



TAS / CAS

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

CAS 2023/A/9712 João Tiago Conde Rodrigues Santo v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Kwadjo Adjepong, Attorney-at-law, London, United Kingdom

in the arbitration between

João Tiago Conde Rodrigues Santo, Portugal

Represented by Mr Botond Pintér, Attorney-at-law, Madrid, Spain

Appellant

and

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

Represented by Ms Cristina Pérez González, Senior Legal Counsel, FIFA and Mr Miguel Liétard
Fernández-Palacios, Director of Litigation, FIFA

Respondent

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I. INTRODUCTION

1. This appeal is brought by João Tiago Conde Rodrigues Santo to challenge a decision rendered by the FIFA Players Status Chamber (“FIFA PSC”) on 30 May 2023, (the “Appealed Decision”). The FIFA PSC found that João Tiago Conde Rodrigues Santo was a “football analyst” and not a “coach” as defined by the FIFA Regulations on the Status and Transfer of Players (“RSTP”) and therefore FIFA declined its competence to hear the matter. Any further claims by the Appellant were rejected.

II. PARTIES

2. João Tiago Conde Rodrigues Santo (“Mr Santo” or the “Appellant”) is a former employee of the club Deportivo Social y Vida Honduras (the “Club”). The Appellant signed a fixed term contract with the Club to provide his professional services for four tournaments of the Honduran National Football League between 2021 and 2024. The Appellant is a Portuguese National.
3. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the international governing body of football. FIFA is an association under Article 60 of the Swiss Civil Code (“SCC”) and is headquartered in Zurich, Switzerland; Mr Santo and FIFA will collectively be referred to as the “Parties”.

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ pleadings, written submissions and oral submissions at the hearing. Additional facts and allegations found in the Parties’ pleadings and submissions may be set out, where relevant, in connection with the legal discussion that follows. While all the facts have been considered, including allegations, legal arguments and documents submitted by the Parties in these proceedings, this Award only refers to the submissions and documents considered necessary to explain the reasoning.
5. On 1 January 2022 the Appellant signed a fixed term employment contract (the “Contract”) with the Club for four tournaments in the Honduras Football League between 2021-2024. Clause 1 of the Contract established that the Appellant was employed as the Club’s “football analyst”.
6. Clause 2 of the Contract stipulated that:

“It will be the obligation of the FOOTBALL ANALYST under his exclusive authority,

1 To analyse in detail the game in a group and individual manner to identify patterns of behaviour.

2 Generate information on opponents, own team and players to assist in decision making.

3 Provide support and help to relieve the burden on staff members and sports Management...”

7. Clause 3 of the Contract stated that the Appellant was *“part of the circle of coaches...”*
8. It is a matter of dispute between the Parties as to whether the Appellant was employed as a “football analyst” or a “coach”. The Contract provided that the Appellant would receive a salary of USD 2,000 until the end of the last tournament. The Appellant was also entitled to receive (a) monthly housing payments during the Contract and (b) round-trip flights between Portugal and Honduras. After signing the Contract, the Appellant began working at the Club.
9. The Appellant received his last salary payment in July 2022. In August 2022, the Club stopped paying the Appellant’s salary. In October 2022, the Club verbally informed the Appellant that his services were no longer required and the Contract was terminated. The reason given by the Club for the termination was because the football team had underperformed. On 15 November 2022, the Club announced, through its official Twitter social media account, the recruitment of a new coaching team headed by Mr Raúl Caceres. The Appellant was not provided with a formal termination letter by the Club. By the time the Appellant submitted his Appeal Brief, on 24 August 2023, he had not signed a new contract with any other club or association and remained unemployed.

IV. PROCEEDINGS BEFORE THE FIFA PSC

10. On 10 December 2022 the Appellant submitted a statement of claim before the FIFA PSC requesting payment of the total amount of USD 45,382 for the Club’s’ breach of contract.
11. On 12 December 2022 FIFA sent a letter to the Appellant and informed him that FIFA did “not appear to be competent” to deal with his claim as the Club had employed him as a “football analyst” according to his contract.
12. On 13 December 2022 the Appellant filed additional evidence seeking to demonstrate he was a “coach” as defined by the FIFA RSTP and a letter requesting that FIFA “reconsider” its decision.
13. On 27 February 2023, FIFA informed the Appellant that the matter would be submitted to the Football Tribunal for a decision to be made on the preliminary procedural matter related to its jurisdiction.

14. On 30 May 2023 the FIFA PSC rendered a decision declaring its lack of competence to entertain the Appellant's claim. The grounds of the decision were communicated to the Appellant on the same day.

15. The decision of the FIFA PSC was as follows:

"IV. Decision of the Players Status Chamber

1. The claim of the Claimant, JOAO TIAGO CONDE RODRIGUES SANTO, is inadmissible.

2. This decision is rendered without costs."

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 21 June 2023, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the "CAS Code") the Appellant filed a Statement of Appeal with respect to the decision of the FIFA PSC. The Appellant also requested the suspension of the deadline for filing the Appeal Brief pending the grant of legal aid.

17. On 21 June 2023, the CAS Court Office granted the Appellant's request to suspend the deadline for filing the Appeal Brief pending the decision on legal aid.

18. On 17 August 2023, the ICAS Athlete's Commission granted legal aid for the Appeal and the deadline for filing the Appeal Brief was set at 10 days from 21 August 2023.

19. On 24 August 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

20. On 29 August 2023, the Sole Arbitrator, Mr Kwadjo Adjepong, acting *pro bono*, was appointed by the Deputy President of the CAS Appeals Division.

21. On 31 August 2023, FIFA was granted an extension of the deadline to file its Answer.

22. On 20 October 2023, the Respondent filed its Answer.

23. On 27 October 2023, the CAS Court Office sent the Notice of Formation of a Panel to the Parties together with the completed Arbitrators' Acceptance and Statement of Independence form signed by the Sole Arbitrator.

24. On 8 November 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter by videoconference.

25. On 17 November 2023, the CAS Court Office provided the Parties with the Order of Procedure, which was duly signed and returned by the Respondent on 20 November 2023 and by the Appellant on 23 November 2023.
26. On 11 December 2023, the CAS Court Office provided the Parties with the Tentative Hearing Schedule, which was duly approved by the Parties.
27. On 18 December 2023, a hearing was held by videoconference. The Parties had no objection as to the constitution of the Panel.
28. At the start of the hearing, the Appellant requested an opportunity to reply to the Respondents representations, about the absence of the Club as a party to these proceedings, made in the Respondents Answer. The Sole Arbitrator determined that the Appellant would be given an opportunity to make brief representations on this issue in his opening submissions and would be given a further opportunity to make more detailed submissions in his closing submissions. No other preliminary issues or objections were raised.
29. The following people were in attendance at the hearing:
 - The Sole Arbitrator, Mr Kwadjo Adjepong, assisted by Mr Fabien Cagneux, Managing Counsel; and
 - The Appellant and Mr Botond Pintér, Attorney-at-law, Madrid, Spain (Representative of Mr João Tiago Conde Rodrigues Santo), and
 - The Respondent: Ms Cristina Pérez González, Senior Legal Counsel (Representative of FIFA) and Mr Miguel Liétard Fernández-Palacios, Director of Litigation (Representative of FIFA).
30. The Sole Arbitrator heard opening and closing submissions from the legal representatives for the Parties. The Sole Arbitrator also heard oral evidence from the following witnesses called by the Appellant, who were subjected to examination and cross-examination as well as questions from the Sole Arbitrator:
 - the Appellant (Mr Santo), assisted by Mr Eduardo Bartilotti Canavez (“the Interpreter”);
 - Mr Fernando Manuel Mendes Mira (the “former Head Coach”), assisted by the Interpreter; and
 - Mr Orlando Manuel Ferreira Fernandes (the “former Assistant Coach”) assisted by the Interpreter.
31. After their closing submissions and before the end of the hearing, all Parties confirmed that their right to be heard had been respected. There were no objections raised as to the manner

in which the Sole Arbitrator had conducted the hearing and no procedural objections were made.

VI. SUBMISSIONS OF THE PARTIES

A. Appellant

32. In his Appeal Brief, the Appellant requested the following relief:

I. This appeal to be upheld in its entirety

II. FIFA is found to have erred in denying its competence to adjudicate on the case of the Coach, Joao Tiago Conde Rodrigues Santo);

III. CAS refer the award back to the FIFA Football Tribunal for a decision on the merits, having already established its competence on the matter;

IV. All Procedural costs incurred during these proceedings be paid by the Respondent”.

33. The Appellant’s submissions, in essence, may be summarised as follows:

- (i) The Appellant meets the FIFA definition of a “coach” as set out at definition 28 on page 10 of the FIFA RSTP (March 2023 Edition) namely employment duties consisting of “...*training and coaching players, selecting players for matches and competitions making tactical choices during matches and competitions...*”
- (ii) Article 18 (1) of the Swiss Code of Obligations (“CO”) provides, in relation to interpreting contracts: “...*the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used in either error or by way of disguising the true nature of the agreement*”. The true and common intention of the Parties was that the Appellant was a “coach”.
- (iii) Unclear declarations or wording in a contract should be interpreted against the party that drafted the contract, therefore, any ambiguity in the Contract must be interpreted in the Appellant’s favour.
- (iv) The Appellant’s employment contract defines him as a “coach” within the organisation of the Club and attributes numerous coaching related duties. For example, the Contract states:
 - (a) The Appellant was “*required to help in decision making...*” and support and help...*the sports management*” (Clause 2).
 - (b) The Appellant was “*part of the circle of coaches*” (Clause 3).

- (c) The Appellant's duties included "*attendance at training sessions, pre-match training sessions, pre-match training camps, team travel to fulfil official and/or friendly commitments at national and international level*" (Clause 8).
- (v) The wording of the Contract is comfortably wide enough to encompass the duties of a "coach". In addition, the main reason for the Appellant's attendance at matches was to sit with the former Head Coach and assist and advise on player substitutions and taking a lead role on making tactical decisions.
- (vi) The Appealed Decision was incorrect as it wrongly described the Contract as being "*...too vague and [that it] does not show that [the Appellant]... 'trained and/or coached' players as required by the regulations*" and should not have questioned the meaning of "*circle of coaches*".
- (vii) The facts must be given preference over what the parties say in legal texts, documents and agreements. Whenever the facts clearly contradict the parties' statements in the documents, the former shall prevail.
- (viii) There is evidence that demonstrates that the Appellant falls within the definition of a "coach" including the Appellant's UEFA B Diploma coaching certificate; the witness statements from former coaches at the Club; and open-source footage of the Appellant participating in and carrying out training sessions.
- (ix) There is evidence from two witnesses the former Head Coach and the former Assistant Coach at the Club which supports the Appellant's submissions that he trained and coached players.
- (x) The Respondent did not take up the option of joining the Club to the proceedings before the FIFA PSC or in these proceedings before CAS. Moreover, the Respondent's arguments on standing to be sued and the involvement of the Club in these proceedings are without merit. There is no issue concerning the Club's right to be heard in the current case before CAS.
- (xi) As the Appellant was a "coach", as defined by the FIFA RSTP, FIFA has competence to hear the Appellant's claim. As a result, this case should be referred back to the FIFA PSC for determination of the Appellant's claim.

B. Respondent

34. In their Answer, the Respondent requested that the Sole Arbitrator issues an award:

"(a) Rejecting the Appellant's appeal in its entirety;

(b) Confirming the Appealed Decision and, in particular, that the FIFA PSC was not competent to deal with the employment-related dispute between the Club and the Appellant; and

(c) Ordering the Appellant to bear the full costs of these arbitration proceedings and to cover all the legal expenses of FIFA related to the present procedure.

4. ...order the Appellant to pay to the Respondent any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 10,000 (ten thousand Swiss Francs)".

35. The Respondent's submissions, in essence, may be summarised as follows:

- (i) FIFA has a lack of competence to decide on the contractual dispute between the Club and the Appellant who is a football analyst. The Contract clearly and unambiguously states that the Appellant was employed by the Club as a "football analyst" (i.e. not as a "coach" as defined by the FIFA RSTP). The term "football analyst" is referred to 10 times in the Contract. Therefore, the FIFA PSC correctly declared itself not competent to adjudicate the matter under Article 22(c) of the RSTP.
- (ii) The Appellant has failed to discharge his burden to prove that he truly was performing as a "de facto assistant coach". The Appellant has failed to submit evidence that he provided his services as a "de facto assistant coach" and there are no objective reasons to think the role indicated in the Contract does not reflect the core meaning of the provisions under review and no reasons to depart from the plain text. As such, Clause 2 of the Contract clearly indicates that the Appellant was not acting in a coaching capacity, but solely as a "football analyst", and clearly listed his responsibilities in that role e.g. to "assist in decision making", to "provide support and help to relieve the burden on staff members and sports management" and to "provide technical reports", but he had no tactical decision-making power.
- (iii) The general rules of contract interpretation cannot be applied in the absence of the Club as a party to these arbitral proceedings. The Club is the only entity that could clarify what it intended when drafting the Contract. The Club should have been given the chance to intervene and defend its case and the Appellant, as the person that decided to start the claim, was able to determine which parties were included. (See CAS 2013/A/3228 *Evgeny V. Levchenko v. Russian Football Association* paras 8.10 and 8.11). Therefore, the absence of the Club in these proceedings means that the question of the true intention of the Contract cannot be addressed.
- (iv) The terms of the Contract are blunt and clear, free from doubt and are unambiguous. The stipulations of the Contract are clear and there is no room for interpretation.

Therefore, there is no uncertainty about the true intentions of the Parties (that the Appellant was to be employed as a football analyst and not a coach).

- (v) CAS jurisprudence has confirmed that the role expressly foreseen in an employment contract shall prevail over the description of the functions foreseen in the employment contract.
- (vi) As in *FC Basel 1893 AG v. Ignacio Torreño Jarabo & FIFA* para. 254 (CAS 2021/A/8539), the Appellant has not demonstrated that the reference to the role expressly indicated in the Contract was erroneous and that the true intention of the parties was different from the stipulations under the Contract. Therefore, there are no issues of interpretation relating to the Contract.
- (vii) As pointed out by the FIFA PSC in the Appealed Decision, had the Appellant truly been an assistant coach he would have simply stated that he had been hired as such. Instead, when filing the claim before the FIFA PSC, he merely asserted he signed a contract with the Club to provide services as a “football analyst”. The Appellant has now decided to change his course of action when filing his appeal with CAS, attempting to justify that he was hired as a “de facto assistant coach”.
- (viii) The video published by the Club included footage defining the Appellant as a “Tactical Assistant” (“Asistente Táctico”) whereas the Club’s assistant coaches, Mr Orlando Fernandes and Mr Denilson Costa were labelled as “Technical Assistants” (“Asistente Técnico”) which shows a clear differentiation between the role of the assistant coaches and the role of the Appellant. The video was posted by the Club on Instagram social media on 16 October 2021, which is before the Appellant was employed by the Club on 1 January 2022. In addition, in the video, the Appellant is only seen to be observing players. Moreover, the Appellant states that he attended training sessions, however physical trainers also attend training sessions but cannot always be described as a “coach”.
- (ix) Although the Appellant holds a UEFA B Diploma coaching certificate, the Appellant has failed to discharge his burden to demonstrate that the employment with the Club required the holding of a coaching licence in accordance with domestic or continental regulations. In addition, the coaching licence does not mean the Appellant was employed by the Club as a “coach”.
- (x) As a result of the above, the FIFA PSC was correct when declaring itself not competent to entertain the Appellant’s claim.

VII. JURISDICTION

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

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

37. Articles 56 and 57 of the FIFA Statutes respectively provide:

Article 56 (1): *“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”*; and

Article 57 (1): *“Appeals against final decisions passed by FIFA’s legal bodies [...] shall be lodged with CAS within 21 days of receipt of the decision in question”.*

38. The Parties did not dispute the jurisdiction of CAS and confirmed it by signing the Order of Procedure referred to above.
39. It follows that CAS has jurisdiction to hear and adjudicate the dispute.

VIII. ADMISSIBILITY

40. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.

41. Under Article 57 of the FIFA Statutes, decisions adopted by FIFA legal bodies, such as the FIFA PSC, can be appealed within 21 days from their notification.
42. The grounds of the Appealed Decision were notified to the Parties on 30 May 2023. The Appellant lodged his appeal on 20 June 2023, i.e. within the 21 days allotted under Article 57 of the FIFA Statutes.

43. Moreover, the appeal complies with the requirements of Articles R47 and R48 of the CAS Code and no objections were raised by the Respondent.
44. It follows that the Appellant's appeal is admissible.

IX. APPLICABLE LAW

45. Article R58 of the CAS Code provides as follows:

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

46. Article 56 (2) of the FIFA Statutes so provides:

"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".

47. Accordingly, the present dispute must be decided applying the FIFA rules and regulations. In particular, the RSTP (March 2023 edition) and the Procedural Rules Governing the Football Tribunal (March 2023 edition) constitute the applicable law with Swiss law applying additionally to fill any lacuna in the FIFA regulations.

X. MERITS

48. The Appellant preliminarily argues that the Appealed Decision should be set aside; to uphold his appeal; and to reject the Respondent's request for relief.
49. Accordingly, the Sole Arbitrator, will consider whether the Appealed Decision should be set aside or upheld. As part of this determination, the Sole Arbitrator has considered: (1) Whether the Appellant meets the definition of a "coach" under the FIFA RSTP; and (2) The significance of the Contract.

A. The applicable burden and standard of proof

50. The Sole Arbitrator observes that the Respondent argues that the Appellant must prove that they were employed by the Club as a "coach" in accordance with the definition in the FIFA RSTP.

51. The Sole Arbitrator thus needs to ascertain whether such burden has been met based on the applicable standard of proof.
52. In accordance with Swiss law and, in particular, Article 8 of the SCC, which reads: *“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”*.
53. Article 13 (5) of the FIFA Procedural Rules also provides that *“A party that asserts a fact has the burden of proving it”*.
54. This position is supported by CAS jurisprudence which provides that *“In 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 approve the facts on which it relies with respect to that issue.”* (See CAS 2009/A/1909 RCD Mallorca SAD & A v. FIFA & UMM Salal SC page 1 para. 1).
55. As a result of the SCC, the Sole Arbitrator observes that the burden rests with the Appellant to prove that they were employed by the Club as a “coach” in accordance with the definition in the FIFA RSTP.

B. FIFA’s competence to hear employment disputes

56. Article 22 of the FIFA RSTP establishes the following:

“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:

[...]

c) employment-related disputes between a club or an association and a coach 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 coaches and clubs;

[...]

2. FIFA is competent to decide regulatory applications made pursuant to these

regulations or any other FIFA regulations” (Emphasis added).

57. In addition, Article 9 paragraph 1 of the FIFA Procedural Rules Governing the Football Tribunal states: *“Subject to the relevant FIFA regulations, only the following natural or legal persons may be a party before a chamber: a. member associations; b. clubs affiliated to a member association; c. players; d. coaches; e. football agents licensed by FIFA; or f. match agents licensed by FIFA” (emphasis added).*

58. As a result of the above, under Article 22 of the FIFA RSTP, the FIFA PSC would – in principle – be competent to deal with an employment-related dispute with an international dimension between a Portuguese coach and a Honduran club.

C. The definition of a “Coach”

59. The FIFA definition of a “coach” found at page 10 of the FIFA Regulations on the Status and Transfer of Players (March 2023 edition) states:

“28. Coach: an individual employed in a football-specific occupation by a professional club or association whose:

i. employment duties consist of one or more of the following: training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions;”

60. As a result of the above, an individual employed by a professional club will satisfy FIFA’s definition of a “Coach” if they fulfil one or more of the following employment duties:

- (i) Training and coaching players;
- (ii) selecting players for matches and competitions;
- (iii) making tactical choices during matches and competitions.

61. The Sole Arbitrator notes that the Appellant submits that there is evidence that demonstrates that he falls within the definition of “coach”, including evidence demonstrating that the Appellant’s duties included “training and coaching players”, “selecting players for matches and competitions” and “making tactical choices during matches and competitions” including the Appellant’s UEFA B Diploma coaching certificate – (Exhibit 3 of the Appeal Brief). The Appellant submits this document is proof that the Appellant has the relevant knowledge, capacity, skills, and qualifications to train and coach football players. However, the Respondent claims this is irrelevant insofar as (i) the Appellant has failed to prove that having a coaching certificate was a mandatory requirement under domestic or continental regulations (as per the definition of “coach” in the RSTP), and (ii) having a coaching certificate does not change the specific conditions under which the Club and the football analyst concluded their Contract, i.e. that the Appellant was purposefully (and exclusively)

hired as a football analyst. Based on the evidence presented by the Parties, the Appellant's coaching qualification was not a mandatory requirement for his employment at the Club. In addition, the Sole Arbitrator notes that the Appellant provided no evidence from a current employee of the Club's management team (e.g. the lawyer at the Club that drafted the Contract) confirming that the qualification is something that the Club took into account and placed significant weight on when deciding to employ the Appellant.

62. The Sole Arbitrator has considered the witness evidence from the Appellant, the former Head Coach of the Club (Mr Fernando Manuel Mendes Mira) and the Assistant Coach (Mr Orlando Manuel Ferreira Fernandes) which was consistent in stating that the Appellant was employed by the Club as a football analyst to assist the former Head Coach and former Assistant Coaches with technical and tactical work. The witnesses claimed the Appellant regularly prepared, led and executed training and coaching sessions with the players of the Club and provided technical and tactical input during matches. The witnesses claimed that the appellant was part of the team of coaches that assisted the Head Coach, who ultimately had the final say on team decisions. However, there was no explanation from the witnesses on why the Contract referred to the Appellant as a "football analyst" and why the Contract did not require the Appellant to be directly involved in leading training sessions or coaching the team during matches. There was also no explanation as to why the Appellant was paid USD 2,000 per month as opposed to USD 5,000 per month like the Assistant Coach, Mr Fernandes. Therefore, it is possible to infer that the Appellant was paid less because he was not in fact a "coach". In addition, there was no witness evidence to suggest that the Appellant was directly involved in selecting players for matches and it was clear that those decisions were made by the former Head Coach.
63. The Sole Arbitrator has also considered the open-source video footage and images of the Appellant participating at a training session of the Club – Exhibits 5 and 6 of the Appeal Brief. The Appellant submits that this is evidence that demonstrates that he actively participated in the training and coaching of the players of the Club. The video evidence shows that the Appellant was described as an "Assistente Tático" or "Tactical Assistant" during one of its regular training sessions. The Appellant submits this demonstrates the true way the Club regarded the Appellant, i.e. as a "de facto assistant coach", however the Sole Arbitrator notes that equally the video did not refer to the Appellant as a "coach". The Respondent notes that in the video footage the Appellant appears to be watching a training session as opposed to engaging in coaching. In addition, the Respondent notes that the video was posted by the Club on Instagram social media on 16 October 2021, before the Appellant was employed by the Club on 1 January 2022. Based on the evidence presented by the Parties, the video evidence does not provide conclusive evidence that the Appellant was a "coach" and the video does not show the Appellant directly coaching and training players during the period when he was employed under the Contract.
64. As stated above at section A, the SCC confirms that the burden of proving that the Appellant was a "coach", as defined by the FIFA RSTP, rests with the Appellant. In order to fulfil its

burden of proof, the Appellant is required to provide the Sole Arbitrator with all the evidence it holds, in relation to his disputed role at the Club, to be able to persuade the Sole Arbitrator that the facts pleaded are true, i.e. that there he was a “coach” and therefore the FIFA PSC was competent to hear the dispute between the Appellant and the Club.

65. There is insufficient evidence provided by the Appellant to corroborate his assertions that he was a coach. The Appellant’s witnesses confirmed that he was hired as a football analyst and provided support to the former coaches to assist them to make tactical decisions during matches, but the final word on tactical decisions and team selection was made by the Head Coach. Although in evidence the Appellant said he was able to influence the selection of players for matches, it was clear that he did not select players and the final decision on team selection was made by the Head Coach.
66. As a result of the above, the Sole Arbitrator concludes that the Appellant has failed to meet its burden to prove that his employment by the Club meets the definition of a “coach” in the FIFA RSTP.

D. The Contract

67. As mentioned in section III above, it is not disputed by the Parties that on 1 January 2022, the Appellant and the Club entered an employment contract for the duration of four tournaments between 2021 and 2024. The Contract states:

“...[The Appellant] undertakes to provide his services as a “FOOTBALL ANALYST”.
(Clause 1)

It will be the obligation of the FOOTBALL ANALYST under his exclusive authority,
1 To analyse in detail the game in a group and individual manner to identify patterns of behaviour.
2 Generate information on opponents, own team and players to assist in decision making.
3 Provide support and help to relieve the burden on staff members and sports management.

... The football analyst will be part of the circle of coaches, and must use the same language according to the circumstances. (Clause 3)

...Technological control to facilitate their work, the football analyst must have knowledge and management of the software options., platforms and tools that exist today. (Clause 4)

Statistical knowledge and data analysis, the analyst must know how to make a quantitative and qualitative analysis of the data, able to make sense of the amount of statistics and numbers related to football, knowing how to contextualize information correctly. (Clause 5)

In the reports that he will deliver to the Technical Director, he will have to take into consideration data such as: Possessions made, zones and characteristics. Analysis of

defensive and offensive actions. Set pieces, for and against. Relationships and associations between players[.] Performance maps, with actions of any type such as passes, recoveries or losses. (Clause 6)

The FOOTBALL ANALYST will receive as a monthly salary the amount of (\$ 2,000.00)... payment of housing, as well as round-trip travel tickets” (Clause 7)

THE FOOTBALL ANALYST, undertakes through this contract to act at all times in a highly professional manner and additionally comply with each and every one of the provisions at the Club...attending training sessions, pre-match training camps, team travel to fulfil official and/or friendly commitments at national and international level... (Clause 8)

...both parties agree...that any controversy or claim arising from the present sports contract may only be settled and submitted to solution or decision before the National Court of Arbitration of Football (TNAF)...” (Clause 10)

68. The Sole Arbitrator has considered the Appellant’s submissions that his role as a “coach” can be demonstrated firstly, based on the employment contract itself and secondly, based on the reality behind the Contract. In this regard Article 18 (1) of the CO provides as follows regarding the interpretation of contracts: *“When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.”* Furthermore, the Appellant argues that unclear declarations or wording in a contract should be interpreted against the party that drafted the Contract.
69. The Sole Arbitrator notes the Appellant’s assertion that, according to the principle of *contra stipulatorem*, the wording is comfortably wide enough to encompass the duties of a “coach” and he was part of “the circle of coaches”. Therefore, the Appellant claims the wording of the Contract does not necessarily accurately correlate to or describe the reality; (see CAS 2020/A/6990, where the employment title of “Professional Football Rehabilitation and Fitness Coach’s Contract” was held to be a de facto coach within the ambit of FIFA’s competence because of the duties the coach was actually tasked with and carried out). In that case, it was concluded that the true intent of the parties to the employment contract was for the football club to hire the coach as an (assistant) coach and not as a physical trainer. Therefore, *“the parties’ subjective intentions will have priority over any contrary declaration in the text of the contract”* (CAS 2017/A/5172). The Respondent observes that the circumstances of CAS 2020/A/6990 differs from the Appellant’s case because the facts of that case involved a situation where both the physical trainer’s contract and his duties clearly indicated that he was a coach. The Sole Arbitrator agrees that the facts in CAS 2020/A/6990 significantly differs from the Appellant’s case and therefore it is of limited relevance.

70. The Sole Arbitrator notes that the Respondent disagrees with the Appellant's submissions in relation to the Contract. The Respondent maintains that the general rules of contract interpretation cannot be applied in the absence of the Club as a mandatory passive joinder. In other words, in the absence of the Club – which is the only entity that could clarify what its intention was when drafting the Contract – an interpretation of the provisions of the Contract cannot take place in the present proceedings. The Sole Arbitrator agrees that, in the absence of the Club as a party to these proceedings, and in the absence of evidence of members of the Club's current management team regarding the "true intention" of the Contract (including the Club's lawyer that drafted the Contract), it is not possible to infer that the wording in the Contract – that the Appellant was employed by the Club as a "Football Analyst" – was a mistake or did not reflect the true intention of the Parties.
71. It is a matter of dispute between the Parties as to whether, in the absence of the Club as a party in the present arbitral proceedings, any decision relating to the rules of interpretation of the Contract would violate the Club's right to be heard, preventing a legitimate interest in defending its case thereby resulting in a lack of standing to be sued and, specifically, a lack of passive mandatory joinder or "*consortité passive nécessaire*". This raises the issue of 'mandatory passive joinder' (also referred to as 'passive mandatory litisconsortium') which has previously been addressed by CAS (See CAS 2008/O/1808; CAS 2013/A/3228) and; (CAS 2020/A/6922). An interpretation of the provisions of the Contract cannot be made in the absence of the drafter of the Contract (i.e., the Club). Therefore, only the Club together with the Appellant can clarify what the fundamental will of the parties was when the Contract was concluded. In addition, the absence of the Club's involvement in these proceedings is an issue because the Club's participation may have had a bearing on the outcome. It is therefore desirable that a Club should also be a party to proceedings where FIFA's competence to hear a claim is disputed.
72. The Sole Arbitrator finds that the Appellant has failed to provide sufficient and conclusive evidence in support of his submissions to overcome the impression that emerges from the wording of the Contract, i.e. that the Appellant was a football analyst and not a coach. In this respect, as confirmed by CAS, the role expressly foreseen in the employment contract shall prevail over the description of the functions foreseen in the employment contract. (See CAS 2018/A/5586)
73. The tasks the Appellant was employed to carry out are inconsistent with the definition of a "coach" in the FIFA RSTP. The Appellant is referred to as a "football analyst" in the contract. In addition, the Appellant's responsibilities as set out in the Contract are consistent with the tasks of a football analyst. The Sole Arbitrator also notes that the reference in the Contract to "attend" training sessions is too vague. The Contract does not include the specific coaching responsibilities defined in the FIFA RSTP and there was no evidence to explain why these responsibilities were not inserted into the Contract, which was signed by the Appellant, if the Parties intended him to be a coach.

74. Article 3 of the Contract, states that the Appellant was “part of the circle of coaches”. However, it can be inferred that this wording relates to the Appellant’s role as part of the broader team at the Club employed to assist the former Head Coach and the former Assistant Coaches with tactical and technical analysis. The Respondent argues that other technical staff such as a physical trainer could also be seen as “part of the circle of coaches” at a football club. However, similarly, FIFA would not be competent to hear a dispute between a physical trainer and a football club, unless the physical trainer’s contract and actual duties were clearly also that of a “coach” as defined by the FIFA RSTP. Therefore, insufficient evidence was provided by the Appellant to confirm that he was employed as a coach by the Club to establish the competence of FIFA.
75. Irrespective of the above, it would have been open to the Appellant to seek to pursue his claim against the Club before the National Court of Arbitration of Football (TNAF) in Honduras, as agreed by the Parties in clause 10 of the Contract.

XI. CONCLUSION

76. In conclusion, the Sole Arbitrator finds that the Appellant has failed to discharge his burden to demonstrate that he falls under the definition of “coach” in accordance with Article 22 of the FIFA RSTP. The FIFA PSC was therefore correct when declaring itself not competent to hear the Appellant’s claim.
77. As a result of the above, based on the evidence presented by the Parties, the Sole Arbitrator concurs with the Respondent that: (a) the Appellant’s Appeal must be dismissed in its entirety; (b) the decision of the FIFA PSC is confirmed and (c) the FIFA PSC is not competent to deal with this employment-related dispute between the Club and the Appellant.
78. All further or different motions or requests submitted by the Parties are rejected.

XII. COSTS

79. In accordance with Article R64.5 of the CAS Code, *“In the arbitral award, the [Sole Arbitrator] 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 [Sole Arbitrator] 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 [Sole Arbitrator] shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”*.
80. Although this appeal shall be dismissed, no order shall be made regarding the payment of the costs and expenses of the Parties. In exercising his discretion with regards to costs, the Sole

Arbitrator considered the outcome of these proceedings; the financial resources of the Parties (including the fact that the Appellant was granted legal aid). The Sole Arbitrator also notes that the hearing was held by videoconference and the Respondent was not represented by external counsel.

81. Considering that the Appellant has been granted Legal Aid under the specific provisions applicable to the Football Legal Aid Fund (FLAF) of the Guidelines on Legal Aid before the Court of Arbitration for Sport, this Arbitral Award is rendered without costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by João Tiago Conde Rodrigues Santo against the decision rendered by the FIFA Players Status Chamber on 30 May 2023 is dismissed.
2. The decision rendered by the FIFA Players Status Chamber on 30 May 2023 is confirmed.
3. This award is rendered without costs in accordance with the specific provisions applicable to the Football Legal Aid Fund (FLAF) of the Guidelines on Legal Aid before the Court of Arbitration for Sport.
4. There will be no order in relation to the payment of legal fees and other expenses incurred by the Parties in connection with these proceedings.
5. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 26 April 2024

THE COURT OF ARBITRATION FOR SPORT

Kwadio Adjépong
Sole Arbitrator