to provide guidance on the minimum criteria for a national dispute resolution chamber to be considered as independent and impartial under the FIFA RSTP and issued the National Dispute Resolution Chamber Standard Regulations (the "FIFA NDRC Regulations") to provide further detail as to how these criteria may be achieved in practice.

- The Brazilian NDRC does not meet the requirements set out in FIFA Circular no. 1010 because it does not satisfy the principle of parity and it is not an independent and impartial tribunal, specifically because: i) the players have no ability to influence the composition of the Brazilian NDRC *i.e.*, the appointment of the Brazilian NDRC Chairperson and the appointment of the panel members; and ii) the costs of initiating a claim and appealing a decision to the *Centro Brasileiro de Mediação e Arbitragem* (the "CBMA") hinder access to justice.

- As to i), the chairperson of the Brazilian NDRC is elected by the CBF alone and not by the parties or their appointed representatives. There is also no specific rule as to which body within the CBF is responsible for the nomination. There is no consent from the players regarding the nomination and the players represent only a small number of the group *i.e.*, 2 out of 10 members (Article 5 of the Brazilian NDRC Regulations). The appearance of equal composition is insufficient to determine compliance with the principle of parity. In CAS 2018/A/5659 the CAS Panel confirmed that the NDRC in question did not meet the criteria of FIFA Circular no. 1010 because the players did not "*exercise equal influence over the selection process [for the president and vice-president] and over the composition of the arbitrators' list from which the president and the vice-president are selected.*"

- The Brazilian NDRC chairperson is not elected by consensus of players and clubs yet appoints the third arbitrator of a panel of three members, with the other two members nominated by each of the club and the player (Article 8 of the Brazilian NDRC Regulations). The Appellant also failed to explain the process or demonstrate that the third member of the panel is an independent person appointed by consensus of the clubs and the players or at least that the players have an equal influence in the appointment of the third panel member. The chairperson is also involved in the decision-making process because the chairperson grants interim or precautionary measures (Article 21 of the Brazilian NDRC Regulations) and decides challenges to individual arbitrators (Article 10 of the Brazilian NDRC Regulations).

- There is a structural inequality in the composition of the Brazilian NDRC because although not directly affiliated to the CBF, the clubs are the influencing party in the nominations and appointment of members of the Brazilian NDRC. Brazilian clubs

are not directly affiliated to the CBF; the CBF's members are the state federations for football in Brazil. The CBF represents the interests of the state federations, which in turn, represent the interests of the clubs. There is no players' union or other representative entity affiliated to either the CBF or the state federations. Brazilian clubs have a direct influence on the elections of the CBF president and vice-president (Article 40 of the Brazilian NDRC Regulations). The fact the players do not enjoy the same level of representation as clubs tips the balance in favour of clubs in proceedings before the Brazilian NDRC.

- The Second Respondent rejected the Appellant's submission that the Brazilian NDRC resembles the composition of the FIFA DRC because Article 4 of the Procedural Rules provides that the chairperson and deputy chairperson are proposed by FIFA but can only be appointed by consensus of the representatives of players and clubs; the same standard of neutrality is not evident in the Brazilian NDRC Regulations.

- As to ii), access to justice is recognized as guaranteed under Article 6(1) of the European Convention on Human Rights and high costs that impede a party from filing a claim are recognized as an obstacle to access to justice. Imposing a symbolic or low amount to avoid frivolous claims or to cover administration costs does not affect a party's ability to access justice, however, exorbitant or excessive charges can impinge access to a dispute resolution forum (*cf*: CAS 2021/A/8148, paras 143 *et seq*). A party lodging a claim in front of the Brazilian is required pay an upfront administrative fee of 2% of the value of the dispute, subject to a cap of BRL 20,000 (increased to BRL 50,000 under new Rules on Costs that apply to proceedings issued as from September 2022). The administrative fees that the Player would have paid in the present dispute would have represented 37.5% of his salary, which is unreasonable and disproportionate, and a violation of the right of access to justice. The minimum federal wage in Brazilian is BRL1,320, and a CBF report from 2016 shows that of a total of 28,203 registered players, 96.08% earned up to BRL5,000. The appeal fees are also disproportionate and there is no provision for legal aid before the Brazilian NDRC or the CBMA.

iii) Sporting successor

- The Second Respondent submits that the Appellant is the sporting successor of Cruzeiro EC. Article 25(1) of the RSTP clearly outlines the criteria to assess when determining whether an entity is the sporting successor of a club. These factors include: the headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition. The Appellant relies heavily on the fact that it has a different name, legal form and registered address, different ownership, and different management to Cruzeiro EC but the status of the new club as a different legal entity has no bearing on whether sporting succession has taken place (*cf:* CAS 2013/A/3425, para 139).

- The Second Respondent submits that the sporting succession between Cruzeiro EC and the Appellant is "*blatant and evident*". The Appellant and Cruzeiro EC share the same history, have the same brand and symbol, the same date of foundation, the

same titles and sporting achievements, the same internet domain, same anthem and same mascot, and the Appellant's playing squad in 2022 was identical to Cruzeiro EC's squad in 2021. The Appellant was also set up under the SAF Law to acquire the assets (name, brand, labels, symbols, properties, assets, registrations, licenses, sport rights on athletes etc.) and rights (right to participate in championships, cups or tournaments in substitution of the old club, right to participate in professional competitions, employment contracts, image use or any other contracts related to football activity) of Cruzeiro EC. Weighing all the relevant criteria, it is clear that the Appellant is the sporting successor of Cruzeiro EC.

- The Appellant never informed the Player or the DRC that Cruzeiro EC was subject to a judicial reorganization under Brazilian bankruptcy law. The Second Respondent submits that the Appellant is precluded from arguing that FIFA is not competent to rule on the issue of sporting succession in cases where the former entity is subject to bankruptcy proceedings under national law (*cf.* CAS 2018/A/5647). All arguments brought regarding the topic of Cruzeiro EC's bankruptcy have no bearing on the present proceedings since the Appellant never raised the argument in connection with the alleged bankruptcy of Cruzeiro EC thereby denying the DRC the opportunity to analyse the topic, and in any event the proceedings were against the Appellant, which is not undergoing bankruptcy proceedings.

- The Second Respondent submits that in accordance with the well-established CAS jurisprudence to exercise due diligence in these types of cases (*cf.* CAS 2019/A/6461, CAS 2020/A/6884 and CAS 2020/A/6745), the Player took all necessary steps to recover his debt under the judicial reorganization process and declared the FIFA proceedings. The Second Respondent submits that the Player showed the required due diligence and acted in good faith by declaring the action taken before the DRC. If the Player were to receive a partial or total recognition of his credit in the bankruptcy proceedings, any payment that he would receive as a result would be offset from amounts owed under the Appealed Decision.

- Article 12bis RSTP has been correctly applied. The reprimand was correctly imposed because the Appellant delayed payment for more than thirty days, the Player put the Appellant in default and granted it a ten-day deadline to comply with payment thereby satisfying the criteria for the application of Article 12bis(2) of the RSTP. The DRC had the full discretion to impose one of the sanctions in Article 12bis(4) and considering the circumstances at hand, it chose to impose a reprimand, which, the Second Respondent submits, is proportionate and justified.

iv) Request for relief

- In the Answer, the Second Respondent submitted the following requests for relief:

"*Based on the foregoing, FIFA respectfully requests CAS to:*

a. Reject the Appellant's appeal in its entirety;

b. Confirm the Appealed Decision and, in particular, that the FIFA DRC was competent to deal with the dispute between the Appellant and the Player and that a reprimand was correctly imposed on the basis of Article 12bis RSTP;

c. 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."

D. The CBF's Position

93. The main points of the CBF's *amicus curiae* brief, which are relevant to this Award, may be summarised as follows:

- The CBF created the Brazilian NDRC in 2016 to comply with FIFA regulations, specifically Articles 22.1(b) and (c) of the RSTP, as well as the FIFA Regulations on Working with Intermediaries, and to provide the Brazilian market with a safe, fair, equal, impartial and independent means of resolving disputes. The CBF has gone further than the minimum standards required under the relevant FIFA regulations and has also considered the requirements under the Brazilian Arbitration Act (Federal law n 9.307/1996) so that Brazil's football stakeholders can submit their dispute to a true arbitral tribunal in accordance with Brazilian law.

- The Brazilian NDRC Regulations that are relevant to the present dispute are the Brazilian NDRC Regulations (2020 Edition). These regulations were amended in September 2022 by the Brazilian NDRC Regulations (2022 Edition) and the CBF's position refers, where relevant, to the later edition.

- Since 2016 the Brazilian NDRC has received 1,556 cases, of which 393 were brought by athletes or coaches against clubs. A study carried out in March 2023 showed, amongst other things, that in disputes between athletes and clubs, athletes are fully or partially successful in 93% of cases.

- The CBF is responsible for managing and representing the interests of Brazilian football as a whole. The CBF is a neutral entity that acts in consideration of all those who make up football in Brazil. It is concerned with the fair and equal treatment of all those who make up Brazilian football, including the athletes and the clubs. Its aim of protecting the interests of all Brazilian football stakeholders, and not solely the clubs, is clearly reflected in Articles 5 and 12 of the CBF Statutes.

- Pursuant to Article 14 of the CBF Statutes, football clubs are not direct members of the CBF. The CBF's members are the 27 state football federations which are responsible for protecting the interests of all football stakeholders within their respective territories. The clubs are represented in CBF bodies that are recognized in the CBF Statutes, namely the CBF's Technical Committee and the National Commission of Clubs. The CBF also summons the clubs directly should it wish to have the clubs' voice heard in its organisation.

- The principle of equal treatment is reflected in the nominations for the Brazilian NDRC membership. Each group in Brazilian football has an equal number of

members in the Brazilian NDRC which balances the power between all interests. Until September 2022, the Brazilian NDRC was composed of 10 members: two members nominated by the CBF; two members nominated by the athletes; two members nominated by the clubs; two members nominated by the coaches; and two members nominated by intermediaries. Since September 2022, the Brazilian NDRC's membership has increased to 12, with the two additional members nominated by the state federations. Pursuant to Article 7 of the Brazilian NDRC, the entities responsible for nominating the Brazilian NDRC members must prove that the nominee has adequate legal training, experience, and "*has recognized competence, mastery or performance*" in national or international sports law.

- The Brazilian NDRC members are nominated by a representative organisation. The nominations are made exclusively by the representative bodies and are sent to the CBF accompanied by a CV indicating the nominee's experience. The CBF has no influence over the nominations made by the representative entities. It appoints the nominees, and the CVs of members are published on the CBF website. The Brazilian NDRC then allocates the members between the Brazilian NDRC's four divisions, which are: Intermediation, Commercial, Labour, and Regulatory (*see* Article 5.1 of the Brazilian NDRC regulations). The Brazilian NDRC is assisted by a secretariat that assists individual panels, the parties, and their lawyers, publishes decisions, and promotes and raises awareness of the Brazilian NDRC's dispute resolution role.

- The Brazilian NDRC President is appointed by the CBF. The President does not sit on panels for individual cases in the Brazilian NDRC's Labour Division and the role is mainly administrative. In relation to the Labour Division, the President receives a claim and distributes it and authorizes an extension of time for publication of the decision. The President does not have power to review acts carried out in cases before any division and has no influence on the assessment of the merits of a case in the Labour Division. The President also determines applications for emergency measures before a panel is constituted to hear an individual case. In relation to claims in the Labour Division, in 2022, athletes lodged 27 applications for emergency measures and were successful in six of the applications; in 2023, eight applications were lodged by athletes, with the athletes successful in six of them. Generally, these applications related to the right of players to leave their clubs due to a breach of contract. The President is a part of the Regulatory Division which analyses non-compliance with decisions handed down in other divisions, amongst other things, but the President does not review the decisions (*see* Article 5.11.II of the NDRC Regulations).

- The CBF has chosen lawyers with considerable experience in the field and no connection to any specific group of football stakeholders to fill the role. For example, in May 2022, the Brazilian NDRC President was Dr Vitor Butruce, a professor of commercial law at the State University of Rio de Janeiro, a partner at the law firm BMA, and a CAS Arbitrator. He was a consultant to the 2014 FIFA World Cup Organising Committee and is listed in Chambers Global as one of Brazil's leading sports lawyers. From September 2022, the Brazilian NDRC President is Dr Celso Portella, a lawyer with more than 15 years' experience in labour law and a postgraduate degree in labour law and procedure. Dr Portella has

been a member of the Brazilian Bar Association Ethics Court since 2019. Dr Portella has never represented clubs or athletes.

- The Panel for individual cases heard in the Labour Division of the Brazilian NDRC is composed of one athlete member (or coach member if the labour dispute involves a coach), one club member, and a third member who until September 2022 was a CBF member but since 2022, can be a CBF member or state federation member. The parties may challenge the appointment of a panel member and request a replacement (Article 10 of the Brazilian NDRC Regulations). There are two procedural documents that are issued in all cases. Procedural Order No 1 informs the parties of the judging panel, and establishes a timetable for progressing the case, including time to challenge the panel members, for the parties to comment on the case and for the Brazilian NDRC to issue the Terms of Reference.

- There has never been a request made to replace a CBF panel member which in the CBF's view confirms the perception in Brazilian football of "*equal appointments*" in the Brazilian NDRC. The Terms of Reference, which is modelled on the document used by the International Court of Arbitration of the International Chamber of Commerce sets out procedural matters and the parties' signatures on the document confirm the voluntary nature of the process and their cooperation with the Brazilian NDRC to resolve the dispute.

- There are opportunities for the parties to challenge an individual panel member and by signing the Terms of Reference, the parties to a dispute before the Brazilian NDRC acknowledge the trust that the party has in the panel members irrespective of their respective nominees. The arbitral awards issued by the NDRC fulfil the criteria for the enforcement of arbitral awards under the New York Convention

VIII. JURISDICTION

94. Article R47 of the Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with the 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.*"

95. Pursuant to Article 57.1 of the FIFA Statutes:

"*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.*"

96. The Appellant relies on Article 57 of the FIFA Statutes, as conferring jurisdiction on the CAS. The Respondents agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer their views by the

Panel and the jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.

97. Accordingly, on the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

IX. ADMISSIBILITY

98. Article R49 of the Code provides that:

"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."

99. Pursuant to Article 57 of the FIFA Statutes:

"1. 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.

2. Recourse may only be made to CAS after all other internal channels have been exhausted."

100. The Panel observes that the FIFA DRC rendered the Appealed Decision on 24 November 2022 and notified the grounds of the Appealed Decision by email to the Appellant and First Respondent on 28 February 2023.

101. The Appellant submits that it filed the appeal in time and the Respondents do not contest the admissibility of the appeal.

102. The Panel notes that the Appellant filed its Statement of Appeal on 21 March 2023, within the deadline of 21 days prescribed in the FIFA Statutes and the Code and that there were no other channels for appeal internal to FIFA. The Statement of Appeal also complies with the requirements of Article R48 of the Code.

103. Accordingly, on the basis of the above, the Panel is satisfied that the Appeal was filed in time and is admissible.

X. APPLICABLE LAW

104. Pursuant to Article R58 of the Code, the Panel is required to 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

105. Furthermore, Article 56.2 of the FIFA Statutes provides that:

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.

106. The Appellant submits that the Code is the applicable procedural law and the substantive law to apply to the merits of the dispute is primarily the FIFA regulations, with Brazilian law, and not Swiss law, applying subsidiarily. It asserts that the employment relationship which is the subject of the appeal was entered into by the Player and Cruzeiro EC. The Appellant is not a party to the Termination Agreement or the Second Employment Agreement and these contracts never transferred to the Appellant; in fact, the Appellant never employed the Player. Cruzeiro EC is subject to bankruptcy proceedings under Brazilian bankruptcy law and the Player is listed as one of many of Cruzeiro EC's creditors. Relying on CAS 2020/A/7424, CAS 2020/A/6831 and CAS 2011/A/2646, which permit the application of national law in situations of bankruptcy, the Appellant asserts that Brazilian law applies subsidiarily.

107. The First and Second Respondents respectively submit that the FIFA Statutes and associated regulations are applicable, with Swiss law applying subsidiarily.

108. The Panel observes that the Parties are in agreement that the applicable law is primarily the FIFA Statutes and associated regulations, but that the Parties are in dispute regarding the law to apply subsidiarily. It therefore falls to the Panel to determine the law to apply subsidiarily should the need arise to fill a gap in the application of the FIFA regulations.

109. The Panel recalls that the FIFA regulations, which the Parties do not dispute apply, include Article 56.2 of the FIFA Statutes which states that the *CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*. The reference to Swiss law in Article 56.2 of the FIFA Statutes is considered to apply to the interpretation of the FIFA regulations themselves in order to achieve the desired harmonisation of FIFA regulations globally (*cf.* HAAS U, Applicable law in football-related disputes: The relationship between the CAS Code, the FIFA Statutes and the Agreement of the Parties on the application of national law, Bulletin TAS/CAS Bulletin, 2015/2, p.14 - 16; CAS 2021/A/7680, paras 87; and CAS 2020/A/7605, paras 181).

110. The Panel observes that this dispute relates primarily to the interpretation and application of the FIFA regulations, specifically the definition of independent tribunal in Article 22.1(b) of the FIFA RSTP and the concept of sporting successor in Article 25.1 of the FIFA RSTP. Furthermore, it is undisputed that Cruzeiro EC, and not the Appellant, is the entity that is subject to judicial reorganisation proceedings, and that the Appellant is responsible under the SAF Law for the payment of amounts to Cruzeiro EC to satisfy certain of the latter entity's debts confirmed during the process under Brazilian bankruptcy law, all points discussed further in this Award.

111. The Panel recalls the case of CAS 2020/A/6900 & 6902 which concerned non-compliance with financial decisions due to restrictions imposed by insolvency proceedings under national law. The Sole Arbitrator in CAS 2020/A/6900 & 6902

considered that the appropriate law to apply was the FIFA regulations and Swiss law, indicating that he would refer to the effects of national insolvency law when required during his award (CAS 2020/A/6900 & 6902, para 109). The Sole Arbitrator noted later in the award that referring to the effects of national insolvency law "*appears rather essential*" in a matter involving national insolvency proceedings (CAS 2020/A/6900 & 6902, para 148).

112. In CAS 2020/A/6831, a case which concerned the interplay between the concept of sporting succession and national insolvency proceedings, again, within the context of enforcement proceedings for non-payment of a financial decision, the CAS Panel opted to apply FIFA regulations and Swiss law subsidiarily, and additionally to refer when relevant to the discussion on the merits, to national bankruptcy law (CAS 2020/A/6831, para 89). The CAS Panel in CAS 2020/A/6831 considered that the FIFA Disciplinary Committee should have noted Bulgarian law when reaching its decision because of Article 5 of the FIFA Disciplinary Code which related to the law applicable to disciplinary matters and which permitted the FIFA Disciplinary Committee to consider "*any other law*". Later in the merits section of CAS 2020/A/6831 it appears that the CAS Panel considered that Bulgarian law was directly applicable to determine the level of liability of the sporting successor in that particular case (CAS 2020/A/6831, para 157). The Panel in the present case observes that Article 3 of the Procedural Rules permits the Football Tribunal chambers, including the DRC, when adjudicating matters to take into account, "*all relevant arrangements, laws, and/or collective bargaining agreements that exist at a national level*", although the Panel is mindful that in this particular case, the DRC was unaware of the insolvency proceedings to which Cruzeiro EC was subject, a point that is discussed further elsewhere.

113. Considering the above, the Panel determines that the applicable law in the present case is the FIFA regulations, with Swiss law applying subsidiarily. In addition and when relevant for the discussion on the merits of this case, the Panel may refer to and will explain the effects of the SAF Law and Brazilian bankruptcy law and take those effects into consideration as part of a discussion on the merits.

114. Furthermore, since the breach of Article 12bis, occurred in April 2022, the Panel considers that the March 2022 edition of the FIFA RSTP applies to the present dispute.

XI. OTHER PROCEDURAL MATTERS

115. During these proceedings, the Appellant submitted the *Amicus Curiae* Brief Request and objections were raised to witness testimony that the First Respondent intended to adduce at the hearing. The Panel considered the Parties' submissions on these procedural matters and decided to uphold the *Amicus Curiae* Brief Request and exclude the First Respondent's witness testimony. The reasons for these decisions are set out below.

A. The *Amicus Curiae* Brief Request Pursuant to Article R41.4 of the Code

116. The Appellant made the following submissions in support of its *Amicus Curiae* Brief Request:

- The Second Respondent had filed an extensive submission regarding the lack of competence of the Brazilian NDRC;
- The admission of an *amicus curiae* brief would be "*positive and advisable*" for the outcome of the case to clarify certain aspects of the Brazilian NDRC operations and "*shed light*" on a controversy with FIFA that might have an impact on different football stakeholders; and
- Following a review of the CBF Letter, it was apparent that the CBF's intervention and the submission of an *amicus curiae* brief was of interest for the good resolution of the current procedure, to solve queries about the Brazilian NDRC's operations and offer a "*valuable and special perspective*".

117. The Respondents objected to the *Amicus Curiae* Brief Request. The First Respondent's objections can be summarised as follows:

- The Brazilian NDRC had no legal personality or legal identity to be appointed or nominated as *amicus curiae* and the Appellant did not request the inclusion of the CBF but of its internal dispute resolution chamber which does not have taxpayer registration or any requirement to act in this case;
- The Appellant did not commence litigation or take any legal action before the Brazilian NDRC and for this reason the Brazilian NDRC does not have any relation to the present procedure and cannot be nominated or appointed before the CAS.

118. The Second Respondent objected to the CBF's participation on the basis that the CBF Letter did not clarify any disputed points in the present proceedings and it was difficult to ascertain the perspective that "*the CBF could provide that would either (i) not already be in the case file, or (ii) not be explained in the parties' submissions before* CAS".

119. The Panel recalls that the relevant procedural rule is Article R41.4 of the Code, which applies equally to appeal proceedings through Article R54, and provides:

"*After consideration of submissions by all parties concerned, the Panel may allow the filing of amicus curiae briefs, on such terms and conditions as it may fix.*"

120. Article 41.4 of the Code provides the Panel with a broad discretion to admit an *amicus curiae* brief and to determine the terms on which it is admitted. The Panel recalls the established CAS jurisprudence that has considered the admission of an *amicus curiae* brief before and after a specific power was inserted into the Code in 2013, and which confirms that an application for an *amicus curiae* brief will be granted if the following criteria are established:

i) the *amicus curiae* has some significant and/or specific knowledge about, or experience with, the issue at stake; and

ii) the *amicus curiae* will assist to identify and analyse an issue in the case (CAS 2008/A/1639, para 9).

121. The Panel also recalls CAS 2017/O/5264-5266, in which the CAS Panel refused an *amicus curiae* brief because it believed that it was sufficiently well informed of the relevant facts and arguments to decide the matter and considered that the *amicus curiae* could not provide either written or oral arguments of significant relevance that may be of assistance to the Panel (CAS 2017/O/5264-5266, para 51).

122. Having considered the submissions of the Parties, the Panel notes that the Parties dispute the independence of the Brazilian NDRC and that were the Panel to make any adverse findings regarding the independence of the Brazilian NDRC, while not directly affecting the CBF, the CBF would be put on notice of the non-compliance of the Brazilian NDRC with Article 22.1(b) of the FIFA RSTP and FIFA Circular no 1010. It would also have a consequential detrimental effect for the application of dispute resolution clauses in football stakeholder contracts in Brazil that identify the Brazilian NDRC as the preferred dispute resolution forum. The Panel considers, therefore, that there is a wider interest amongst football stakeholders in Brazil to admit the CBF as *amicus curiae*.

123. The Panel further considers that the CBF, as the regulator of football in Brazil, qualifies as having significant or specific knowledge or experience of the formation and operation of the Brazilian NDRC since it established the entity and knows how it operates. The Panel notes that there are specific disputed points outlined in the Appeal Brief and in the Answers regarding compliance of the Brazilian NDRC with the principles of parity, equal representation and access to justice, which the CBF Letter does not fully resolve and on which the Panel considers that it is not sufficiently well-informed. An *amicus curiae* brief would therefore be of assistance to the Panel to resolve the factual disputes on which it needs to assess the independence of the Brazilian NDRC. The Panel also considers that there is no procedural prejudice arising from the admission of the CBF as *amicus curiae*, particularly since it is unlikely to delay the hearing and the Parties will have the full opportunity to comment on the *amicus curiae* brief and to question the CBF if it attends the hearing.

124. Accordingly, for the foregoing reasons, the Panel granted the *Amicus Curiae* Brief Request and permitted the CBF, as the relevant legal and regulatory body, to file an *amicus curiae* brief in these proceedings.

125. The Panel's decision and the terms upon which the CBF was permitted to participate in the proceedings were communicated to the Parties on 27 October 2023.

B. Objection to First Respondent's Witnesses Pursuant to Article R56 of the Code

126. On 4 October 2023, the First Respondent informed the CAS Court Office that Messrs Fabio Deivson Lopes, Leonardo Renan Simões de Lacerda and Róbson Michael Signorini would be attending the hearing on 28 November 2023 as witnesses.

127. On 13 October 2023 and 16 October 2023, the Second Respondent and Appellant, respectively, notified of their objections to the First Respondent's witnesses attending the hearing. They both disputed the admission of the witnesses on the basis that Articles R44.2 and R55 of the Code were clear in application and the First Respondent should have indicated the names of the witnesses in its Answer "*and provided the pertinent witness statements*". They also submitted that the First Respondent had failed to justify its late evidentiary request and that no exceptional circumstances were evident to justify the late admission of the witnesses.

128. The Panel recalls that the procedural rules relevant to the admission of the First Respondent's witnesses are those outlined in Articles R44.2, R55 and R56 of the Code.

129. Article R44.2 of the Code applies to an appeal hearing and provides that:

"*The parties may only call such witnesses and experts which they have specified in their written submissions. Each party is responsible for the availability and costs of the witnesses and experts it has called*".

130. Article R55 of the Code is the procedural rule that governs the submissions of the Respondent in an appeal proceedings and provides that:

"*Within 20 days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS Court Office an answer containing:*

- *a statement of defence;*
- *any defence of lack of jurisdiction;*
- *any exhibits or specification of other evidence upon which the Respondent intends to rely;*
- *the name(s) of any witnesses, including a brief summary of their expected testimony;*
- *the witness statements, if any, shall be filed together with the answer, unless the President of the Panel decides otherwise;*
- *the names of any expert(s) it intends to call, stating their area of expertise and state any other evidentiary measure which it requests.*

[...]" (emphasis added.)

131. Furthermore, Article R56 of the Code provides:

"*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*" (emphasis added.)

132. The Panel observes that the names of the First Respondent's witnesses, Leonardo Renan Simões de Lacerda and Róbson Michael Signorini, were not mentioned at all in the First Respondent's Answer. The witness, Fabio Deivson Lopes, was mentioned in paragraph 35 of the Answer, but only in passing and not identified as a witness, and no summary

of his expected testimony or a witness statement was provided. Accordingly, the Panel finds that the First Respondent did not comply with the requirements of Article R55 of the Code insofar as he did not specify the names of any witnesses or include a brief summary of their expected testimony or include any witness statements when he filed his Answer.

133. The Panel recalls Article R56 of the Code which states that unless the Parties agree or the Panel orders otherwise on the basis of exceptional circumstances, "*the Parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after submission of the Appeal Brief and of the Answer.*"

134. Since the Appellant and Second Respondent object to the First Respondent's witnesses, it falls on the Panel to consider whether there are *exceptional circumstances* which permit the Appellant to supplement the information provided in his Answer with oral evidence from Leonardo Renan Simões de Lacerda, Róbson Michael Signorini and Fabio Deivson Lopes. The Panel observes that in its letter of 4 October 2023, the First Respondent did not provide any reason for omitting the names of witnesses or providing their evidence, at least in summary form, when he filed the Answer.

135. The Panel appreciates the relevance and importance of the oral testimony for the First Respondent to put its case, nevertheless, that importance needs to be balanced against the Appellant's and Second Respondent's procedural rights and the requirement for the timely production of witness evidence to enable preparation for a hearing. The Panel finds that there are no exceptional circumstances which permit the First Respondent to supplement the information provided in his Answer with oral evidence from Leonardo Renan Simões de Lacerda, Róbson Michael Signorini and Fabio Deivson Lopes. Accordingly, the Panel determines that the First Respondent's witness evidence is inadmissible and holds that it is excluded from the hearing on 28 November 2023.

136. The Panel's decision was notified to the Parties on 18 October 2023.

C. The Appellant's Application Pursuant to Article R56 of the Code to Admit Documents to the File After the Hearing

137. On 29 March 2024, just over four months after the hearing, the Appellant made an application under Article R56 of the Code to submit additional documents to the file for the Panel's consideration. The documents were copies in Portuguese and in English of a Brazilian Bankruptcy Court decision dated 16 February 2024, and an opinion of the Public Prosecutor's Office in Brazil dated 26 May 2023 that formed the basis of the Brazilian Bankruptcy Court decision. The Brazilian Bankruptcy Court decision confirmed the amount due to the Player under the judicial reorganisation process and confirmed that liability for payment of the amount lay with Cruzeiro EC.

138. The Appellant submitted the documents under cover of a four-page letter that contained several paragraphs of background context to the documents, including summarising information regarding the judicial reorganisation process during the period between 4 August 2022 and 26 May 2023. The Appellant submitted that the *exceptional*

circumstances justifying the late admission of the documents were two-fold, namely that:

- The documents had only been disclosed to the Appellant "*in the past weeks*"; and
- The documents simply confirmed "*statements and arguments already included in the Appeal Brief*" and to which the Appellant referred during the hearing.

139. Having considered the Appellant's letter and documents, and recalling Article R56 of the Code, the Panel determines that the Appellant's application does not disclose any exceptional circumstances that warrant putting the Respondents to the time and expense of commenting on the documents even were the Respondents to agree to their admission, which, in the Panel's view and considering the procedural history between the Parties, was unlikely.

140. While noting that the Brazilian Bankruptcy Court decision was rendered after the hearing and only on 16 February 2024, the Panel considers that the Appellant by its own admission acknowledges that the documents simply confirm "*statements and arguments already included in the Appeal Brief*" and referred to during the hearing, and therefore the documents do not provide any new information that was unavailable prior to the hearing and exceptionally warrants admitting the documents to the file at this late stage of the proceedings.

141. For these reasons, the Panel determines that the documents are inadmissible and rejects the Appellant's application.

142. The Panel's decision was notified to the Parties on 3 April 2024.

XII. MERITS

143. The Panel observes that it is undisputed that the Player is owed outstanding wages under the Termination Agreement and the Second Employment Contract and that a breach of Article 12bis of the FIFA RSTP occurred. The dispute arises over liability for the debt owed to the Player.

144. In light of the Parties' respective submissions, the Panel considers that the following issues require determination:

a) Did the DRC breach the principle of *ne ultra petita* and the Appellant's right to a fair hearing when considering the dispute at first instance?

b) Was the DRC competent to adjudicate the disputes under the Termination Agreement and the Second Employment Contract?

c) Is the Appellant liable as sporting successor for the debt owed by Cruzeiro EC?

d) Does the Player's claim breach the principles of *verwirkung* and *venire contra factum proprium*?

145. When dealing with each of these issues, the Panel recalls the principle established in Article 8 of the Swiss Civil Code and confirmed in CAS jurisprudence that:

> "*[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. CAS 2020/A/6796, para 98 and CAS 2009/A/1810 & 1811).

146. In the present case, the burden of proof rests on the Respondents to prove that the Appellant is liable for Cruzeiro EC's debt. All parties assume the burden of proving the facts upon which they rely to put their case.

147. Bearing the above in mind, the Panel turns to the first issue.

A. Did the DRC breach the principle of *ne ultra petita* and the Appellant's right to a fair hearing when considering the dispute at first instance?

148. The Appellant alleges that it was never afforded the opportunity to react to the allegation that it was the sporting successor of Cruzeiro SAF before the DRC. It submits that its right to a fair hearing was infringed, particularly because the DRC never provided a copy of the letter from the CBF which confirmed that Cruzeiro SAF was the sporting successor of Cruzeiro EC, and that the DRC violated the principle of *ne ultra petita* by amending the operative part of the Appealed Decision to record that the Appellant was the sporting successor of Cruzeiro EC, without any specific petition to that effect being included by the Player in his prayer for relief.

149. The Respondents reject the Appellant's submission. The First Respondent submits that its amended statement of claim was against the Appellant only and included the argument that Cruzeiro SAF was the sporting successor of Cruzeiro EC. Cruzeiro SAF participated in the proceedings and no material error occurred when the finding regarding sporting succession was inserted into the operative part of the Appealed Decision. The Second Respondent submits that the Appellant's procedural rights were not infringed and that even if they were (*quod non*), the Panel's *de novo* power of review outlined in Article R57 of the Code cures any procedural failings.

150. From the information available to the Panel, it is evident that the Appellant was the only Respondent identified on the Player's amended statement of claim, that the amended statement of claim provided a detailed explanation of the Appellant's status as the sporting successor of Cruzeiro EC, and that the Appellant participated in the DRC proceedings, and had the opportunity, across two rounds of submissions, to refute the claim that it was a sporting successor of Cruzeiro EC. During the hearing, when pressed on the issue of why it did not inform the DRC of the judicial reorganisation proceedings or challenge the sporting successor allegation, the Appellant admitted that at the time of

the DRC proceedings, there was confusion within the organisation and that it was dealing with challenges presented by the new SAF Law and the judicial reorganisation process. The Panel accepts the Second Respondent's submission that, had the Appellant challenged the issue before the DRC, the DRC would have provided the letter received from the CBF which confirmed Cruzeiro SAF's status as sporting successor, and would have made a decision on the sporting successor issue with knowledge of all the facts.

151. In the Panel's view, the failure to challenge the allegation of sporting succession rests entirely on the Appellant and it rejects any suggestion that the Appellant's right to a fair hearing was breached when it had the opportunity to put its case on the issue of sporting succession and failed to take it because of its own internal disorganisation.

152. Accordingly, the Panel rejects outright the claim that the DRC proceedings infringed the Appellant's right to a fair hearing.

153. The Panel recalls the principle of *ne ultra petita,* which is found in Article 58 of the Swiss Code of Civil Procedure and confirmed in CAS jurisprudence, and prevents an adjudicating body from granting more than the parties have requested in their requests for relief (*cf*: CAS 2016/A/4384, para 120; CAS 2014/A/3723, para 76; CAS 2008/A/1644, para 22).

154. The Panel observes that the First Respondent did not request a declaration that the Appellant was the sporting successor of Cruzeiro EC in the prayers for relief of the amended statement of claim that he submitted to the DRC. Nevertheless, the First Respondent argued the claim before the DRC and, on the basis that sporting succession was not disputed, the Appellant not having challenged the issue, the DRC made a finding that the Appellant was the sporting successor of Cruzeiro EC (Appealed Decision, paras 70-71). The Panel considers that by recording the finding in the operative part of the Appealed Decision, the DRC was not ruling *ultra petita*, but confirming a finding upon which the Appellant's liability was based.

155. The Panel notes that the original operative part of the Appealed Decision was notified to the Appellant and the Player on 28 November 2022 and did not include the finding that the Appellant was the sporting successor of Cruzeiro EC. Instead, it was subsequently inserted by the DRC relying on Article 15.8 of the Procedural Rules, which empowers the DRC to correct *obvious mistakes* and *obvious procedural errors* that are discovered after a decision is rendered, *ex offico* or following an application.

156. The Panel notes that the Appellant challenges the insertion of the finding on the basis of *ne ultra petita* but did not specifically challenge the exercise of the DRC's power under Article 15.8 of the Procedural Rules, *i.e.*, the Appellant did not challenge whether omitting to include the finding in the original operative award was an *obvious mistake* or *obvious procedural error* which justified the exercise of the DRC's power under Article 15.8 of the Procedural Rules. Accordingly, the Panel considers that it is not required to address the issue of whether the amendment was within the DRC's exercise of power under Article 15.8 of the Procedural Rules.

157. The Panel finds that the Appellant's allegations of procedural failings by the DRC, are in any event, cured by the present proceedings. The Panel observes that its duty pursuant to Article R57 of the Code is to decide the case *de novo,* which means that any denial of due process at the lower-level proceedings (if any) is cured by the CAS proceedings, a principle that is well-established in CAS jurisprudence (*cf.* CAS 2016/A/4648, paras 74; CAS 2012/A/2913, para 87; CAS 2009/A/1880-1881 paras 18-23; and cited cases).

158. Accordingly, for the foregoing reasons, the Panel dismisses the Appellant's claims that the DRC breached the Appellant's right to a fair hearing and the principle of *ne ultra petita.*

B. Was the DRC competent to adjudicate on the disputes arising under the Termination Agreement and the Second Employment Contract?

159. The Appellant submits that the DRC erred in assuming jurisdiction over the disputes arising under the Termination Agreement and the Second Employment Contract, when Cruzeiro EC and the Player had agreed pursuant to clause 11.3 of the Second Employment Contract to submit disputes to the exclusive jurisdiction of the Brazilian NDRC, which, it further submits, is an independent and impartial dispute resolution tribunal that complies with the minimum standards prescribed in FIFA regulations. The Respondents assert that the Brazilian NDRC was not a competent forum in which to adjudicate the dispute and submit that the FIFA DRC correctly assumed jurisdiction.

160. The Panel observes that the issue of the DRC's competence to adjudicate the entire dispute arises because the outstanding wage payments due to the Player are owed pursuant to the Second Employment Contract and the Termination Agreement and the agreements contain different dispute resolution clauses.

161. The Second Employment Contract was signed on 10 August 2020 and includes clause 11.3 which reserves disputes to the exclusive jurisdiction of the Brazilian NDRC as follows:

> "*11.3 The Parties, by mutual agreement and by free expression of their will, expressly elect the venue of the [Brazilian NDRC] as the only competent forum to process and judge any dispute arising exclusively from the present Instrument, to the detriment of any other forum, however privileged it may be, based on Article 3, item II of the [Brazilian NDRC] Regulations.*"

162. The Termination Agreement was signed later, on 28 August 2020, and contains a clause that is the same as that contained in the First Employment Agreement and reserves the dispute to the jurisdiction of the FIFA DRC as follows:

> "*4.1 The parties elect the venue of the Dispute Resolution Chamber/FIFA to settle any dispute that may arise under this contract, whether for collection of fines or fulfilment of obligations, expressly waiving any other jurisdiction, however privileged it may be.*"

163. Although initially arguing that the First Employment Contract – which was terminated by the Termination Agreement – and the Second Employment were to be considered "*as a whole*", with the effect that the prevailing document was the Second Employment Contract and that jurisdiction fell to the Brazilian NDRC to adjudicate the entire dispute, the Appellant withdrew this argument at the hearing. It now relies on its alternative submission that the DRC ought to have declined to consider the claim of BRL 1,673,041.04 arising under the Second Employment Contract because the parties agreed to submit the dispute to the Brazilian NDRC and it maintains the argument that the Brazilian NDRC is an independent national dispute resolution chamber.

164. On the basis that the DRC's competence is not disputed in relation to the unpaid wages owed to the Player under the Termination Agreement, the Panel finds that the DRC was correct to assume jurisdiction in relation to the dispute arising under the Termination Agreement pursuant to clause 4.1 of the Termination Agreement. The issue is whether the DRC was also competent to consider the amounts owed under the Second Employment Contract when clause 11.3 of the Agreement reserved jurisdiction to adjudicate disputes to the Brazilian NDRC.

165. Article 22 of the FIFA RSTP provides that:

> "*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:*
> ...
>
> *b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;*
>
> *[...].*"

166. Article 23 of the FIFA RSTP provides that:

> "*1. The Dispute Resolution Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 a), b), d), e), and f).*
>
> ...
>
> *3. The Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.*
>
> *[...].*"

167. The Panel recalls that pursuant to Article 22.1(b) of the FIFA RSTP, instead of availing themselves of FIFA's dispute resolution mechanism, a club and a player may submit an employment-related dispute to a civil court or may agree in writing for the dispute to be decided by an independent arbitration tribunal. The Panel now considers whether these requirements are fulfilled to remove the dispute under the Second Employment Contract from the DRC's jurisdiction.

i) Agreement in writing

168. The Panel recalls the Player's oral testimony that he was assisted in the negotiation for the Second Employment Contract by an intermediary, that he signed the Second Employment Contract, but could not remember the dispute resolution clause or reading the Second Employment Contract, as he normally does, and that he did not accept the dispute resolution clause in the Second Contract. The Player explained that he was unaware that the Brazilian NDRC was the forum in which to bring a dispute regarding the Second Employment Contract and stated that he always thought that "*FIFA*" was the appropriate forum to resolve the dispute.

169. The Panel observes that the Player was represented by an intermediary and not a lawyer during the Second Employment Contract negotiation, and accepts the Player's position that he thought "*FIFA*" was the appropriate adjudicatory body, presumably because he had signed contracts in the past as an international player that referred to the FIFA dispute resolution mechanism as the appropriate forum for resolving disputes. Nevertheless, the Player signed the Second Employment Contract thereby demonstrating knowledge of its contents, and since the Panel considers that the wording of Clause 11.3 of the Second Employment Contract is clear and unambiguous and demonstrates the intention of Cruzeiro EC and the Player to submit disputes under the Second Employment Contract to the Brazilian NDRC, the Panel finds that there was an agreement in writing to submit disputes under the Second Employment Contract to the Brazilian NDRC.

170. The issue now turns to whether, for the purposes of Article 22.1(b) of the FIFA RSTP, the Brazilian NDRC is an independent tribunal that guarantees fair proceedings and respects the principle of equal representation of players and clubs.

ii) The status of the Brazilian NDRC as an independent tribunal

171. As a preliminary matter, the Panel observes that at the time of writing this Award, FIFA issued new regulations and guidance regarding the establishment of a national dispute resolution chamber in the form of the National Dispute Resolution Chamber Recognition Principles (February 2024), including revised national dispute resolution chamber regulations, and the Explanatory Notes on the New Regulatory Framework for National Dispute Resolution Chambers (January 2024). The Panel emphasises that in reaching its decision in the present dispute regarding the status of the Brazilian NDRC as an independent tribunal, it has taken into consideration only the guidance that existed at the relevant time, namely FIFA Circular no. 1010 and the FIFA NDRC Regulations, and not the new regulations and guidance issued in January 2024.

172. The Appellant submits that the Brazilian NDRC complies with the minimum procedural standards prescribed in FIFA Circular no. 1010 and the guidance provided in the FIFA NDRC Regulations and is an independent tribunal for the purposes of Article 22.1(b) of the FIFA RSTP. Despite disputing the Brazilian NDRC's independence in his Answer, at the hearing, the First Respondent confirmed that he did not dispute the status of the Brazilian NDRC as an independent tribunal. The Second Respondent rejects the Appellant's submission. The Second Respondent's position is that the Brazilian NDRC is not an independent tribunal because it does not comply with the principle of parity when considering the representation of players, clubs and federations in the Brazilian NDRC's membership; it does not guarantee equal influence over the appointment of arbitrators between clubs, players and the CBF; and does not guarantee that the chairperson and the deputy chairperson are chosen by the consensus of the player representatives and club representatives. The Second Respondent also submits that the cost of lodging a claim impedes access to justice for football stakeholders.

173. The Panel recalls that the minimum criteria that must be satisfied in order for a tribunal to be considered *independent* under Article 22.1(b) of the FIFA RSTP are prescribed in guidelines issued by FIFA, specifically FIFA Circular no. 1010 and the FIFA NDRC Regulations. Neither of these documents are considered binding on national associations that wish to establish a dispute resolution chamber (*cf*: CAS 2021/A/8016 and CAS 2020/A/6830, paras 159 - 160) and the Panel accepts that national associations are free to implement additional standards or to establish an independent tribunal in a different manner to that prescribed in the FIFA guidance. The independence of a national dispute resolution chamber in any particular case will turn on the facts. The Panel considers, however, that compliance with the guidance will satisfy the definition of independent tribunal under Article 22.1(b) of the FIFA RSTP.

174. FIFA Circular no. 1010 describes the minimum procedural criteria or standards that should be observed to establish an independent arbitration tribunal at a national level. These standards are: the principle of parity, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. The Brazilian NDRC's compliance with the principle of parity, the right to an independent and impartial tribunal and the principle of a fair hearing are at issue in this dispute. It is useful, therefore, to highlight further the requirements under FIFA Circular no. 1010 in respect of these three criteria:

"***Principle of parity when constituting the arbitration tribunal***

The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appointed the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitration list.

Right to an independent and impartial tribunal

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

Principle of a fair hearing

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert."

175. The following FIFA Standard NDRC Regulations are also relevant to this dispute:

"*Article 3(1) Composition*

The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate:

a) a chairman and a deputy chairman chosen by consensus by the player and club representatives from a list of at least five persons drawn up by the association's executive committee;

[..]"

"*Article 32 Procedural costs*

Proceedings before the NDRC are free of charge. They shall not incur any procedural costs except where provided for under article 21 paragraph 5."

176. The minimum criteria provided in FIFA Circular 1010 are drawn from widely accepted standards established by international tribunals to ensure the procedural fairness of dispute resolution proceedings and to guarantee the parties' right to a fair hearing. Of particular relevance, is the case of *Ali Riza and Others v Turkey* (2021) 72 EHRR 25 in which the European Court of Human Rights (the "ECtHR") considered an allegation that the arbitration committee established by the Turkish Football Federation (the "TFF") to adjudicate football disputes at a national level was not an independent and impartial tribunal and infringed Mr Riza's right to a fair hearing under Article 6 of the European Convention on Human Rights (the "ECHR") in an employment-related dispute that Mr Riza had against his former club. The ECtHR reviewed the TFF's governance framework, the formation of the arbitration committee and the appointment of members to the arbitration committee, to consider whether there were sufficient procedural safeguards in place to permit the arbitration committee's members to reach a decision independently. It concluded that the arbitration committee was not an independent and impartial tribunal because, amongst other factors, in disputes between a player and a club, the players and clubs did not have equal influence in the arbitration committee's composition. This arose primarily because the arbitration committee's

members were appointed by the TFF Board of Directors, which in turn was appointed by the TFF Congress, itself composed primarily of interests that represented the clubs. The ECtHR considered that it was arguable that the TFF arbitration committee had an implicit bias towards clubs which raised reasonable doubts in the absence of procedural safeguards, that the arbitration committee was not independent and impartial (*Ali Riza and Others v Turkey* (2021) 72 EHRR 25, paras 210-223).

177. The ECtHR case law also emphasises the importance of the appearance of a tribunal's independence and impartiality so that justice is "*seen to be done*" and that confidence is inspired in those who are subject to the adjudicatory body's jurisdiction (*cf. Findlay v The United Kingdom,* § 73, no. 22107/94, Reports 1997-I, para 73; *Ramljak v Croatia*, § 78, no.5856/13 ECHR, para 78).

178. The Panel considers that it is indirectly bound to consider the decisions of the ECtHR under Article 6(1) of the ECHR in relation to the definition of an independent tribunal under Article 22.1(b) of the FIFA RSTP (*cf.* CAS 2020/O/6689, para 810; CAS 2011/A/2384 & 2386, paras 17 *et seq*; CAS 2010/A/2311 & 2312, paras 6.12 *et seq*)

179. Turning now to a consideration of the independence of the Brazilian NDRC.

180. The Panel observes that the CBF is the national association for football in Brazil and a member of FIFA. At the hearing and in the *amicus curiae* brief, the CBF emphasised that it is responsible for managing and representing the interests of Brazilian football as a whole. Its governance structure is underpinned by the CBF Statutes and sets out the CBF's statutory mission of protecting the interests of all Brazilian football stakeholders – not solely the clubs – which is reflected in the way that it organises its own affairs (Articles 5, 12 and 96 of the CBF Statutes). The CBF's direct members are the 27 state federations for football, which are responsible for protecting the interests of all football stakeholders within their respective territories (Article 14 of the CBF Statutes).

181. Brazilian football clubs are affiliated to one of the 27 state football federations. Brazilian football clubs are also present in committees that are recognised in the CBF Statutes *e.g.* the Competition Technical Committee (Article 96 of the CBF Statutes) and the Commission of Clubs, which serves a consultative function and represents the clubs' interests to the CBF (Article 103 of the CBF Statutes). A players' union participates in the Competition Technical Committee and there is a players' committee that is not recognised in the CBF Statutes but was established by the CBF several years ago and apparently serves a consultative function similar to the Commission of Clubs. The CBF regularly consults with interested parties *e.g.* when revising regulations, including the Brazilian NDRC Regulations.

182. The Brazilian NDRC is divided into four divisions: the Agents' Division, the Labour Division, the Commercial Division, and the Regulatory Division, each of which has its own jurisdiction and is assisted by a Secretariat that administers the Brazilian NDRC, undertakes a case management function and promotes the Brazilian NDRC's services to football stakeholders. Article 5 of the Brazilian NDRC Regulations establishes the appointment mechanism for the Brazilian NDRC. Prior to 2022, there were ten members appointed to adjudicate disputes in the Brazilian NDRC as follows:

> *"Art 5 - The [NDRC] is composed of 10 members, as follows:*
>
> *I-two nominated by the CBF, one of whom shall be President;*
>
> *II - two nominated by the clubs through a union entity with national coverage or, in the absence thereof, through a class entity with national coverage;*
>
> *III - two nominated by the athletes through a union entity with national coverage or, in the absence thereof, through a class entity with national coverage;*
>
> *IV - two nominated by registered intermediaries, through a national union or, in the absence thereof, through a class entity with national coverage; and*
>
> *V - two nominated by the coaches and members of the technical commission, through a national union or, in the absence thereof, through a class entity with national coverage."*

183. Since September 2022, when new regulations came into effect, the number of members was increased to 12, with the state federations now entitled to nominate two members.

184. The nominees for the Brazilian NDRC must have "*adequate legal training and experience, as well as recognised competence, mastery or performance in the area of sports law, national or international*" (Article 7 of the Brazilian NDRC Regulations). The nominations are made by representative organisations: in the case of clubs, the nomination is made by the union representing clubs; and in the case of the players, the nomination is made by the national players federation which brings together player unions from various states in Brazil.

185. The Panel notes that the CBF President selects and appoints the CBF nominees, however, there was no evidence before the Panel of the process by which the CBF President selects CBF nominees. The Panel was informed that the CBF's Technical Committee has no direct influence in the selection process and there was no evidence that showed the involvement of the CBF Club Commission or the CBF players' committee. Since September 2022, the state federations have been entitled to nominate two representatives for the Brazilian NDRC and it was explained to the Panel that the state federations participate in a voting process to select their nominees and that each state will have a different process. The membership nominations for all categories are sent to the CBF by the representative organisations, accompanied by a CV that outlines the person's experience and the CBF President appoints the nominees as members of the Brazilian NDRC through signing a form that confirms their mandate. The appointment process is an administrative act only.

186. Members of the Brazilian NDRC must declare that they will perform their duties independently and impartially and in accordance with the Brazilian NDRC Regulations; they must not be involved in the CBF or any sports administration entities affiliated to it or to a club, amongst others, and may not act in proceedings before the NDRC (Article 5.3 – 5.5 of the Brazilian NDRC Regulations). A member appointed to a case must declare circumstances that give rise to reasonable doubt as to their impartiality or

independence (Article 9 of the Brazilian NDRC Regulations) and a party is able to challenge or request the removal of a member if there are doubts as to a member's impartiality (Article 10 of the Brazilian NDRC Regulations).

187. The President of the Brazilian NDRC is appointed by the CBF as one of its two nominated members (Article 5.3 of the Brazilian NDRC Regulations). The CBF confirmed that there is "*no specific reflection of the interests of athlete or clubs in this appointment*" and there was no other evidence before the Panel of agreement between the players and the clubs to the President of the Brazilian NDRC. The CBF has consistently chosen lawyers with considerable experience in the field and no direct connection to any football stakeholders to fill the role. The President of the Brazilian NDRC does not sit on panels in the Labour Division and has no influence on the outcome of cases in the Labour Division. The President's role is to receive a claim, distribute it to the relevant division and to authorise an extension of time for publication of a decision. The President also decides applications for emergency measures before a panel is constituted. The cases assigned to the Labour Division are decided by a panel of three Brazilian NDRC members and consists of one member appointed by the players, one member appointed by the clubs and one member nominated by the CBF (Article 8.2(III) of the Brazilian NDRC Regulations). Appeals are made to the CBMA.

188. To lodge a claim before the Brazilian NDRC, a party must pay a fee that is equivalent to 2% of the value of the case and the fee is capped at BRL 20,000 (now BRL 50,000 under the new Costs Rules). The cost may be paid in instalments. The cost is comparable to the 2% fee charged to lodge a claim in the Labour Court in Brazil. A player is able to seek an exemption from payment of the charges if he opts for the Labour Court and is able to demonstrate that he is unable to pay the fee. The CBMA imposes fees based on the value of the claim; the minimum cost of an arbitration before the CBMA is BRL 31,000 which applies in cases up to the value of BRL 500,000.

189. Having considered the Parties' submissions and based on the information available to the Panel, including the *amicus curiae* brief, the Brazilian NDRC Regulations and the CBF submission at the hearing, the Panel concludes that the Brazilian NDRC is not an independent tribunal for the purposes of Article 22.1(b) of the FIFA RSTP in relation to employment-related disputes between a club and a player for the following reasons:

- The Brazilian NDRC does not fulfil the principle of parity because in a dispute before the Labour Division between a player and a club, the players and clubs do not have equal influence over the panel composition. The third member of the panel is a member nominated and appointed by the CBF President. The Panel accepts that the clubs are not direct members of the CBF, but they are members of the CBF affiliates, the state football federations, and while the interests of the CBF, the state football federation and the clubs may not always align, the clubs by virtue of their indirect membership to the CBF are in a stronger position than the players to influence the nominations made by the CBF President for the CBF appointments to the Brazilian NDRC (and since September 2022, in relation to the state federation nominations). The Panel considers that it is arguable, therefore, that because of the appointment process, each individual panel in the Labour Division in the Brazilian NDRC has an implicit bias towards clubs and cannot be regarded as objectively

independent when compared to the entities that are likely to be a party to an employment-related dispute.

- There was no evidence before the Panel that the appointment of the CBF nominees are agreed by the consensus of the clubs' representatives and the players' representatives. There was also no evidence that the appointment of the Brazilian NDRC President was in accordance with the FIFA NDRC Standard Regulations and no evidence of the method by which the CBF President selects individuals for the CBF nomination to the Brazilian NDRC and from which the Panel could ascertain whether the CBF's method of nomination satisfies the principle of parity.

- The Panel notes the statistics provided by the CBF regarding the success of players in employment-related claims before the Labour Division. The statistics arise from a study carried out by the NDRC in March 2023 and show that in 54 cases brought by athletes against clubs in recent years, the athletes were:

  "*[Totally] or practically totally successful in their claims in around 93% of them. In another 5% of the cases, the athletes were mostly successful, having achieved more than half of what they wanted when they filed their claims. In only one case was the athlete partially successful in less than half of this claim. In addition, only one case was judged unfounded [.]*" (*Amicus Curiae* Brief, para 88).

- The CBF also informed the Panel that there had never been an instance of a Brazilian NDRC decision being overturned by the Brazilian courts or a Brazilian NDRC decision overturned by the CBMA for an alleged violation of the principles of: parity of the arbitral tribunal; impartiality and independence of the arbitration panel; due process; right to contentious proceedings and the right to be heard; and equal treatment of the parties.

- The Panel acknowledges that the statistics relating to the case outcomes of employment-related disputes heard in the Labour Division, and to a lesser extent the appeal outcomes, suggest the absence of actual bias towards employers across the period of time to which the statistics refer. The Panel was not provided with a copy of the report or informed of the methodology used to produce the statistics from which it could evaluate the study and draw its own conclusions regarding the presence of actual bias. Be it as it may, and even assuming that the statistics reflect the real situation, *i.e.*, that there is no bias in the operation and adjudication of the Brazilian NDRC, this Panel is bound by the principles and standards applied by FIFA in assessing the structure and functioning of an NDRC. As it presently stands, the *perception of bias* embodied in the requirements of Article 22.1(b) of the FIFA RSTP and Circular 1010, still remains, and the Brazilian NDRC may not be regarded as independent for the purposes of Article 22.1(b) insofar as employment-related disputes between clubs and players are concerned.

190. On the basis that the Panel thus finds that the Brazilian NDRC is not an independent tribunal for the purposes of Article 22.1(b) of the FIFA RSTP, it does not consider it necessary to examine the issue regarding the Brazilian NDRC's costs, although it notes

that on the evidence submitted, it would likely not have been persuaded that the costs of filing a claim in the Brazilian NDRC impede access to justice.

191. Accordingly, for the foregoing reasons, the Panel determines that the DRC was competent to hear the dispute regarding unpaid wages owed to the Player under the Termination Agreement and the Second Employment Contract.

192. As a final point to note, the Panel is grateful for the CBF's helpful contribution to these proceedings. The Panel's conclusions regarding the independence of the Brazilian NDRC are not binding on the CBF because the CBF is not a party to these proceedings. The Panel also emphasises that its comments are not directed to any one individual in the CBF or the Brazilian NDRC, and are not to be taken as impugning the subjective impartiality of any of the Brazilian NDRC members, which was simply not at issue before the Panel, but are directed to the structural flaw that the Panel has concluded exists in the Brazilian NDRC's framework *vis-à-vis* the FIFA requirements and which, in the Panel's view, militates against a finding that the Brazilian NDRC is an independent tribunal insofar as employment-related disputes between a player and a club are concerned.

C. Is the Appellant liable as sporting successor for the debt owed by Cruzeiro EC?

193. The Appellant disputes that it is the sporting successor of Cruzeiro EC and therefore liable for the unpaid wages owed to the Player. It submits that Cruzeiro SAF is not the sporting successor of Cruzeiro EC and places significant weight on the fact that the transfer of Cruzeiro EC was not undertaken with the intention of avoiding payments to creditors, and further that the application of the SAF Law and Brazilian bankruptcy law limit its liability in the present dispute. The Respondents reject the Appellant's submission and state that the facts clearly indicate that the Appellant is the sporting successor of Cruzeiro EC and therefore liable for the Player's debt.

194. The Panel recalls that the concept of sporting succession developed through FIFA practice and CAS jurisprudence before being codified in FIFA regulations in 2019. It derives from *lex sportiva* and applies to determine liability in relevant claims brought for resolution under the FIFA dispute resolution mechanism; it also applies in the FIFA disciplinary jurisdiction to enforce a decision of a financial nature.

195. At the time it was codified in FIFA regulations in the 2019 edition of the FIFA Disciplinary Code, FIFA issued Circular No 1681 of 11 July 2019, which emphasised its commitment to enforcing financial decisions against errant clubs, although in the Panel's view, the statement does not expressly refer to the purpose of the sporting succession concept but rather communicates FIFA's intention to collect payments off sporting successors thereby ensuring that creditors are paid:

> "*Financial justice: at the core of these changes stands FIFA's commitment to enforce both financial and non-financial decisions and agreements rendered by the Dispute Resolution Chamber and the Players' Status Committee, as the natural forums of disputes between clubs, players, associations, coaches and other football stakeholders, through the Disciplinary Committee.*

[...]

- *FIFA will act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities towards other clubs, players, managers, etc.*"

196. Instead, the purpose behind the sporting succession concept has been expressed in CAS jurisprudence and academic commentary and is summarised in the treatise CONTRERAS/SAMARTH/ALAMILLA, *Sporting Succession in Football*, (Salerno, Italy 2022), pp 56–64, as being to promote contractual stability (CAS 2020/A/6831, para 116), to protect competition and/or a level playing field (CAS 2020/A/6831, para 117), to prevent abusive or fraudulent conduct (CAS 2020/A/7902, paras 76-77), and to protect creditors from non-transparent asset transfers (Professor Dr Ulrich Haas, 'The sporting successor and insolvency in football', Football Law Annual Review 2022).

197. Article 25.1 of the FIFA RSTP provides:

"*The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued by the Football Tribunal. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition.*"

198. A similar provision exists in Article 15 of the 2019 edition FIFA Disciplinary Code (now Article 23 of the 2023 edition of the FIFA Disciplinary Code) for the purposes of enforcing a financial decision against a club, although in the present case it is not FIFA's disciplinary jurisdiction with which the Panel is concerned.

199. The Panel recalls that the factors listed in Article 25.1 of the FIFA RSTP to determine whether a club is a sporting successor are not exhaustive and the issue is decided on a case-by-case basis. A common theme in the CAS jurisprudence is that, "*a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operate it*" (CAS 2013/A/3425, para 139). Therefore, whether a new club is operated by a different legal entity to the old club, has no bearing on whether a sporting succession has occurred for the purposes of Article 25.1 of the FIFA RSTP.

200. The Panel acknowledges that CAS jurisprudence outlines different approaches to the factors that are determinative of sporting succession. On the one hand, cases such as CAS 2020/A/6884 and CAS 2020/A/6941 place emphasis on the objective factors, particularly those which in the eyes of the public show that the identity of the sporting entity remains the same *e.g.* name, uniform, stadium, amongst others. On the other hand, there is a line of jurisprudence that emphasises that objective factors and subjective factors, *e.g.* an intent to defraud creditors, are relevant to determining whether a club is a sporting successor (*cf:* CAS 2020/A/7902 and CAS 2020/A/7183).

201. In the present case, the Panel prefers an assessment that attaches weight to the objective factors and particularly those which, in the eyes of the public, retain the club's sporting

identity. In the Panel's view, this analysis is consistent with the established jurisprudence that a club transcends the legal entities that operate it and facilitates the many purposes which the sporting succession concept serves. The subjective intention behind a sporting succession, if in fact it is a relevant consideration at all, is in the Panel's view more relevant to a consideration of the consequences that follow from a finding that the new entity is a sporting successor, since there is CAS jurisprudence which confirms that in circumstances of national insolvency proceedings, liability for the total debt does not automatically attach to a sporting successor, a point that is discussed further below.

202. From the available evidence, and comparing Cruzeiro EC with Cruzeiro SAF, the Panel observes that Cruzeiro SAF:

- retains "Cruzeiro" in the club name;
- plays in the same team colours;
- uses the former club's mascot;
- uses the same brand and symbol;
- uses the same social media and internet domain;
- shares the same foundation date (2 January 1921) and history, including sporting titles;
- has the same anthem;
- has retained many of Cruzeiro EC's players;
- plays in the same stadium; and
- acquired the right to compete in the same level of competition as Cruzeiro EC.

203. The Panel considers that these factors clearly demonstrate that Cruzeiro SAF continues to trade on the identity of Cruzeiro EC and has not distanced itself sufficiently from Cruzeiro EC to be viewed as a different sporting entity, irrespective of the legal form that it now assumes or the intention behind the succession. Accordingly, the Panel rejects the Appellant's submission and accepts the Respondents' arguments that Cruzeiro SAF is the sporting successor of Cruzeiro EC.

i) Consequences of a finding of sporting successor

204. Article 25.1 of the FIFA RSTP states that a sporting successor "*shall be considered the debtor*" and therefore liable for the debts of the former entity. It does not specify the level of liability, although in keeping with the various regulatory purposes of the rule, its intended application is to ensure that the sporting successor is liable for the total debt of the former club. Ordinarily, it may be that the application of the sporting successor concept in this manner does not come into conflict with national law and liability for

the full amount attaches to a sporting successor. However, when insolvency proceedings arise at a national level, the application of the regulatory rule in this manner may come into conflict with a national law which itself limits the liability of the insolvent club or a new entity that has taken its place. Article 24.3(b) of the FIFA RSTP anticipates such a conflict in the specific situation of the consequences that may be imposed for failure to pay a debt ordered to be paid by the Football Tribunal, and provides that a registration ban will not be imposed if a debtor club is "*subject to an insolvency-related event pursuant to the relevant national law and the debtor club is legally unable to comply with an order*". The FIFA RSTP does not specify a method to resolve the conflict arising from the application of Article 25.1 of the FIFA RSTP and national insolvency law.

205. The Panel recalls CAS 2020/A/6831 which establishes that in circumstances of a conflict between national insolvency law and the concept of sporting successor, a CAS Panel is required to assess the conflict and determine the level of liability of the sporting successor on a case-by-case basis (*cf*: CAS 2020/A/6831, para 133). Although the Panel in CAS 2020/A/6831 considered the conflict in the context of disciplinary proceedings under Article 15.4 of the 2019 edition of the FIFA Disciplinary Code, the present Panel considers that the principle applies equally to resolving a conflict between national law and the sporting successor concept as applied under Article 25.1 of the FIFA RSTP because the concepts are the same. The assessment requires a consideration of the effects of national insolvency law, including the creditor's due diligence, and any other relevant factor, in this case the SAF Law, to balance the interests and determine the level of liability for the sporting successor under Article 25.1 of the FIFA RSTP and within the aegis of the FIFA dispute resolution mechanism. The effects of national insolvency law will be a matter of proof in each case.

206. Although not directly subject to insolvency proceedings under Brazilian national law, the Appellant submits that it should not be liable for the debt because it is not the sporting successor of Cruzeiro EC, a point already rejected by the Panel, and that it should not be liable because of the application or the effect of Brazilian insolvency law and the SAF law, an argument to which the Panel now turns.

207. There was no oral witness testimony before the Panel on the effects of Brazilian insolvency law or the SAF Law. The Panel's understanding of the national law context in the present dispute arises from the erudite submissions of the Appellant's legal representatives and a legal opinion from Professor Carlos Eduardo Ambiel PhD and Professor José Francisco Cimino Manssur dated August 2022 titled *Football Corporations (SAF) and Limitations of Liability for Labor Obligations – LAW 14.193/2021* ("the Legal Opinion"); none of which were challenged by the Respondents.

208. According to the evidence before the Panel, Brazilian football clubs have traditionally organised as not-for-profit civil associations and their legal form has made them less attractive to third party investors. It is disputed as to whether Brazilian bankruptcy law permits a not-for-profit association to utilise insolvency procedures for the purpose of restructuring their debts. It is also widely known in Brazil that professional football clubs have struggled financially across a number of years, accruing significant debt, and that their solvency could be improved if third party investment were available.

209. In 2021, Brazilian Federal Law n. 14.193/2021, which is otherwise known as the "SAF Law", was enacted to permit professional football clubs to organise as a new type of business entity with the title in Portuguese of *Sociedade Anônima do Futebol* or "SAF" (in English, "Football Corporation"). The purpose of the SAF Law was explained in the Legal Opinion as being to encourage third party investment, improve governance mechanisms in football clubs, and to limit liability for pre-existing debts, while at the same time introducing mechanisms for the payment of these debts (Legal Opinion, p.18). It is optional and not mandatory for football clubs in Brazil to incorporate as a SAF, although the legislation is intended to incentivise professional football clubs to "*transfer the practice of professional football to business companies*" (Legal Opinion, p.22).

210. The SAF Law establishes three forms of constitution of a SAF (Article 2 of the SAF Law) and contains provisions that provide for specific governance rules for the SAF, the implementation of a special tax regime, limitations on the SAF's liability for the obligations of the old club, and an obligation on the SAF to transfer part of it revenues to the old club for the purposes of debt repayment. Specifically, Article 9 of the SAF Law provides that a SAF is not liable for the debts of the old club before or after the SAF's date of incorporation, or in the case of an asset transfer, is not liable for the debts of the old club assumed prior to the constitution of the SAF, except if related to football activities and transferred to the SAF pursuant to Article 2.II of the SAF Law.

211. In order to protect creditors, specifically labour creditors, Article 10 of the SAF Law obliges the SAF in certain circumstances to transfer revenue to the old club for the purposes of debt repayment. The SAF's liability for the old club's debts that arise prior to the SAF's incorporation is an indirect liability and the old club always remains primarily liable to pay its creditors (Legal Opinion, p. 29). Article 11 of the SAF Law attaches personal liability to the SAF's managers if the payments are not made to the old club, and attaches personal liability to the old club's president or managing partners if the payments to creditors are not made. Article 13 of the SAF Law permits a civil association in football to utilise a central execution regime, provision for which is made in the SAF Law, or to use judicial or out-of-court reorganisation to pay its debts.

212. The Panel accepts that pursuant to Article 2.II of the SAF Law, Cruzeiro EC incorporated the Appellant, a new business entity, and transferred the assets of its football department to Cruzeiro SAF. Provisions in the SAF Law facilitated the transfer, including the transfer of employment contracts for professional players and intellectual property rights and other assets attached to Cruzeiro EC's football department. No specific date was provided for the asset transfer but the Panel was informed that the transfer of playing contracts occurred throughout February 2022. The Panel observes that the Player's contract did not transfer to Cruzeiro SAF because the Second Employment Contract terminated prior to the transfer; the Termination Agreement was also not a liability that transferred. The debt owed to the Player under the Second Employment Contract and the Termination Agreement is a pre-existing debt of Cruzeiro EC for which the Appellant is not liable pursuant to the provisions of the SAF Law.

213. In view of the SAF Law's provisions that permit civil associations in football to utilise insolvency procedures, in July 2022, Cruzeiro EC applied for judicial reorganisation

under Brazilian bankruptcy law. The Panel observes that Cruzeiro EC then entered into negotiations with its creditors to agree the Plan, that the Appellant issued a statement confirming that it would provide the financial assistance required to enable Cruzeiro EC to meet its obligations to creditors under the Plan, and that the Plan was subsequently approved at a general meeting of creditors in June 2023. The Panel accepts the Player's evidence that he voted against the Plan because he disagreed with the amount of BRL 4,865,923.34 recorded as the credit due to him as it was lower than Cruzeiro EC owed. The Panel was not provided with a copy of the Plan to confirm the final amount indicated as payable to the Player. Nevertheless, based on other documentary evidence and the evidence submitted at the hearing, the Panel is satisfied that the amount due under the Plan is higher than the amount directed to be paid by the DRC (the DRC not having directed payment of future amounts that were owed pursuant to a payment schedule in the Termination Agreement at the time of its decision) and lower than the total amount due to the Player under the Second Employment Contract and the Termination Agreement. Despite his objection to the Plan, the Panel understands that the Player is still a preferred creditor and will receive the full amount recorded as owed in accordance with the payment schedule agreed as part of the Plan.

214. The Appellant alleges that the Player did not exercise due diligence during the judicial reorganisation process and that the Player is seeking to recover his debt twice. The Panel recalls that the requirement to exercise due diligence in national insolvency proceedings is a consideration when determining the liability of a sporting successor (CAS 2020/A/6941, paras 88–95; CAS 2019/A/6461, paras 59–63; and CAS 2011/A/2646, paras 27–31).

215. The Panel observes that: i) there was no obligation on the Player to wait until the judicial reorganisation process had concluded, before lodging a claim before the DRC; ii) the Player lodged the DRC claim before the judicial reorganisation process commenced; iii) the Player participated in the judicial reorganisation process, including filing a formal petition requesting that he not be included, because he had a claim pending before the DRC; iv) the Player was entitled to object to the Plan for reason that he understood that he would not receive the full amount owed; and v) the Player did not provide his bank details to receive his first debt repayment scheduled under the Plan because he was awaiting the outcome of these proceedings. The Panel understands that the first debt repayment under the Plan was made in early November 2023 to those creditors listed to receive payment, and that the Player would have received his first payment had he provided his bank details.

216. Considering the points outlined in the preceding paragraph, the Panel finds that the Player reasonably availed himself of two legal processes that he was entitled to use simultaneously and has been open and honest about the proceedings in both fora. It considers the Appellant's submissions regarding the absence of due diligence and double recovery to be entirely without merit and unfair and rejects them outright.

217. The Panel accepts the Appellant's submission that its situation is not an isolated case of an insolvent football club filing for bankruptcy to avoid payment of its debts, but that Cruzeiro EC is one of over 40 football clubs that have been incentivised by the SAF Law to form a football corporation, for the purposes of accessing third party investment

and facilitating the payment of its debts. The Panel notes the equilibrium created by the judicial reorganisation process, the Plan and its payment schedule, and the legal obligation on the Appellant to make regular payments in accordance with the Plan. The Panel also accepts that if a SAF is liable for the debts of an old club under the football regulatory system when national law provides otherwise, then third party investors may be disincentivised to invest in Brazilian football and the Brazilian government's efforts to develop Brazilian football may be frustrated. The Panel observes that the Player is included in the Plan, and despite his objection to the Plan, will still receive regular payment of some of his wages over the next six years when he provides his bank details, although the Panel accepts that the Player understood that it will not be the full amount which he claimed as part of the judicial reorganisation process.

218. The Panel acknowledges the regulatory interest of holding football clubs accountable for their financial obligations, protecting creditors and maintaining contractual stability. It also acknowledges that at the centre of this dispute is a football player who provided services loyally to a professional football club across a number of years and was not paid for those services. The Panel further observes the effects of national law on the Appellant's position and the Appellant's interest in liability for payment of Cruzeiro EC's debt to the First Respondent being limited to the terms agreed under the Plan. When balancing the various interests, the Panel considers that the unique circumstances of professional football in Brazil, the specific situation of Cruzeiro EC, and the effects of relevant national legislation as explained above, tip the balance in favour of Cruzeiro SAF and militate against holding it liable for payment of Cruzeiro EC's debt as determined by the FIFA DRC. The Panel determines that the level of liability for the Appellant as the sporting successor of Cruzeiro EC for the payment of the debt owed to the First Respondent is that prescribed by Brazilian national law, and it accepts the Appellant's submission that it is not liable for the amount determined by the FIFA DRC and within the aegis of the FIFA dispute resolution mechanism.

219. This finding of the Panel does not leave the Player deprived of any entitlement to payment for his wages since he will receive the amounts due to him under the Plan that was agreed by the creditors and approved by the Brazilian Bankruptcy Court.

D. Does the Player's claim breach the principles of *verwirkung* and *venire contra factum proprium*?

220. On the basis of the Panel's conclusion that the Appellant is not liable in the circumstances of this particular case for the amount directed to be paid by the FIFA DRC, the Panel does not consider it necessary to determine the Appellant's alternative arguments that rely on the principles of *verwirkung* and *venire contra factum proprium,* and accordingly dismisses these claims.

E. Conclusion

221. For all of the above reasons, the Panel determines that the Appellant is the sporting successor of Cruzeiro EC, but in the unique circumstances of the present case, the extent of the Appellant's liability for the debt of Cruzeiro EC to the Player is prescribed by

Brazilian law, and the Appellant is not liable for the amount directed to be paid in the Appealed Decision.

222. Accordingly, the Panel partially upholds the appeal.

XIII. COSTS

223. Article R64.4 of the 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.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. It shall contain a detailed breakdown of each arbitrator's costs and fees and of the administrative costs and shall be notified to the parties within a reasonable period of time. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

224. 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.*"

225. The Panel has found in favour of the Appellant on the point of liability for Cruzeiro EC's debt, but not on the issue of the DRC's competence to consider the claim, and has confirmed the DRC's conclusion that the Appellant is the sporting successor of Cruzeiro EC. The Panel further notes that the DRC was denied the opportunity to fully consider the case and the impact of the judicial reorganisation process on the DRC claim because the Appellant did not raise the issue at the time of the DRC proceedings. Considering these factors, the procedural behaviour of the Parties in these proceedings generally, and the Parties' financial means, the Panel determines that the costs of the arbitration, in an amount that will be determined and served on the Parties by the CAS Court Office, shall

be borne by the Parties in the following proportions: 60% payable by the Appellant; 20% payable by the First Respondent; and 20% payable by the Second Respondent.

226. The Panel also recalls that Article R64.5 of the Code outlines the factors to take into account when deciding which party bears the legal costs and the quantum of the contribution. These factors are: the complexity and outcome of proceedings; the conduct of proceedings; and the financial resources of the parties.

227. The Panel notes i) the complex and novel aspects of the case, ii) the outcome was only partially in favour of the Appellant, iii) the Parties have conducted these proceedings in good faith, and iv) the First Respondent is a football player who has not received his salary payments for several years and has yet to receive anything from the judicial reorganisation. Taking these factors into consideration, the Panel finds it appropriate that the Appellant and the Respondents each bear their own legal costs and expenses in relation to these proceedings.

228. Any other motions or prayers for relief are dismissed.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Cruzeiro Esporte Clube Sociedade Anônima Do Futebol on 21 March 2023 is partially upheld.

2. The decision rendered by the Dispute Resolution Chamber of the FIFA Tribunal on 24 November 2022 is amended as follows:

   "1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Alejandro Ariel Cabral.

   2. The Respondent, Cruzeiro Esporte Clube SAF, is the sporting successor of Cruzeiro Esporte Clube.

   3. The claim of the Claimant is dismissed.

   4.-9. [deleted]

   10. The decision is rendered without costs.

3. Cruzeiro Esporte Clube Sociedade Anônima Do Futebol is liable as sporting successor for the debt owed by Cruzeiro Esporte Clube to Alejandro Ariel Cabral to the extent determined by the national laws of Brazil and the Brazilian judicial authorities in the framework of the judicial reorganisation proceedings.

4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be paid by the Parties in the following proportions: 60% payable by Cruzeiro Esporte Clube Sociedade Anônima Do Futebol; 20% payable by Mr Alejandro Ariel Cabral; and 20% payable by FIFA.

5. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.

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

Seat of arbitration: Lausanne, Switzerland
Date: 30 April 2024

THE COURT OF ARBITRATION FOR SPORT

Leanne O'Leary
President of the Panel

Efraim Barak
Arbitrator

Lars Hilliger
Arbitrator