TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/9795 Grupo Desportivo de Chaves v. Kevin Lenini Gonçalves Pereira de Pina & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Carmen Núñez-Lagos, Attorney-at-law, Paris, France

between

Grupo Desportivo de Chaves - Futebol, SAD, Portugal
Represented by Mr Mário Santos Paiva, Funchal, Portugal

Appellant

v.

Kevin Lenini Gonçalves Pereira de Pina, Cape Verde
Represented by Mr Pedro Macieirinha, Vila Real, Portugal

First Respondent

and

Fédération Internationale de Football Association, Switzerland
Represented by Miguel Liétard Fernández-Palacios and Roberto Nájera Reyes, Zurich, Switzerland

Second Respondent

I. PARTIES

1. Grupo Desportivo de Chaves (hereinafter the "**Appellant**" or the "**Club**") is a Portuguese football club affiliated to the Portuguese Football Federation ("**FPF**"), which in turns is a member of the *Fédération International de Football Association*.

2. Mr Kevin Lenini Gonçalves Pereira de Pina (hereinafter the "**First Respondent**" or the "**Player**") is a professional football player of Cape Verdean nationality.

3. *Fédération Internationale de Football Association* (hereinafter "**Second Respondent**" or "**FIFA**") is the international governing body of football, an association organised and existing under the laws of Switzerland, with its headquarters in Zurich, Switzerland.

4. The Player and FIFA are jointly referred to as "**Respondents**" and together with the Appellant as the "**Parties**."

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and oral arguments and evidence. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence she considers necessary to explain her reasoning.

A. Background of the dispute

6. On 20 May 2021, the Player and the Club signed a Sports Employment Contract (the "**Contract**") valid from 1 July 2021 to 30 June 2024.

7. The Contract stated, *inter alia*, as follows:

> "First – 1 […]
>
> *2. By the present Contract the Parties declare in a free, express and irrevocable manner that CHAVES SAD* [Club] *is the legitimate owner of all (100%) of the federation/sporting rights of the PLAYER, whereby, equally, CHAVES SAD is the legitimate owner of 80% (eighty percent) of the economic rights of the PLAYER and, in turn, the PLAYER is the owner of 20% (twenty percent) of the net value of his economic rights***. So that no doubts remain, the PLAYER declares in an express, free and irrevocable manner that he will only have the right to receive a percentage of the values that CHAVES SAD will be entitled to, in case the PLAYER is transferred definitely and onerously, and in case of an onerous transfer, the 20% (twenty percent) of the PLAYER will be calculated after deducting any and all amounts that CHAVES SAD may have** *to pay as a solidarity mechanism (as defined by the Portuguese Football Federation and/or FIFA), all amounts related to intermediation, expenses with the hiring and transfer*

of the PLAYER, as well as expenses and costs incurred and/or supported by CHAVES SAD during the performance of the Sports Employment Contract." (Emphasis added).

Nineteenth – 1 […]

2. Any and all disputes arising from the present Sports Employment Contract shall be submitted to the jurisdiction of the Sports Arbitration Court (TAD), based in Lisbon, Portugal, applying the provisions regarding voluntary arbitration in labour matters as established in Article 7 paragraph 1 of Law 74/2013 of 6 September."

8. The Player worked for the Club during the first season 2021/2022.

9. On 7 September 2022, the Club and the Player agreed to terminate the Employment Contract (the "**Termination Agreement**") upon the transfer of the Player to the FC Krasnodar.

10. The Termination Agreement stated, *inter alia*, as follows:

"*CLAUSE THREE*

1. The PLAYER declares and acknowledges that CHAVES SAD has scrupulously complied with all its obligations towards the PLAYER arising, directly or indirectly, from the Sports Employment Contract entered into between the parties, better identified above.

2. The PLAYER declares and acknowledges that he has nothing else to receive or claim from CHAVES SAD, under any title whatsoever, and regardless of its nature, namely, but not exclusively, salaries, prizes, bonuses, damages, agreements and/or any other amount.

3. On this date, the PLAYER expressly and irrevocably declares that CHAVES SAD has settled all its accounts with the PLAYER, whether those resulting from the Sports Employment Contract, or from any amendments, or those resulting from its revocation, thus the PLAYER has nothing to demand or claim from CHAVES SAD, under any title whatsoever, giving the competent and full discharge.

4. The PLAYER confirms having read, understood and accepted the content of the present revocation of the Sports Employment Contract, further acknowledging that he was warned of the possibility of obtaining an independent legal opinion about it, before signing it, having been given a copy of the same."

CLAUSE 8

"*3. For the interpretation of this Revocation Agreement or resolution of any dispute and/or emerging issues resulting from its application or execution, the Parties elect, with express waiver of any other, however privileged it may be, the Court of Arbitration for Sport, based in Lisbon, applying the provisions regarding voluntary*

arbitration in labour matters as established in Article 7 paragraph 1 of Law no. 74/2013, of 6 September."

11. On the same date, the Club and FC Krasnodar, with the approval of the Player, agreed to permanently transfer the Player to the Russian club, subject to the signature of an employment contract between FC Krasnodar and the Player (hereinafter the "**Transfer Agreement**"). In its Preamble, the Club warranted and committed that:

> "[I]*t holds 100% of the federative and economic rights on the Player, is the sole and exclusive owner of the right to claim a transfer fee for the release and the transfer of the Player in the meaning of statutory requirements of FIFA (in particular FIFA RSTP) and that upon registration of the Player on a permanent basis KRASNODAR shall become the sole and exclusive owner of all interests and rights in connection herewith.*"

12. The transfer fee was agreed in an amount of EUR 1 200 000,00 payable in two instalments:

- EUR 600 000 net, on or before 30 September 2022; and
- EUR 600 000 net, on or before 20 January 2023.

13. An Employment Contract was signed between the Player and FC Krasnodar on the same date, valid from 8 September 2022 until 20 June 2025.

14. On 10 November 2022, the Player requested the payment of an amount of EUR 120 000 corresponding to the 20% of the first instalment of the transfer fee of EUR 600 000.

15. On 14 November 2022, the Club rejected the Player's request alleging that the Player had signed the Termination Agreement and had waived all rights to claim any further amount under the Contract. The Player confirmed his payment request on the same date.

A. First proceedings before the FIFA's Dispute Resolution Chamber (Ref. n. FPSD-8335)

16. On 23 November 2022, the Player lodged a claim with the FIFA Dispute Resolution Chamber ("**FIFA DRC**") for outstanding transfer fee and requested payment of the following amount:

> 1. "*The amount equivalent to 20% of EUR 600.000 (Six Hundred Thousand Euros), due on 30 September 2020, which is EUR 120.000 (One Hundred Twenty Thousand Euros).*
>
> 2. *Plus interest at 5% rate since the due dates (30 September 2022) until effective payment*."

17. In its answer, the Club opposed to the jurisdiction of the FIFA DRC under Article 22 par. 1 lit. b) of the FIFA Regulations on the Status and Transfer of Players ("**FIFA RSTP**")

as the parties had agreed under Clause Nineteenth of the Contract to submit any dispute to the Portuguese Court of Arbitration for Sports.

18. With regard to the issue of jurisdiction, the FIFA DRC concluded that:

> *"23. Taking into account all the above, the Dispute Resolution Chamber emphasised that in accordance with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players, FIFA is, in principle, competent to hear an employment-related dispute between a club and a player of an international dimension. Nevertheless, the parties may explicitly opt in writing for such dispute 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 arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs.*
>
> *24. In this respect, the Chamber noted that the Respondent failed to provide any documentary evidence which could prove that the TAD meets the requirements of providing fair proceedings and equal representation, as established inter alia in art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players and FIFA Circular no. 1010. On account of the above, and referring to the principle of burden of proof contained in art. 13 par. 5 of the Procedural Rules, the Chamber established that the Respondent's objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent, on the basis of art. 22 par. 1 lit. b) of the Regulations, to consider the present matter as to the substance."*

19. With regard to the merits, the FIFA DRC established that neither the Transfer Agreement nor the Termination Agreement were sufficiently clear and unequivocal to overturn the Player's ownership of the 20% of his economic rights. The DRC stressed that, according to the Contract, the Player was the irrevocable holder of such economic rights, and this reinforced the need of a separate, unequivocal and explicit agreement renouncing to his share of economic rights.

20. In view of the above, the FIFA DRC concluded that the Player was entitled to receive an amount of EUR 120 000 from the Club, plus the annual interest of 5% as from 1 October 2022 until the date of the effective payment.

21. Thus, on 20 April 2023, the FIFA DRC rendered its Decision (the "**Appealed Decision**"), notified to the Parties on 3 May 2023 and decided that:

> "*1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Kevin Lenini.*
>
> *2. The claim of the Claimant is admissible.*
>
> *3. The claim of the Claimant is partially accepted.*

4. The Respondent, GD Chaves, must pay to the Claimant EUR 120,000 as outstanding amount plus 5% interest p.a. as from 1 October 2022 until the date of effective payment.

5. Any further claims of the Claimant are rejected.

6. A reprimand is imposed on the Respondent.

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

8. 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 ban 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.

9. 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.

10. This decision is rendered without costs."

22. On 20 June 2023, the grounds of the Appealed Decision were notified to the Parties.

B. Second proceedings before the FIFA's Dispute Resolution Chamber (Ref. No. FPSD-1072)

23. For the sake of completeness, it is worth to be mentioned that after the communication of the findings of the Appealed Decision without grounds, on 17 May 2023, the Player filed an additional claim against the Club before the DRC. Under these proceedings, the Player sought the payment of the second instalment of 20% of the transfer fee paid to the Club, plus interest of 5% *p.a.* until effective payment (the "**Player's Second Claim**").

24. On 24 May 2023, the FIFA General Secretariat proposed to settle the Player's Second Claim, in accordance with Article 20 of the Procedural Rules Governing the Football Tribunal, as follows:

"*The Respondent, GD Chaves, shall pay the Claimant, Kevin Lenini:*

- EUR 120,000 as outstanding remuneration plus 5% interest per annum as from 21 January 2023 until the date of effective payment.

Payment (including any applicable interest) shall be made within 45 days as from notification of the confirmation letter."

25. The FIFA Secretariat noted that the Club and the Player must either accept or reject the proposal by 8 June 2023. The Player expressly accepted the above-mentioned proposal on 26 May 2023.

26. On 9 June 2023, the FIFA Football Tribunal concluded that "*both parties - explicitly or tacitly - accepted the proposal*" made by the FIFA Secretariat. As a result, the terms of such proposal were confirmed as a final and binding decision concerning the Player's Second Claim. The FIFA Football Tribunal ordered the Club to fulfil the payment within 45 days of notification of that decision (the "**Confirmation Letter**").

27. On 2 August 2023, FIFA informed the Club and the Player about the implementation of a ban on the Club from registering new players internationally. Furthermore, FIFA requested FPF to immediately implement a ban against the Club from inscribing new players at the national level. FIFA implemented these prohibitions based on the Club's failure to pay the amounts stated in the Confirmation Letter.

28. On 4 August 2023, the Player informed FIFA that the Club paid the relevant amounts granted in the Confirmation Letter. As a consequence, the Player requested FIFA to lift the ban against the Club on registering the players.

29. The present Appeal is only addressed at the FIFA DRC's declaration of jurisdiction, as well as the order to pay EUR 120 000, corresponding to 20% of the first instalment of the transfer fee of EUR 600 000 under the Transfer Agreement. The Sole Arbitrator notes that the payment of the 20% of the second instalment of the transfer fee was not part of the relief sought by the Player in the above-mentioned proceedings before the DRC.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 11 July 2023, the Appellant filed its Statement of Appeal in accordance with Article R47 of the Code of Sports-related Arbitration (the "**Code**") (2023 edition), before the Court of Arbitration for Sport ("**CAS**") against the Player and FIFA with respect to the Appealed Decision and requested that the dispute be referred to a sole arbitrator and conducted in English.

31. On 18 July 2023, the Appellant requested an extension of ten (10) days to file its Appeal Brief, which was granted by the CAS Court Office on the same date.

32. On 19 July 2023, FIFA agreed to submit the case to a sole arbitrator, appointed by the President of the CAS Appeals Arbitration Division and that the proceedings be conducted in English. The Second Respondent also confirmed its agreement.

33. On the same day, the CAS Court Office confirmed English as the language of the proceedings and that a sole arbitration would be nominated by the Division President, or her Deputy, pursuant to Article R54 of the Code.

34. On 25 July 2023, the First Respondent informed that he would not pay his share of the advance of costs and on 26 July 2023, upon the First Respondent's request, the CAS Court Office determined that the time limit for the First Respondent to file its Answer would be fixed upon the Appellant's payment of the advance of costs.

35. On 31 July 2023, the Appellant filed its Appeal Brief.

36. In its Appeal Brief, the Appellant requested the following evidentiary measures: 1. To order the First Respondent to submit his sports employment contract with Football Club "Krasnodar" LLC. 2. To order Football Club "Krasnodar" LLC to submit the sports employment contract signed with the Player. 3. To order FIFA to submit a complete copy of the proceeding under the case no FPSD-8335.

37. On 3 August 2023, the Second Respondent requested that its deadline to file its Answer to the Appeal Brief be fixed after the payment of the advance of costs by the Appellant and, on the same day, the CAS Court Office granted said request.

38. On 23 August 2023, upon the Appellant's payment of the entire advance of costs, the Respondents were invited to file their Answers within twenty (20) days.

39. On 4 September 2023, FIFA requested an extension of ten (10) days to file its Answer. The extension was granted by the CAS Court Office exclusively to the Second Respondent on 6 September 2023.

40. On 11 September 2023, the First Respondent filed its Answer.

41. On 21 September 2023, FIFA requested a second extension of ten (10) days to file its Answer and informed this petition had been already accepted by the Appellant. The extension was granted by the CAS Court Office on 22 September 2022.

42. On 4 October 2023, FIFA requested a third extension of five (5) days to file its Answer and informed this petition had been already accepted by the Appellant. The Appellant expressly agreed to such request on the same day and, on 5 October 2023, the CAS Court Office granted FIFA until 10 October 2023 to file its Answer.

43. On 9 October 2023, the Second Respondent filed its Answer.

44. On 10 October 2023, the CAS Court Office invited the Parties to inform by 17 October 2023 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

45. FIFA informed on the same day that it considered unnecessary to hold a hearing in the present matter and, on 17 October 2023, the Appellant and First Respondent requested to hold a hearing in the present matter.

46. On 19 October 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel appointed to rule on the present dispute had been constituted as follows:

Sole Arbitrator: Ms Carmen Núñez-Lagos, Attorney-at-law in Paris, France.

47. On 25 October 2023, the CAS Court Office, on behalf of the Sole Arbitrator, ordered the First Respondent to provide a copy of the employment contract signed by the Player with FC Krasnodar by 30 October 2023. Additionally, it informed that the Appellant's request for the production of the sports employment contract and FIFA case file were rejected. The CAS Court Office clarified that the reasoning for the Sole Arbitrator's decision on the requests for production would be included in the Final Award.

48. On the same day, the CAS Court Office informed that the Sole Arbitrator had decided to hold a hearing in this matter by videoconference.

49. The Player submitted a copy of the employment contract signed by the Player with FC Krasnodar on 27 October 2023.

50. After the exchange of different proposals regarding the date of the hearing, on 21 November 2023, on behalf of the Sole Arbitrator, the CAS Court Office called the Parties and their witnesses to appear at the hearing to be held on 18 December 2023, at 9:30 CET, by video-conference (via Cisco Webex).

51. On 28 November 2023, the Parties sent their list of attendees. Among others, the Player requested the appearance of Mr Jaime Bragança as witness during the hearing, to replace the Player's testimony, who would not be able to attend the hearing. The Appellant further requested the attendance of Mr Fernando Pereira, who was not included in the witness list.

52. On 29 November 2023, the CAS Court Office invited the Appellant and FIFA to comment on the Player's petition to allow the appearance of Mr Jaime Bragança, by 7 December 2023. In addition, the Appellant was invited to clarify in which capacity Mr Fernando Pereira would attend the hearing, since he was not listed as a witness.

53. On 2 December 2023, FIFA confirmed it did not object to Mr Jaime Bragança's presence as a witness.

54. On 4 December 2023, the CAS Court Office noted that the Appellant did not clarify, within the granted deadline, in which capacity Mr Fernando Pereira would attend the hearing. It therefore invited Respondents to comment on Mr Pereira's attendance by 7 December 2023.

55. On 7 December 2023, the Appellant clarified that Mr Fernando Pereira would be expected to elucidate on the application of the Portuguese Football Federation and Portuguese law, and opposed to the appearance of Mr Jaime Bragança, as he had no direct knowledge of the case. On the same date, the Player opposed to the appearance of Mr Fernando Pereira, since his name did not appear in the Appeal Brief.

56. On 8 December 2023, the CAS Court Office advised the Parties that:

    (i) the Sole Arbitrator had decided to declare inadmissible the participation at the hearing of Mr Fernando Pereira and Mr Jaime Bragança;

(ii) the grounds for that decision would be communicated in the final award; and

(iii) the Sole Arbitrator had decided to grant a deadline until 11 December 2023 for the Appellant to file a brief summary of the testimony of the witnesses listed in its Appeal Brief.

57. All Parties signed and returned the Order of Procedure: the Appellant on 18 December 2023, the First Respondent on 13 December 2023, and the Second Respondent on 11 December 2023.

58. On 18 December 2023, a hearing was held by video-conference.

59. In addition to the Sole Arbitrator and Mrs Lia Yokomizo, CAS Counsel, the following persons attended the hearing:

For the Appellant:

-Mr Mario Santos Paiva, Legal Counsel

-Mr Filipe Martins, Transfer and Registration responsible from Portuguese Football League, witness

-Mr João Leal, Transfer and Registration responsible from FPF, witness

-Mr Francisco Carvalho, President of the Club, witness

-Mr Óscar Santos, General Manager of the Club, witness

-Ana Matos Ferreira, interpreter (Portuguese-English)

For the First Respondent:

-Mr Pedro Macieirinha, Legal Counsel

-Mr Joaquim de Almeida Pizarro, Legal Counsel

For the Second Respondent:

-Mr Roberto Nájera, Legal Counsel

60. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and that they had been treated equally and fairly in these arbitration proceedings.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

A. The Appellant

61. The Appellant's submissions, in essence, may be summarised as follows:

Competence of the FIFA DRC

-The FIFA DRC had no jurisdiction to solve this matter, since the Contract and the Termination Agreement contain an arbitration clause that designates the Portuguese Sports Arbitration Court (the "**TAD**") (Tribunal Arbitral do Desporto) based in Lisbon, as the arbitral institution to administer their disputes.

-In Clause Nineteen of the Contract and then in Clause 8 of the Termination Agreement, the Club and the Player expressly agreed that the competent judicial body of the TAD in Lisbon would be competent to resolve and all disputes arising from the Contract.

-Such a clause is perfectly valid pursuant to Article 22(1)(b) of the FIFA RSTP, which provides that (i) when there is an independent arbitral tribunal established at the national level, (ii) when such an independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs, and (iii) when the parties have expressly agreed in writing to refer their dispute to such an independent arbitral tribunal, then the FIFA DRC is not competent to hear an employment-related dispute between a player and a club, even if it is a dispute of an international dimension.

-The jurisdiction clause agreed by the Club and the Player fulfils all legal requirements to exclude FIFA's jurisdiction. It was made in writing and clearly states that the TAD's competence to settle an employment-related dispute is exclusive, as it has been required in other CAS cases.

-The Club did not have to prove that the TAD provided fair proceedings and equal representation, as stated in the Appealed Decision. Based on the *ubi lex voluit dixit, ubi noluit tacuit* principle, the Appellant argues that the FIFA RSTP does not impose an obligation to prove that the national arbitration tribunal guarantees fair proceedings and respects the principle of equal representation. In fact, the Appellant considers that, at least in the European Union and Portugal, the norm is that all courts guarantee fair proceedings, since this is an imposition stated in the law and the Portuguese Constitution.

-The TAD is a body created by Portuguese law and guarantees the same rights as national civil and criminal courts as stated in the Portuguese Constitution. The required conditions of FIFA Circular Nº 1010, such as the right to challenge the arbitrators appointed by the counter party, fair proceedings and no corruption, are fully met by the TAD. The TAD is an independent body, and its decisions may be appealed before the South Administrative Central Court of Lisbon.

-With regard to the insufficient financial means of the Player to support the costs of the arbitration, the Player is currently receiving EUR 25 000 (twenty-five thousand euros)

net per month from his new club, and the legal fee to submit a claim before the TAD may vary between EUR 750 and EUR 1 500. Consequently, the Appellant concludes this was a false allegation from the First Respondent, without evidentiary support.

-Based on the above, the FIFA DRC erred in deciding that it was competent to hear the dispute, and the Appealed Decision should therefore be set aside since the Player should have filed his claim with the TAD, which is the only competent body to deal with the matter.

Merits

-In the unlikely event that the FIFA DRC is to be considered competent to hear the Player's claim, the Appealed Decision erred in accepting such claim and awarding the Player an amount of EUR 120 000.

-By entering into the Termination Agreement, the Club fulfilled its obligations under the Contract. Once the Player signed the employment contract with his new club, the Termination Agreement became effective. Consequently, all Contract's clauses were revoked, including the Player's right to receive a share of the transfer fee.

-Pursuant to Clause 3 of the Termination Agreement, the Player "*declares and acknowledges that he has nothing else to receive or claim from CHAVES SAD, under any title whatsoever, and regardless of its nature, namely, but not exclusively, salaries, prizes, bonuses, damages, agreements and/or any other amount*." The wording of this renunciation does not leave room for interpretation, is clear and unambiguous (principle of *in claris non fit interpretatio*).

-The wording of the Termination Agreement is sufficient and clear to conclude that the Player waived his right to receive any amount pertaining to economic rights.

-The Player accepted the termination of the Contract by stating in Clause One of the Termination Agreement: "*By the present Agreement, CHAVES SAD and the PLAYER revoke, by mutual agreement and effective from 7 September 2022, the Sports Employment Contract identified above, as well as all its possible amendments*."

-The Club was reluctant to accept the transfer of the Player, considering the economic bans imposed on Russian clubs. It accepted to terminate the Contract because the Player waived all his rights to any percentage of the transfer fee. Shouldn't that be the case, the Club would not have agreed to its termination. As the Club owned 100% of the federative rights after the termination, it could indeed reflect this situation in the Transfer Agreement (entered into with the express approval of the Player) by stating that "*GD CHAVES warrants and commits that it holds 100% of the federative and economic rights on the Player, is the sole and exclusive owner of the right to claim a transfer fee for the release and the transfer of the Player* […]."

-Moreover, all amounts due by the Club under the Termination Agreement were dully paid on time, as was confirmed by the Player himself by signing said agreement. The Appellant considers that, should the Player contend he was entitled to any further

amount, he should have issued an invoice within 5 days after the transfer to the new club as established in Portuguese fiscal law and sent to the Appellant, which never happened.

-Finally, the Appellant contends that, as it acted in good faith and in compliance with Portuguese Law, FIFA regulations and the agreement with the Player, the disciplinary sanction imposed by FIFA were unnecessary, unfair and not proportional to the facts.

62. In its Statement of Appeal, the Appellant submits the following requests for relief:

> "*In accordance with article R48 of the Code of Sports-related Arbitration, we kindly ask:*
>
> i. *To accept this appeal and enforce CAS jurisdiction as competent to rule on the matter, in accordance with article R47 of the Code of Sports-related Arbitration as set out above;*
> ii. *To set aside the Appealed Decision;*
> iii. *To acquit the Appellant from all charges;*
> iv. *To order the Respondents to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
> v. *To order Respondents to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.*
>
> *Alternatively, and only in the event the above is rejected:*
>
> vi. *Reverse the Decision of FIFA– considering the facts and legal arguments giving rise to the appeal stated on the Appeal Brief;*
> vii. *If CAS still considers that there the First Respondent is entitled to receive an amount– although the Appellant does not agree – kindly asks to be given at least 60 (sixty days) to pay the amounts considered due;*
> viii. *To order the Respondents to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
> ix. *To order the Respondents to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel*."

63. In the Appeal Brief, the Appellant amended its requests for relief, in the following terms:

> "*In accordance with article R48 of the Code of Sports-related Arbitration, we kindly ask:*
>
> i. *To accept this appeal and enforce CAS jurisdiction as competent to rule on the matter, in accordance with article R47 of the Code of Sports-related Arbitration as set out above and determine that FIFA did not have jurisdiction to render the*

decision due to the substance of the present matter, as the fact that it falls under the jurisdiction of the Portuguese arbitration court for sports (TAD);

ii. *To set aside the Appealed Decision;*
iii. *To acquit the Appellant from all charges;*
iv. *To order the Respondents to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
v. *To order Respondents to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.*

Alternatively, and only in the event the above is rejected:

vi. *To accept this appeal and enforce CAS jurisdiction as competent to rule on the matter, in accordance with article R47 of the Code of Sports-related Arbitration as set out above.*
vii. *To set aside the Appealed Decision;*
viii. *To acquit the Appellant from all charges;*
ix. *To order the Respondents to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
x. *To order Respondents to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.*

Alternatively, and only in the event the above is rejected:

xi. *Reverse the Decision of FIFA– considering the facts and legal arguments giving rise to the appeal stated on the Appeal Brief;*
xii. *If CAS still considers that there the First Respondent is entitled to receive an amount– although the Appellant does not agree – kindly asks to be given at least 60 (sixty days) to pay the amounts considered due;*
xiii. *To acquit the Appellant from the disciplinary sanction imposed by FIFA;*
xiv. *To order the Respondents to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and*
xv. *To order the Respondents to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel*."

B. The First Respondent

64. The First Respondent's submissions, *in essence*, may be summarised as follows:

Competence of the FIFA DRC

-It is for the Appellant to prove that the dispute resolution bodies of the TAD are fair and independent. The burden of proof lies on the Appellant who is to discharge it in all and any given case.

-Article 22 (b) FIFA RSTP allows the FIFA DRC to declare itself competent when the dispute has an international dimension, as is the case here.

-The Player was without sufficient financial means to support the costs of an arbitration before the TAD, and FIFA Circular Nº 1010 clearly states that arbitral proceedings should be free of cost, which is not the case with the TAD.

-Furthermore, the FIFA DRC's jurisdiction was required for reasons of transparency, independence, impartiality and related to the specificity of sport. The FIFA DRC holds legal background and qualifications in football, and shall apply the FIFA Statutes, Regulations and collective bargaining agreements. This guarantees an independent decision.

-The jurisdiction clause should not be enforced since the current dispute does not arise from a breach of an employment contract but concerns a claim arising from economic rights, which is unrelated to the performance by the Player.

-The Contract was terminated even though the 20% of the economic rights of the Player were not payable at that time. Such amount was only due once the transfer fee was paid by FC Krasnodar, which shows the difference between an employment-related dispute and this case. Under these circumstances, the jurisdiction clause is not applicable to the current dispute.

-The Appealed Decision was rendered in accordance with the law and the parties' behaviour. FIFA's jurisdiction and the payment of compensation were accepted by the Club when the Player claimed the second instalment of 20% of the transfer fee paid by FC Krasnodar.

-In view of the Club's non-payment of the share of the transfer fee, a second claim was filed by the Player before the FIFA DRC.

-During these proceedings, the FIFA General Secretariat made a proposal to the Player and the Club to settle the dispute. From the Player's perspective, this proposal was accepted by the Club. As a consequence, the FIFA DRC issued a confirmation letter, ordering the Club to proceed according to the accepted proposal. Even though this order was not fulfilled by the Club on time, the Appellant eventually ended up paying, after FIFA banned the Club from registering new players, until the payment was completed.

-From the above-mentioned background, the Appellant accepted, recognized and acknowledged the jurisdiction of FIFA to decide such dispute, as well as the merits of the Player's claim. The Club did not raise any jurisdictional objection before the FIFA

Football Tribunal and tacitly accepted to pay the second instalment of 20% of the transfer fee.

-As both claims before FIFA DRC abide by the "triple identity test", *i.e.*, involve the same subject matter, the same legal grounds and the same parties, the decision passed in the second case shall constitute *res judicata* over this case, in both jurisdiction and merits.

Merits

-The Appealed Decision shall be considered valid and binding, as the Contract clearly stipulated that the Player had an "irrevocable" right to receive 20% of the amount paid to the Club, as a consequence of the Player's transfer to another club.

-The FIFA DRC rightly concluded that the Termination Agreement was not sufficiently clear and unequivocal to conclude that the Player waived his 20% over his economic rights. Article 15(5) of the FIFA Procedural Rules allowed the Chamber to establish the absence of sufficient evidence to support the Appellant's defence.

-With regard to the fact that 20% of the economic rights were not payable at the moment of the conclusion of the Termination Agreement, the exclusion of such amount from the Termination Agreement is sustained by the Collective Bargaining Agreement signed by the Football Players Union and the Portuguese League of Professional Football (the "CBA").

-Article 40(3) of the CBA establishes that:

> "*3. If in the termination agreement, or jointly with it, the parties establish pecuniary compensation of a global nature for the player, it shall be understood, in the absence of any, to include any credits already accrued at the date of termination of the contract or payable by virtue of such termination.*"

-The Termination Agreement only included the credits already overdue on the date of termination of the Contract and payable as a result of such termination. The 20% of the economic rights of the Player would be payable once the transfer fee was paid, which came to pass at a later date.

-The CBA creates a *iuris tantum* presumption of the exclusion of the economic rights from the waiver given by the Player in the Termination Agreement. Consequently, since the Appellant did not file evidence proving otherwise, the Player concludes that the termination of the Contract did not include the right to receive 20% of the Player's economic rights.

65. In its Answer, the First Respondent requested the Sole Arbitrator to decide:

> "*The Appeal shall be rejected;*
>
> *The CAS shall maintain the appealed decision;*

The Appellant shall be condemned to pay the Respondent, the amount equivalent to 20% of 600.000,00 € EUR (Six Hundred Thousand Euros), due on 30 September 2022, which is 120.000,00 € EUR (One Hundred Twenty Thousand Euros), plus, interest at 5% rate since the due dates (30 September 2022) until effective payment.

A reprimand shall be imposed the Appellant. The Appellant shall bear the costs of Arbitration."

C. The Second Respondent

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

Competence of the FIFA DRC

-The FIFA DRC rightly concluded that it had jurisdiction to decide the dispute between the Player and the Club, as the Appellant did not prove the minimum procedural standards to exclude FIFA's jurisdiction.

-Members of FIFA are free to exercise their fundamental right of choosing a jurisdiction venue to solve their employment-related disputes. FIFA Circular Nº 1010 and the National Dispute Resolution Chamber ("**NDRC**") Standard Regulations set the parameters for an NDRC to comply with the minimum procedural standards for independent arbitration tribunals, as required by Article 22(b) RSTP.

- The FIFA Circular Nº 1010 establishes that, for an arbitration tribunal to be independent, it must meet the following minimum procedural standards: a. Principle of parity when constituting the arbitration tribunal. b. Right to an independent and impartial tribunal; c. Principle of fair hearing; d. Right to contentious proceedings and d. Principle of equal treatment.

- The NDRC Standard Regulations foresees, as the main element to establish the independence of an NDRC, that the president and the deputy/vice-president of the NDRC must be appointed by consensus. This is a clear indication of the requirements expected to adequately implement an NDRC with regard to independence and parity.

-The Appellant had to prove that the TAD met the following criteria related to fair proceedings, equal representation and independence, according to the applicable law: a. Parties must have equal influence over the appointment of arbitrators. b. Every interest group must be able to exercise equal influence over the compilation of the arbitrator list. c. Arbitrators may be rejected in case of legitimate doubt. d. The rejection and replacement procedure must be regulated. Such conditions have been set as parameters of independence, in accordance with case law of the European Court of Human Rights and CAS.

-The NDRC Standard Regulations also include an additional requirement, in accordance with its Article 32: the NDRC shall be free of charge and shall not incur any procedural costs.

-During the course of the proceedings before FIFA, none of the above-mentioned conditions were explained or proven by the Appellant. It was noted that the Club failed to submit the relevant documents which could have allowed the DRC to analyse the required standards, despite an express invitation to comment on TAD's jurisdiction. The Appellant has merely alleged that the arbitral institution complies with the minimum requirements but failed to prove them as required by the FIFA Circular Nº 1010, the RSTP and the NDRC Standard Regulations.

-The Appellant did not prove either that TAD proceedings were free of costs. On the contrary, in its Appeal Brief, the Club confirmed that a cost is involved.

-The FIFA DRC has consistently decided to accept jurisdiction when the relevant party failed to prove that the corresponding NDRC met the required standards.

-Additionally, CAS cases have ruled that the party which invokes the jurisdiction of an NDRC needs to establish this in every single case, regardless of any previous FIFA or CAS decision confirming its independence, since conditions may change. Therefore, if the relevant requirements have not been met, the FIFA DRC will decline the jurisdiction of said body and accept its own jurisdiction.

-The FIFA DRC rightly ruled that it had jurisdiction to decide the matter and solved the merits of the dispute. The Appellant failed to timely provide sufficient documentation to evidence that the national resolution body met the minimum standards. As a consequence, the DRC rightly decided the case with the information that it had in its power, which was insufficient to prove the necessary requirements to exclude FIFA's jurisdiction.

67. From FIFA's perspective, the Club failed to establish that FIFA had no competence only due to its own fault/negligence, not because the evidence was not available at the time.

Merits

-FIFA refrains from commenting on them since it considers its involvement as a respondent in these proceedings is exclusively due to the Appellant's attempt to set aside FIFA's jurisdiction to decide the case.

68. In its Answer, the Second Respondent requested the Sole Arbitrator to decide:

"*Based on the above, FIFA respectfully requests CAS to issue an award:*

(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings."

V. JURISDICTION

69. 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 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 him prior to the appeal, in accordance with the statutes or regulations of that body*."

70. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 para. 1 of the FIFA Statutes, which provides that *"Appeals against final decisions passed by FIFA's legal bodies and against decision passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."*

71. In addition, neither of the Respondents objected to the jurisdiction of the CAS, and the Parties furthermore confirmed the CAS' jurisdiction when signing the Order of Procedure.

72. Considering the above, the Sole Arbitrator finds that CAS has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

73. The grounds of the Appealed Decision were notified to the Appellant on 23 June 2023 and the Statement of Appeal was filed on 11 July 2023, *i.e.*, within the statutory time limit of 21 days set out in Article 57 para. 1 of the FIFA Statutes.

74. The Statement of Appeal complied with all the requirements of Articles R48 and R51 of the CAS Code.

75. It follows that the appeal is admissible, which is not disputed by the Respondents.

VII. APPLICABLE LAW

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

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

77. Pursuant to Article 56 para. 2 of the FIFA Statutes:

> "*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*."

78. The Sole Arbitrator notes that solely the Second Respondent has argued that, in view of the aforementioned articles, FIFA Statutes and regulations – namely the RSTP, constitute the applicable law to the matter at hand and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

79. The Sole Arbitrator notes that the Contract does not provide an election of applicable law.

80. The Sole Arbitrator is mindful that the Termination Agreement refers to the laws in force in the Portuguese Republic. Clause Eight.1 of the Termination Agreement reads:

> "*The present Revocation Agreement shall be regulated, in all that is not specifically provided for, under the terms and conditions imposed by the legal provisions in force in the Portuguese Republic, in particular the legal regime of the employment contract of sports practitioners, approved by Law n. 54/2017, of July 14, the Collective Labour Agreement established between the Portuguese Professional Football League and the Union of Professional Football Players, as well as, subsidiarily, the Labour Coe, approved by Law n. 7/2009, of February 12.* […]."

81. The Sole Arbitrator notes that both the Appellant and the First Respondent applied in these proceedings, for the purpose of Article R58 of the Code, the rules and regulations of FIFA, and vaguely referred to Portuguese law principles applicable to the interpretation of contracts.

82. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied to accept the application of the various rules and regulations of FIFA and, when necessary, Swiss law to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY MATTERS

83. In its Appeal Brief, the Appellant requested the following evidentiary measure:

> "*1. To order the First Respondent to submit his sports employment contract with Football Club "Krasnodar" LLC.*
>
> *2. To order Football Club "Krasnodar" LLC to submit the sports employment contract signed with the Player.*
>
> *3. To order FIFA to submit a complete copy of the proceeding under the case no FPSD-8335*."

84. On 25 October 2023, the Sole Arbitrator ordered the First Respondent to provide a copy of the employment contract signed by the Player with FC Krasnodar by 30 October 2023.

85. The Sole Arbitrator however denied ordering Football Club Krasnodar LLC to submit the sports employment contract signed with the Player, as Football Club Krasnodar LLC is not a party to this appeal.

86. With regard to the production of the FIFA case file, the Sole Arbitrator rejected this petition as the file FPSD-8335, from which the Appealed Decision is the final document, was produced by the Respondents with their respective submissions, further to the Appellant's Appeal Brief.

87. In addition, the Parties raised several issues with regard to the list of attendees to the hearing, sent prior to the hearing date: i) the Appellant added the name of Mr Fernando Pereira, which was not included as witness in the Appeal Brief and ii) the Player requested that a certain Mr Jaime Bragança appeared *in lieu* of the Player himself.

88. The presence of Mr Fernando Pereira was justified by the Appellant to elucidate on the application of the Portuguese Football Federation and Portuguese law. FIFA and the Player opposed to the appearance of this witness.

89. The presence of Mr Jaime Bragança was accepted by FIFA, but rejected by the Appellant, as he did not have any relation to the case.

90. The Sole Arbitrator decided to reject the appearance of both Mr Fernando Pereira and Mr Jaime Bragança, as none of the Parties were able to explain their relation to the case.

IX. MERITS OF THE APPEAL

91. On the basis of the relief requested by the Parties, the object of these proceedings is, in essence, whether the FIFA DRC was competent to decide the dispute, and whether the Player is entitled to the remuneration provided for as a percentage of the transfer fee.

92. The relevant facts and circumstances of the case are not disputed between the Parties, in particular the fact that the Club and the Player signed an employment contract and eventually ended their relationship by entering into a termination agreement. In addition, the Player signed an employment contract with FC Krasnodar, and the Club and FC Krasnodar entered into an agreement for the transfer of the Player.

93. The Sole Arbitrator will address the following issues:

    a. Did the FIFA DRC have jurisdiction to deal with the case?

    b. If so, was the Player entitled to receive a share of the transfer fee?

a. Did the FIFA DRC have jurisdiction to deal with the case?

94. The Appellant argues that the Player's claim was inadmissible since it was lodged before a non-competent judicial body, the FIFA DRC, when the Parties had agreed on the submission of any dispute arising out of the Contract to the TAD in Lisbon.

95. In the Appealed Decision, the FIFA DRC found it had competence to deal with the dispute since the Club had failed to submit any regulations of the allegedly competent deciding body and, accordingly, had not proven that the TAD met the minimum procedural standards required.

96. The Sole Arbitrator notes that the Parties do no dispute that, whether FIFA has jurisdiction or not to deal with a case, can only be decided by applying FIFA regulations as stated in Article 2 para. 1 of the FIFA Procedural Rules (2022 edition applicable to this matter) that reads:

> *"The matters for which each chamber has jurisdiction are provided by specific FIFA regulations."*

97. The Sole Arbitrator notes that the Parties do not contest that the FIFA DRC is competent to decide on its own jurisdiction in a case in which, as the matter at hand, the dispute between the Player and the Club is a dispute related to an employment agreement, and has an international dimension, as the Player is a professional football player from Cabo Verde and the Club is a Portuguese Club.

98. Article 22 of the FIFA RSTP states as follows:

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

99. In accordance with the abovementioned Article 22 of the FIFA RSTP, should the Parties have explicitly chosen to submit their dispute to an independent arbitration tribunal established at a national level (national dispute resolution chamber), within the framework of the association and/or collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, the dispute between the Player and the Club will be referred by the FIFA DCR to the said national dispute resolution chamber.

100. The Sole Arbitrator recalls that the possibility to refer to an arbitration tribunal under Article 22 of the RSTP derives from Article 58.3 of the FIFA Statutes which provides that:

> "*The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to* ***an independent and duly constituted arbitration tribunal*** *recognised under the rules of the association or confederation or to CAS*." [emphasis added]

101. FIFA Circular Nº 1010 was enacted in 2005 to laid down the minimum procedural standards that an arbitration tribunal must meet in order to be considered *"**an independent and duly constituted arbitration tribunal***", as provided for under article 58.3 of the FIFA Statutes. FIFA clearly states in Circular 1010 that:

> "*The members of FIFA and the confederations are obliged to ensure compliance with such minimum standard at all times*" and add "*in certain cases, FIFA reserves the right to examine the minimum procedural standard required for arbitral tribunals in view of art. 60, par 3 c, of the FIFA Statutes*." (currently art. 58.3)

102. FIFA created the Dispute Resolution Chamber in 2001, based on the principle of equal representation of clubs (employers) and players (employees). In 2007, and with the aim to shift responsibilities in matters of social relations to FIFA member's association, FIFA approved standard regulations to be followed by all National Dispute Resolution Chambers to be constituted, following the same principle of equal representation of clubs and players.

103. The result is a set of rules defined under FIFA rules and regulations according to which a National Dispute Resolution Chamber is to guarantee that its internal rules follow the NDRC Standard Regulations and that the arbitration tribunal that will eventually be constituted complies with the FIFA Circular Nº 1010 minimum criteria.

104. FIFA Circular Nº 1010 laid down the minimum procedural standard which comprise the principle of parity when constituting the arbitration tribunal, 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.

105. In addition, the FIFA NDRC, *inter alia*, provides:

> "*Article 3 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;*

b) between three and ten player representatives who are elected or appointed either on the proposal of the players' association affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro;

c) between three and ten club representatives who are elected or appointed on the proposal of the clubs or leagues […]"

"*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 [witness and expert]."

106. Therefore, the Sole Arbitrator notes that in a case like this, where one of the parties referred the dispute to the FIFA DRC and the other party disputes its competence in favour of the national arbitration body, the FIFA DRC will examine whether the above-mentioned requirements were fulfilled and, in the affirmative, will decline its own jurisdiction and refer the parties to the national decision-making body. On the contrary, if proof of the relevant requirements are not met, the FIFA DRC will decline the jurisdiction of the said body and accept its own jurisdiction.

107. The Appellant however considers that pursuant to Article 22 of the RSTP and FIFA Circular Nº 1010, the parties are not obliged "*to demonstrate or proof that the arbitral tribunal guarantees fair proceedings and respect of the principal of equal representation of players and clubs*." It adds that the TAD necessarily meets the standard criteria, since it is a national body, created and regulated by law and meets all the legal standards required under European law, and, moreover, has been accepted as a national deciding body by the FIFA DRC in other cases.

108. In turn, FIFA considers that CAS jurisprudence has rightly stated that "*the party who invokes the jurisdiction of a national arbitration body needs to establish this in every single case […] since the situation and not least the applicable national regulations may change over time*." (CAS 2020/7452 and CAS 2014/A/3656).

109. The Sole Arbitrator considers that it is a well-established principle that the FIFA DRC may request proof that the NDRC complies with the minimum criteria of the alleged competent tribunal, when one of the Parties opposes to the jurisdiction of such NDRC. In such a situation, CAS jurisprudence has confirmed that the FIFA DRC will decide "*based on the evidence before it*" (See CAS 2020/A/7452). This is the reason why the FIFA DRC requested the Club to submit the relevant information.

110. It was therefore up to the Club to discharge the burden to prove that the TAD, to which the Parties have referred to in their arbitration agreement, met the standards required by FIFA regulations.

111. The Sole Arbitrator observes that the Appellant, be it during the proceedings before the FIFA DRC, or during the course of this appeal, only alleged that the TAD complies with the minimum requirements in a general basis but did not prove that the TAD complied to

each of the aforementioned requirements in the FIFA Circular Nº 1010, as required by the CAS cited jurisprudence.

112. The Appellant did not provide evidence, be it through witnesses or documents, that the remaining criteria established by the NDRC Standard Regulations had been met, amongst others, with regard to independence and parity as provided for under Article 3.1 of the NDRC Standard Regulations.

113. The Club was invited by the FIFA DRC to present submissions or documentation. Yet, the Appealed Decision mentions that "*despite having been invited to do so, the Respondent provided no further arguments or documentation.*" (Appealed Decision, para 16). FIFA Counsel confirmed at the hearing that the Club failed even to respond to the FIFA DRC invitation with any argument.

114. Finally, the Club could not overcome the fact that the TAD provides for a fee for costs, and is therefore not free, as required by Article 32 of the NDRC Standard Regulation. CAS 2021/A/8148 established that:

> "*143. Article 32 of the FIFA NDRC Regulations provides that the proceedings before any NDRC are to be free of charge.*
>
> *144. The Panel notes, based on the information contained in the Appealed Decision (at para.53) that has remained unchallenged, that the "Arbitration Fee" was in the aggregate approx. ZAR 30,000[…].*
>
> *145. Therefore, irrespective of whether the NSL DRC and SAFA Arbitration Tribunal as required to respect the principle of equal representation, the Panel considers that it is not compliant with the FIFA Requirements on this front.*
>
> *146. The Panel therefore concludes that the FIFA PSC was correct to accept jurisdiction*."

115. Based on the above, the Sole Arbitrator finds that the Appellant failed to prove, both before the FIFA DRC and in the present appeal proceedings, that the TAD, at the time of the Player's filing its claim with the FIFA DRC, met the criteria required by Article 22 of the FIFA RSTP, the Circular 1010 and the NSTP Regulations. The Sole Arbitrator therefore confirms that the FIFA DRC was competent, on the basis of article 22 of the FIFA RSTP, to decide on the merits of the dispute.

b. If so, was the Player entitled to receive a share of the transfer fee?

116. The Parties dispute whether the Player was entitled to receive a share of 20% of the transfer fee, in an amount of EUR 120 000 as provided for in the Contract, or, on the contrary, whether by signing the Termination Agreement, the Player had forfeited his right to this share.

117. The Sole Arbitrator notes that the issue at hand is whether the agreement according to which the Player is to receive a specific amount (percentage) – in the event of his future transfer to another club can be considered as revoked by the Termination Agreement.

118. The Sole Arbitrator observes that the Contract grants the Player an "irrevocable" right to receive 20% of the amount the Club shall receive if the Player is transferred. Clause 1 of the Contract provides that:

> "[the] *PLAYER is the owner of 20% (twenty percent) of the net value of his economic rights.* ***So that no doubts remain, the PLAYER declares in an express, free and irrevocable manner that he will only have the right to receive a percentage of the values that CHAVES SAD will be entitled to, in case the PLAYER is transferred definitely and onerously, and in case of an onerous transfer, the 20% (twenty percent) of the PLAYER***".

119. Clause One of the Termination Agreement reads:

> "*By the present Agreement, CHAVES SAD and the PLAYER revoke, by mutual agreement and effective from 7 September 2022, the Sports Employment Contract identified above, as well as all its possible amendments*."

120. Clause Three of the same agreement reads:

> "*2. The PLAYER declares and acknowledges that he has nothing else to receive or claim from CHAVES SAD, under any title whatsoever, and regardless of its nature, namely, but not exclusively, salaries, prizes, bonuses, damages, agreements and/or any amount.*
>
> *3. On this date, the PLAYER expressly and irrevocably declares that CHAVES SAD has settled all its accounts with the PLAYER, whether those resulting from the Sports Employment Contract, or from any amendments, or those resulting from its revocation, thus the PLAYER has nothing to demand or claim from CHAVES SAD, under any title whatsoever, giving the competent and full discharge*."

121. And Clause Four reads:

> "*The effect of the present revocation agreement are subject to the condition that a sports employment contract is signed between the PLAYER and the "Football Club "Krasnodar" LLC" until 08.09.2022 and the PLAYER must inform CHAVES SAD of this fact in writing. If the PLAYER does not sign a sports employment agreement contract with "Football Club "Krasnodar" LLC" until 08.09.2022, the PLAYER commits to present himself at the facilities of CHAVES SAD until 10.09.2022, immediately integrating its staff.*"

122. The Sole Arbitrator notes that the ownership of economic rights, restricted in the past to clubs (as players were considered third parties), is nowadays allowed for the players, so that the players can buy into their future valuations by receiving part of their own transfer fee. This is reflected in FIFA Manual on Third Party Influence "TPI" and on third party ownership of player's economic rights "TPO" in football agreements (the "Manual"), according to which the FIFA Disciplinary Committee:

> "*considers that it is mainly the player who, through his work, effort, perseverance and daily discipline, arouses interest from other clubs and therefore generates his own surplus value. Therefore, although clubs and their technical services also have a significant hand in the good performance of a player, the latter is primarily responsible for his own development and is the main cause for the interest of other clubs and their ultimate decision to pay a certain sum to secure his services*." (p. 30 of the Manual)

123. The Manual also reflects that:

> "*The Committee considers that the amount determined in a transfer agreement (or an employment contract) to be paid to the player for his future transfer – which constitutes a share in the value of his future transfer- must be considered part of his remuneration in accordance with the employment relationship with his club*."

124. Therefore, the Sole Arbitrator concludes that, as the share in the value of the transfer fee is part of the Player's remuneration, it should have been paid after the Transfer was concluded.

125. Therefore, at the date of signature of the Termination Agreement, as said agreement was conditional upon the signature of an employment agreement with Krasnodar, the transfer fee was not yet paid by Krasnodar to the Club and the remuneration for that transfer (20% percentage fee) provided for in the Employment Contract was still to be due.

126. Alternatively, the Player could have renounced to this remuneration, but this renouncement should have been explicitly made. The Sole Arbitrator notes that the Termination Agreement does not refer to this specific compensation, to which the Player is entitled upon his transfer to another club and which is different from the remuneration for his services to the Club enumerated in the Contract.

127. The Sole Arbitrator agrees with the FIFA DCR that the revocation of a player's economic rights should have been clearly established and emphasised in the Termination Agreement so that the Player was clearly aware of the forfeiting of his rights at the time of the signing of the Termination Agreement.

128. The Sole Arbitrator concludes that the Player had a financial interest in the future transfer of his own registration and this interest cannot be considered to be revoked by the terms of the Termination Agreement.

129. The Appealed Decision is therefore confirmed in its entirety. The Appellant is due to pay the First Respondent an amount of EUR 120 000.

130. The Sole Arbitrator furthermore does not find any grounds for amending the FIFA DRC decision with regard to interest, and the Sole Arbitrator therefore confirms also that interest in the Appealed Decision.

131. Finally, and for the sake of good order, the Sole Arbitrator dismisses the Appellant request to be given at least 60 (sixty days) to pay the amounts considered due, for the reason that

no explanation was given to this request, as well as the request to be acquitted from the disciplinary sanction imposed by FIFA, as the Appeal is dismissed.

132. In addition, the Sole Arbitrator dismisses the Player's request to impose a reprimand on the Appellant, for the reason that counterclaims are not permitted in CAS appeal proceedings under Article 55 of the CAS Code.

X. Costs

133. Article R64.4 of the CAS Code provides as follows:

> "*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*."

134. Article R64.5 of the CAS Code provides as follows:

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

135. As a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne by the Appellant in their entirety.

136. Furthermore, and also as a general rule, the award may grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The Appellant must therefore pay a contribution towards the First Respondent's legal fees in the amount of CHF 5,000 (five thousand Swiss Francs), while taking into consideration the fact that FIFA was not represented by an external counsel, the Second Respondent must bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Grupo Desportivo de Chaves - Futebol, SAD against the Decision of the FIFA Dispute Resolution Chamber passed on 20 April 2023 (Decision FPSD-8335) is dismissed.

2. The Decision of the FIFA Dispute Resolution Chamber passed on 20 April 2023 (Decision FPSD-8335) is confirmed.

3. The costs of the appeal, to be determined and served separately to the Parties by the CAS Court Office, will be borne by Grupo Desportivo de Chaves - Futebol, SAD in their entirety.

4. Grupo Desportivo de Chaves - Futebol, SAD is ordered to pay a total amount of CHF 5,000 to Kevin Lenini Gonçalves Pereira de Pina as contribution to his expenses and legal fees incurred in connection with these arbitration proceedings.

5. Grupo Desportivo de Chaves - Futebol, SAD and FIFA shall bear their own legal fees and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland

Date: 26 April 2024

THE COURT OF ARBITRATION FOR SPORT

Carmen Núñez-Lagos
Sole Arbitrator