CAS 2023/A/9943 Qingdao Hainiu FC v. Uros Deric & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Ken E. Lalo, Attorney-at-law in Gan-Yoshiyya, Israel

in the arbitration between

Qingdao Hainiu FC, Qingdao, China

Represented by Ms Julie Xie, Attorney-at-law, Grandall Law Firm, Tianjin, China

Appellant

and

Uros Deric, Nova Pazova, Stara Pazova, Serbia

Represented by Mr Rafael Meirelles Gomes de Ávila, Attorney-at-law, Campo Grande, Brazil, and Mr Fhayllow Nocko, Attorney-at-law, Campo Grande, Brazil

First Respondent

&

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios and Mr Roberto Nájera Reyes, Attorneys-at-law, FIFA Litigation Department, Zurich, Switzerland

Second Respondent

I. THE PARTIES

1. Qingdao Hainiu FC (the "Appellant" or the "Club") is a Chinese football club, affiliated to the Chinese Football Association ("CFA").

2. Uros Deric (the "First Respondent" or the "Player") is a Serbian professional football player, born on 28 May 1992.

3. The Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is the international governing body of football. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code ("SCC") with its headquarters in Zürich, Switzerland.

4. The Player and FIFA shall be jointly referred to as the "Respondents". The Appellant and the Respondents shall be referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings, testimony and evidence adduced during these proceedings. 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, he refers in this Award only to the submissions and evidence he considers necessary to explain its reasoning.

6. On 19 February 2022, the Club and the Player allegedly signed a "Letter of Intention" (the "LOI") by means of which the Club expressed its interest in the Player's services.

7. On an unspecified date, the Player also allegedly signed a contract titled "Employment Contract for Professional Football Player (2022 version)", which largely reproduced the contents of the LOI (the "Contract").

8. On 20 and 21 March 2022, the Player allegedly signed four letters in both Chinese and English, titled: (i) "Commitment Letter of the working experience"; (ii) "Commitment letter of the highest education certificate"; (iii) "Commitment Letter of the Body Examine Result"; and (iv) "Non-Criminal Commitment letter".

9. According to the Player, despite the fact that he had already taken all the procedures to move to China, the Club decided not to honour the LOI and the Contract and not to provide the Player any employment.

10. The Club claims that it has no information about the alleged offer or Contract and that its management did not know the Player. The Club indicates that "*it has doubts about and denies the authenticity of the Offer*" of employment allegedly made to the Player.

11. On 16 March 2023, the Player allegedly sent a letter to the Club demanding the total value of the LOI (i.e., USD 280,000 net) for the Club's failure to comply with the conditions stipulated therein. The Club has not settled this claim or any part thereof.

12. On 5 April 2023, the Player filed a claim against the Club before the Dispute Resolution Chamber of the FIFA Football Tribunal ("FIFA DRC") requesting that the Club pay him USD 280,000 net plus default interest at the rate of 5% *per annum* on the amount due.

13. On 18 April 2023, FIFA notified the Club via the FIFA Legal Portal that a claim was lodged against it by the Player before the Football Tribunal.

14. The letter and attachment from FIFA dated 18 April 2023 stated, *inter alia*, that:

> "*In view of the foregoing, we kindly invite you to provide us with your position on the claim, along with any documentary evidence you deem useful in your support,* ***by no later than 8 May 2023 exclusively*** *via the Legal Portal (legalportal.fifa.com) in PDF format in accordance with art. 21 par. 1 and art. 13 par. 3 and 5 of the Procedural Rules Governing the Football Tribunal (hereinafter: the Procedural Rules). In this respect, please note that your club has been registered in the Legal Portal with the e-mail 921383291@qq.com.*" (emphasis in original)

This letter and attachment also indicated that as of 1 May 2023, the e-mail service psdfifa@fifa.org will be discontinued for official communication pertaining to claims and regulatory applications, which must thereafter be made exclusively via the FIFA Legal Portal (legalportal.fifa.com).

15. On 9 May 2023, the Player was asked via the Legal Portal to provide his employment situation as from the alleged termination of the Contract.

16. On 15 May 2023, the Player submitted his explanation indicating that he has been unemployed from 15 March 2022 and during the term of the Contract discussed in the legal process, and that there is no amount to be reduced from any eventual redress arbitrated by the FIFA DRC.

17. The Club did not provide its position before the FIFA DRC.

18. On 5 June 2023, FIFA notified the FIFA DRC decision FPSD-9854 passed on 1 June 2023 (the "DRC Decision"), which accepted the Player's Claim as follows:

> "*1. The claim of the Claimant, Uros Deric, is accepted.*
> *2. The Respondent, Qingdao Hainiu FC, must pay to the Claimant USD 280,000 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 5 April 2023 until the date of effective payment.*
> *3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
> *4. 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.*

5. *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.*
6. *This decision in rendered without costs.*" (emphasis omitted)

19. Neither the Player nor the Club requested the grounds of the DRC Decision and, therefore, the DRC Decision became final and binding.

20. On 29 July 2023, the Player requested FIFA to impose the sanctions provided in the DRC Decision pursuant to Article 24 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), since the Club failed to pay the amounts provided in the DRC Decision.

21. On 3 August 2023, FIFA imposed on the Club a registration ban for its non-compliance with the DRC Decision, issuing decision FDD-15519 (the "Registration Ban Decision") and imposing a ban from registering new players internationally and at national level.

22. The Club argues that it was not able to participate in the proceedings before the FIFA DRC or to submit a defence and evidence because it did not receive any correspondence from the Player or from the FIFA DRC and that it was unaware of the proceedings, including the DRC Decision and the Registration Ban Decision.

23. The Club argues that only on 16 August 2023 it received from the CFA a copy of the Registration Ban Decision. The Club then and on 16 August 2023 registered an account with email 2183962817@qq.com in the FIFA Legal Portal. FIFA approved the registration on 17 August 2023 and the Club then downloaded from the FIFA Legal Portal all the documents, official communications and decisions in the FIFA proceedings.

24. The Club alleges that, after an internal review, it did not find any information about the Offer or the Contract with the Player and that its management did not know the Player and "*was shocked*" to learn of the claim made by the Player.

25. The Club claims that at that point it conducted an investigation and found out that communication in this case was addressed to an e-mail address of Mr Chen Suijie, a former employee of the Club, who left the Club due to illness in April 2023. The Club claims that prior to his departure, Mr Chen Suijie was responsible for managing the FIFA Transfer Matching System ("FIFA TMS") for the Club and that he submitted his resignation on 20 March 2023, but failed to properly handover his work to other colleagues at the Club because "*he was ill in hospital*".

26. The Club argues that it was not able to present its defence and position in front of the FIFA DRC due to such reasons which are "*not attributable to the Appellant*".

27. The Club also alleges that the Player entered into an employment relationship with a third party, a club in another country, valid from July and until December 2022, and was therefore not entitled to receive the amounts claimed by him before the FIFA DRC. The Club claims that the Player was to receive income from a third party under a new employment contract and should not have made a duplicate claim against the Club.

28. Therefore, in its appeal of both the DRC Decision and the Registration Ban Decision, the Club alleges, *inter alia*, that it was unaware of the proceedings held before the FIFA DRC.

III. PROCEEDINGS BEFORE THE CAS

29. On 22 August 2023, the Appellant filed with the Court of Arbitration for Sport ("CAS") its Statement of Appeal, pursuant to Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code"), appealing both the DRC Decision and the Registration Ban Decision. The Appellant requested that the matter be referred to a Sole Arbitrator.

30. On 24 August 2023, the CAS Court Office advised the Appellant that its appeal appears to be directed both against the Registration Ban Decision dated 3 August 2023 and the DRC Decision dated 1 June 2023 and notified to the Parties on 5 June 2023 and that in consideration of the joint reading of Article R49 of the CAS Code and Article 58 of the FIFA Statutes (May 2022 edition) (the "FIFA Statutes"), the appeal, insofar as it is directed against the DRC Decision notified on 5 June 2023, "*seems to be manifestly late*".

31. On 31 August 2023, the Appellant responded to the CAS Court Office letter of 24 August 2023, indicating that it did not receive and was not aware of the DRC Decision until 17 August 2023, hence the appeal was timely.

32. The Statement of Appeal was notified to the Respondents on 31 August 2023.

33. On 7 September 2023, the Second Respondent advised that in addition to the belatedness of the appeal against the DRC Decision, it was not clear whether the Appellant appealed one or two decisions. It submitted that, if the Appellant filed an appeal against two separate decisions, namely, the DRC Decision and the Registration Ban Decision, in one proceeding, paying only one Court Office Fee of CHF 1,000, then it had failed to comply with the CAS formalities, a matter which could no longer be cured.

34. On 12 September 2023, the Appellant clarified that it was appealing both the DRC Decision and the Registration Ban Decision which are interrelated, as "[*b*]*oth decisions are based on the same underlying legal relationship and both decisions are causally linked*".

35. On 12 September 2023, the First Respondent indicated that the appeal is untimely and should be "*dismissed in a preliminary manner*" and that, if it were to continue, the First Respondent agreed to refer the matter to a sole arbitrator.

36. On 13 September 2023, the CAS Court Office advised the Parties that the procedure would proceed under a single case reference, namely CAS 2023/A/9443, "*[c]onsidering that the DRC Decision and the [Registration Ban Decision] are closely interrelated and that, in particular, the [Registration Ban Decision] only exists insofar as the DRC Decision is to be considered as final and binding*". The CAS Court Office further informed the Parties that it would "*be for the Panel, once constituted, to rule on the admissibility of the appeal*".

37. On 13 September 2023, the Appellant filed an Appeal Brief, pursuant to Article R51 of the CAS Code. This was done following the grant of a request to extend the time limit in which to submit such filing, as notified in CAS Court Office letter of 31 August 2023.

38. On 15 September 2023, the Second Respondent agreed to refer the matter to a sole arbitrator from the football list.

39. On 10 October 2023, the First Respondent filed his Answer, in accordance with Article R55 of the CAS Code. Such Answer was not provided by courier and was uploaded to the CAS e-Filing platform only on 30 October 2023 and is, therefore, inadmissible for non-compliance with Article R31 of the CAS Code, as will be further detailed in this Award.

40. On 11 December 2023, the Second Respondent filed its Answer, in accordance with Article R55 of the CAS Code. This was done following the grant of requests to extend the time limit in which to submit such filing, as notified in CAS Court Office letters of 27 October 2023, 10 November 2023 and 4 December 2023.

41. On 12 December 2023, the CAS Court Office informed the Parties of the constitution of the Sole Arbitrator.

42. All three Parties have provided their preference that the Sole Arbitrator issue an award based solely on the Parties' written submissions: (i) the Appellant in its letter of 13 December 2023; (ii) the First Respondent in his letter of 15 December 2023; and (iii) the Second Respondent in its letter of 20 December 2023. The Second Respondent indicated that it considers "*a hearing unnecessary since (i) the matter at hand does not present exceptional complexity, (ii) the parties have clearly explained their positions in their relevant submissions and (iii) the other Parties have not requested it*".

43. On 17 January 2024, the Second Respondent provided several cases and articles quoted in its Answer in response to the Sole Arbitrator's request of 16 January 2024.

44. On 18 January 2024, the Appellant filed an objection to the filing of additional documents by the Second Respondent on 17 January 2024.

45. In the same filing by the Appellant of 18 January 2024, the Appellant also requested the grant of provisional measures; namely, a provisional lifting of the registration ban imposed in the Registration Ban Decision.

46. On 26 January 2024, both Respondents objected to the provisional measures sought by the Appellant and requested that the Appellant's request be rejected.

47. On 8 February 2024, the Appellant requested that it be allowed to admit additional evidence relating to a FIFA DRC decision issued on 6 February 2024, rejecting a claim of Mr Uros Cosic (also a Serbian player, as claimant, represented by the same lawyers representing the Player in the current proceedings) against the Club concerning a similar offer of employment (the "Cosic Case"). The Appellant argued that the Cosic Case has a very high degree of similarity to the present case (e.g. the offers in both cases are in the same format and the evidence of the case and the content of the claims are very similar), "*which the Appellant considers to be of some relevance to the present case*".

48. The admission of the Cosic Case was objected to by both Respondents in their respective letters of 13 February 2024. The Second Respondent argued that the Appellant has neither alleged – let alone proven – "*exceptional circumstances*" nor the relevance for accepting the new evidence on file and that considering that the outcome of the DRC Decision is unalterable at this stage, the "*new evidence*" filed by the Appellant is irrelevant to these proceedings. The First Respondent argued that the new evidence is not relevant to the current proceedings as it relates to a different case, that it merely proves that the Appellant knows how to follow FIFA files and handle legal proceedings before FIFA, and that there is no relevance for the newly provided documents and no reason to admit them.

49. On 19 February 2024, CAS Court Office advised the Parties that the Sole Arbitrator has decided not to admit the new evidence provided by the Appellant in accordance with Article R56 para. 1 of the CAS Code.

50. On 19 February 2024, CAS Court Office also advised the Parties that the Sole Arbitrator has decided that the Second Respondent complied with the scope of the submission of documents specified by the Sole Arbitrator and, therefore, the documents provided by the Second Respondent on 17 January 2024 are admitted to the case file.

51. On 28 February 2024, the Sole Arbitrator issued the operative part of an Order rejecting the provisional lifting of the registration ban imposed in the Registration Ban Decision.

52. On 28 February 2024, the CAS Court Office provided the Player's "*Petition for the termination of the cases*" dated 27 February 2024, in which the Player requested "*the TERMINATION OF ALL THE PROCESS currently being processed before the CAS/TAS (CAS 2023/A/9943 Qingdao Hainiu FC v. Mr. Uros Deric / FIFA) and the consequent cancellation of the TRANSFER BAN penalty imposed by FIFA*" against the Appellant. The reason for such a request was the information that "*the parties have reached an agreement and the total amount of the FIFA decision was duly paid by QINGDAO HAINIU FC [...] to the account of the ATHLETE*".

53. In its letter of 28 February 2024, the CAS Court Office advised that "*it is not for the First Respondent to withdraw the Appeal, but for the Appellant, the procedure will continue its course until any such withdrawal is requested by the Appellant.*"

54. On 19 March 2024, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the "Order of Procedure").

55. The Order of Procedure was signed and returned by the Appellant on 21 March 2024 and by the Second Respondent on 20 March 2024.

56. The Order of Procedure was not signed by the First Respondent within the designated deadline.

57. On 27 March 2024, the CAS Court Office provided the First Respondent with an extended period in which to sign and return the Order of Procedure. The First Respondent did not sign and return the Order of Procedure within the extended period and has not explained his failure to do so.

58. On 6 May 2024, the Sole Arbitrator issued a reasoned Order on the request for provisional measures.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

59. The aim of this section is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. Additional elements of the Parties' claims may be discussed in subsequent sections of the Award. As stated above, the Sole Arbitrator reiterates that in deciding upon the Parties' claims he has carefully considered all the submissions made and all the evidence adduced by the Parties, whether or not expressly referred to in this section of the Award.

A. The Position of the Appellant

60. In both its Statement of Appeal and Appeal Brief, the Appellant requests the Sole Arbitrator to issue the following reliefs:

> "*The Appellant hereby respectfully requests to:*
> *a) set aside the Decision of DRC;*
> *b) lift the ban on registering any new players;*
> *c) order the Respondent to bear the costs of arbitration".*

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

- The Club, after internal checking, did not find any information about the offer or employment contract with the Player. The management of the Club did not know the Player and was "shocked" to learn of the claim by him.

- The Club has a specific procedure regarding offers to and employment of foreign players and this was not followed in regard to the Player, evidencing that no offer was made to the Player.

- The LOI and the Contract are not in line with documents provided by the Club to other players; they lack the signature of any of the Club's authorized representatives

or the Player's agent; the Club's official seal on them is illegible; the Player did not provide any evidence of exchange of correspondence with the Club's representatives to confirm the offer was made by the Club; the format, contents and letterhead was noticeably distinct from other foreign players employed by Club during the same period; and the Player was unable to prove that his acceptance of the offer was served on the Club.

- Therefore, the Club strongly disputes the authenticity of the LOI and Contract.

- In accordance with Article 1 of the Swiss Code of Obligations, the conclusion of a contract requires a mutual expression of intent by the parties. However, the Player did not provide any evidence that the Club sent the LOI to the Player and that the Player informed the Club of his acceptance of the offer of employment. The conclusion is that no offer of employment was established.

- Even if the LOI was a true statement of intent by the Club and the Player, the Player failed to meet the required conditions to be fulfilled for the Contract to be effective; namely a) the Player passing a COVID test and b) the Player's arrival in China.

- From February to December 2022 the Chinese government enforced very strict measures to control the spread of the COVID-19 virus. The Player has not met these requirements and the Contract conditions have not been met.

- There was no evidence from the Player that the conditions for the offer to become effective had been met, and there was no evidence of any attempt by the Player to contact the Club in relation to the fulfilment of these conditions since February 2022.

- Therefore, even if there was an offer of employment, it was not legally valid because the conditions for its establishment and validity have not been met.

- In accordance with the past jurisprudence of the FIFA DRC, a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The Player did not meet the burden of establishing that the offer constitutes a valid employment contract.

- There is no evidence that the Club made an offer to or signed a contract with the Player.

- Therefore, there exists no valid and binding employment relationship between the Club and the Player.

- The Player failed to advise, and the DRC Decision failed to take into account, the fact that for a substantial part of the period for which the Player was compensated through the DRC Decision the Player has also received compensation from another club, as evidenced by another FIFA decision involving the Player and HÀ NỘI, a Vietnamese football club ("Hà Nội").

- On 10 November 2022, the FIFA DRC rendered a decision in which it partially accepted the claim of the Player against Hà Nội, and required Hà Nội to pay the Player VND 13,350,000 as outstanding remuneration and USD 251,500 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 18 August 2022 until the date of effective payment.

- In these proceedings it was established that the Player and Hà Nội entered into an employment relationship valid from July until December 2022. In the present proceedings the Player claimed that the employment period under the offer between him and the Club was from 15 March 2022 to 31 December 2022.

- Therefore, at the time when the Player filed his claim against the Club before the FIFA DRC, he had already received a decision on his employment dispute with Hà Nội. However, when the Player was asked by the FIFA DRC to provide his employment status since March 2022, he did not disclose this information. This, despite the fact that it was clear as a result of the decision in the Hà Nội case that the Player would receive income from the new employment contract with Hà Nội.

- The Player made a duplicate claim, which would constitute a breach of the principle of good faith.

- Even if there were a valid employment contract between the Club and the Player, the misrepresentation of the Player led to a false calculation of the compensation amount.

- Therefore, the factual basis for determining the amount of compensation in the DRC Decision was incorrect, resulting in the Club being unfairly burdened with the amount of compensation.

- The Club did not receive the Player's claim before the FIFA DRC nor any correspondence from the Player or the FIFA DRC and was not able to submit a defence and evidence, nor request the grounds of the DRC Decision. The Club did not receive the DRC Decision and was unaware of the proceedings in front of the FIFA DRC.

- The Club successfully registered an account with an email address in the FIFA Legal Portal only on 16 August 2023.

- Only on 17 August 2023, the account was finally approved by FIFA and the Club was able to access the case information. It is only then that the Club was able to download from the FIFA Legal Portal all the documents relating the DRC Decision.

- Prior to that date, the Club had no knowledge of the Player's claim and was not able to present its defence and position in the FIFA proceedings nor challenge the issued DRC Decision.

- The Club found out that the notification of the case was sent to the e-mail address 921383291@qq.com, of which the Club was completely unaware. After investigation, the Club found out that the owner of this e-mail address is Mr Chen

Suijie, a former employee of the Club, who left the Club due to illness in April 2023. Prior to his departure, Mr Chen Suijie was responsible for managing the FIFA TMS. He submitted his resignation on 20 March 2023 and failed to properly handover his work to other colleague because he was ill in hospital.

- Pursuant to Article R49 of the CAS Code, in the absence of a time limit set in the FIFA's Statutes or regulations, the time limit for an appeal against the DRC Decision and the Registration Ban Decision is twenty-one days from the receipt of each of the decisions appealed against.

- The Registration Ban Decision is dated 3 August 2023, and it is based on the DRC Decision of 1 June 2023. The two decisions are interrelated and causally connected and should be reviewed together.

- Given that the DRC Decision should not be deemed to have been properly served via the FIFA Legal Portal on 5 June 2023, the 21-day appeal period should be determined in accordance with the Registration Ban Decision dated 3 August 2023.

- The appeal was filed within 21 days of receipt of the Registration Ban Decision dated 3 August 2023 and is, therefore, timely and admissible.

B. The Position of the First Respondent

62. The First Respondent's Answer was deemed inadmissible and excluded from the case file (see below paras. 106 ff).

C. The Position of the Second Respondent

63. In its Answer, the Second Respondent requests the Sole Arbitrator to issue the following reliefs:

> "*Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:*
> *(a) rejecting the reliefs sought by the Appellant;*
> *(b) declaring the appeal against the DRC Decision inadmissible;*
> *(c) in all cases, dismissing the appeal in full;*
> *(d) in all cases, confirming the DRC Decision and the Registration Ban Decision;*
> *(e) ordering the Appellant to bear the full costs of these arbitration proceedings; and*
> *(f) ordering the Appellant to make a contribution to FIFA's legal costs.*"

64. The Second Respondent's submissions, in essence, may be summarized as follows:

- FIFA duly notified the Player's Claim to the only email address recorded by the Club in FIFA TMS and, despite having the opportunity to participate in the first-instance proceedings, the Club failed to provide its position due to its own fault/negligence.

- The DRC Decision was correctly notified to the Club through the FIFA Legal Portal

which was accessible through the only email address recorded by the Club in the FIFA TMS.

- Given that the Club failed to request the grounds of the DRC Decision (despite having the chance to ask for them), the Club waived its right to appeal the DRC Decision and the latter became final and binding as per Article 15 Procedural Rules.

- By failing to request the grounds of the DRC Decision, the Club accepted the outcome thereto and, consequently, it is prevented from challenging it at this stage as this would be against the principle *venire contra factum proprium*.

- The Club's appeal against the DRC Decision should be considered inadmissible as it was filed well beyond the 21-day deadline established in the FIFA Statutes and the CAS Code to appeal FIFA decisions.

- Since (i) the Club failed to pay the amounts provided by the DRC Decision and (ii) the Player requested the implementation of the consequences foreseen in point 4 of the DRC Decision, FIFA had no other choice but to implement and issue the Registration Ban Decision.

- The DRC Decision and the Registration Ban Decision are correct from a legal and factual standpoint and should be confirmed.

- The appeal should, therefore, be rejected in its entirety.

- The costs of this procedure should be covered by the Club who should also make contribution to FIFA's legal costs in this matter.

V. JURISDICTION OF THE CAS

65. In accordance with Article 186 of the Swiss Private International Law Act ("PILA"), the CAS has the power to decide upon its own jurisdiction.

66. Article R47 of the Code provides that:

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

67. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

68. Article 56(1) of the FIFA Statutes, provides as follows:

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

69. Article 57(1) of the FIFA Statutes, provides that:

> "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*"

70. FIFA has accepted CAS jurisdiction in this matter and the Player did not argue against it.

71. In view of the foregoing, the Appellant was entitled to appeal to CAS and the CAS has jurisdiction to decide the appeal.

VI. ADMISSIBILITY OF THE APPEAL

72. On 22 August 2023, the Club appealed both the DRC Decision and the Registration Ban Decision before CAS, alleging, *inter alia*, that it was unaware of the proceedings held at FIFA.

73. The Player argues that the appeal is inadmissible as it was filed beyond any applicable deadline.

74. FIFA argues that the appeal against the DRC Decision is inadmissible, since the DRC Decision was notified on 5 June 2023 and the appeal was filed only on 22 August 2023, long beyond the expiration of the 21-day deadline to file an appeal pursuant to Article 57 FIFA Statutes and Article R49 of the CAS Code.

75. FIFA stated, however, in its Answer that "*[t]he admissibility of the Appellant's appeal is not contested by FIFA*", presumably referring to the appeal against the Registration Ban Decision.

76. The appeal, as it relates to the Registration Ban Decision, was filed within the 21-day deadline to file an appeal pursuant to Article 57 FIFA Statutes and Article R49 of the CAS Code.

77. The Club alleges that, due to a miscommunication with its former TMS Manager, it did not become aware of the Player's claim and of the DRC Decision and that it only learnt about them when the CFA implemented the Registration Ban Decision at national level. The Club alleges that it, therefore, "*was not able to present its defense and position and receive the decision in the FIFA proceedings due to reason not attributable to the Appellant*".

78. FIFA evidenced that on 18 April 2023 it sent the Player's claim with attachments to the only Club's email recorded in TMS (i.e., 921383291@qq.com), as well as to the Club's email previously recorded in TMS (i.e., 639226648@qq.com). According to the TMS records, the Club's email address 921383291@qq.com was registered and activated in TMS on 12 January 2022 and was deactivated only on 15 September 2023.

79. Article 10(4) of FIFA's Procedural Rules Governing the Football Tribunal (edition October 2022) indicates that "[*c*]*ommunications from FIFA via email shall be sent to a party by using the email address provided by the party, or that in TMS. An email address provided in TMS is binding on the party that has inserted it. Parties with a TMS account must ensure that their contact details are always up to date.*"

80. Under this Article, (i) FIFA notifications are made through the email address provided in TMS; (ii) when a party registers an email in TMS, all FIFA communications directed to that address are binding on that party; and (iii) the parties are obliged to update their contact details in TMS and ensure that these are always up to date.

81. Therefore, the Sole Arbitrator concludes that FIFA duly notified the Player's claim and all related proceedings and materials to the correct email address registered by the Club in TMS at the time of the dispute. During the entire FIFA DRC proceedings (i.e., from 5 April 2023 until 5 June 2023) the email address 921383291@qq.com was active in TMS and thus, all communications sent by FIFA to this email address were binding on the Club.

82. The Club accepts that, "*on 18 April 2023, FIFA notified the Appellant that a claim was lodged against it by the First Respondent before the Football Tribunal*". However, it states that it "*found out that the owner of the e-mail address 921383291@qq.com is Mr. Chen Suijie, a former employee of the Appellant who left the Club due to illness in April 2023. Prior to his departure, Mr. Chen Suijie was responsible for managing the FIFA Transfer Matching System. He submitted his resignation on 20 March 2023 and failed to properly handover his work to other colleague because he was ill in hospital.*" The Club provided evidence to support Mr Chen Suijie's hospitalization.

83. Pursuant to Article 10 (4) Procedural Rules, "*parties with a TMS account must ensure that their contact details are always up to date*" and, therefore, it was the Club's responsibility to update its email address in TMS. This was done by the Club only on 16 September 2023. Therefore, the Club should bear the consequences of its own fault and negligence and the Sole Arbitrator concludes that it is deemed that the Club has timely received all communication relating to the Player's claim, had the opportunity to respond to it, failed to do so and finally was properly and timely delivered the DRC Decision, on 5 June 2023.

84. Additionally, on 5 June 2023, the DRC Decision was duly notified to the Club through the Legal Portal.

85. On 25 April 2022, FIFA announced that it was preparing to launch the new FIFA Legal Portal: an online platform through which proceedings before the FIFA Football Tribunal and FIFA judicial bodies would be conducted. The same circular making the

announcement further explained that the Legal Portal would enable FIFA member associations and football stakeholders to manage their proceedings before FIFA decision-making or judicial bodies and gradually replace the system of email communication. This was aimed to ensure simple, secure and transparent communication between FIFA and its stakeholders, allowing for heightened traceability. The Legal Portal became compulsory on 1 May 2023.

86. The Legal Portal plays a fundamental role in the successful notification of the DRC Decision, which is ultimately where the cause or the purpose of the Appellant's appeal is situated.

87. On 6 April 2023, FIFA announced that "*[...] as of 1 May 2023, all proceedings before the FIFA Football outside the FIFA Transfer Matching System (TMS) and the FIFA judicial bodies shall be initiated and conducted exclusively through the Portal [...] the mandatory use of the Portal will apply to both new and ongoing proceedings [...] the Portal must be used for any proceedings before the relevant FIFA decision-making or judicial body, including the notification of decisions [...]*".

88. Besides the general circulars advising all FIFA stakeholders about the purpose, relevance and timing of the Legal Portal and its implementation, FIFA also specifically informed the Club on 18 April 2022 that the proceedings will be handled in the Legal Portal.

89. In the same letter of 18 April 2022, the Club was also advised by FIFA that it has been registered in the Legal Portal with the e-mail 921383291@qq.com, i.e., the only email registered by the Club in TMS.

90. Following these repeated reminders, the DRC Decision was notified to the Club and to the Player via the Legal Portal on 5 June 2023.

91. The Club argues that it did not become aware of the DRC Decision because its former TMS Manager did not hand over his work properly and timely to another colleague during his illness and hospitalization.

92. The Sole Arbitrator concludes that this is not a valid justification and that the Club must bear the consequences of its negligence.

93. Article 10(3) Procedural Rules (Edition March 2023) further safeguards the close monitoring *of the Leg*al Portal by the involved parties by clearly establishing that:

> "*Parties must review TMS and the Legal Portal at least once per day for any communications from FIFA. Parties are responsible for any procedural disadvantages that may arise due to a failure to properly undertake such review The contact details indicated in TMS are binding on the party that provided them.*"

94. FIFA communicates with a vast number of stakeholders. It is a reasonable and structural approach to require all FIFA stakeholders to ensure they comply with FIFA notification rules in order to allow and ensure an orderly and transparent system of communication which can be easily monitored. The Club could easily comply, through minimal internal

processes which are simple to apply, with such rules by a simple registration through a proper email address and a daily review of the TMS and the Legal Portal "*at least once per day*".

95. The Club was granted access to the Legal Portal with the only email address registered by it in TMS (921383291@qq.com). This means that the DRC Decision entered the Club's sphere of control on 5 June 2023. This suffices for a successful notification, irrespective of when the Club effectively took actual knowledge of the DRC Decision. It is sufficient that the Club had the opportunity to obtain knowledge of the DRC Decision irrespective of whether it in fact obtained such knowledge (See CAS 2016/A/, para. 48; CAS 2022/A/8598, para. 122; CAS 2019/A/6253; CAS 2020/A/7494; CAS 2006/A/1153).

96. The Club had the possibility to become acquainted with the content of the DRC Decision uploaded onto the Legal Portal, as of 5 June 2023.

97. Article 15 Procedural Rules (edition May 2023) reads as follows:

> "*5. Where no procedural costs are ordered, a party has ten calendar days from notification of the operative part of the decision to request the grounds of the decision. Failure to comply with the time limit shall result in the decision becoming final and binding and the party will be deemed to have waived its right to file an appeal. The time limit to lodge an appeal begins upon notification of the grounds of the decision.*
>
> *[...]*
>
> *7. Failure to comply with the time limit referred to in paragraph 6 of this article shall result in the request for the grounds being deemed to have been withdrawn. As a result, the decision will become final and binding and the party will be deemed to have waived its right to file an appeal.*"

98. Moreover, the DRC Decision clearly stated that:

> "*Should any of the parties wish to receive the grounds of the decision, a written request must be received by FIFA, within 10 days of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*"

99. Considering that the Appellant did not request the grounds of the DRC Decision, the Club waived its right to file an appeal and the DRC Decision, therefore, became final and binding.

100. The Sole Arbitrator concludes that given that the DRC Decision was duly notified to the Appellant on 5 June 2023 and that the Club failed to request the grounds of the DRC Decision in time or to appeal it before CAS within the 21-day deadline, the DRC Decision became final and binding.

101. The Sole Arbitrator concludes that the Club's appeal against the DRC Decision is inadmissible as it was filed well beyond the 21-day deadline to file an appeal pursuant to Article 57 FIFA Statutes and Article R49 of the CAS Code.

VII. APPLICABLE LAW

102. According to Article R58 of the CAS Code "*[t]he 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*".

103. According to Article 56(2) of the FIFA Statutes, "*[t]he 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.*"

104. The DRC Decision and the Registration Ban Decision were rendered by FIFA, and, therefore, the FIFA Statutes and regulations shall constitute the applicable law to this dispute, including the RSTP and the Procedural Rules of the Football Tribunal. Swiss law shall be applied, subsidiarily.

VIII. PROCEDURAL ISSUES

105. The Sole Arbitrator shall examine in this section some preliminary issues of a procedural nature.

A. Admissibility of the First Respondent's Answer

106. The Player filed his Answer by email on 10 October 2023. The Player's Answer was not sent to CAS by courier and was uploaded to the CAS e-Filing platform only on 30 October 2023.

107. Article R31 of the CAS Code states in its pertinent part that:

> "*The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit, as mentioned above.*

> *Filing of the above-mentioned submissions via the CAS e-filing platform is permitted under the conditions set out in the CAS guidelines on electronic filing.*"

108. In accordance with Article R31 of the CAS Code, the Player's Answer is inadmissible for non-compliance with the provisions of Article R31. Accordingly, such Answer is not relied upon by the Sole Arbitrator in making its determinations and decisions as referenced in this Award.

B. Evidence filed by the Second Respondent

109. On 17 January 2024, the Second Respondent provided several cases and articles quoted in its Answer in response to the Sole Arbitrator's request of 16 January 2024.

110. On 18 January 2024, the Appellant filed an objection to the filing of additional documents by the Second Respondent on 17 January 2024.

111. As advised on 19 February 2024, the Sole Arbitrator has decided that the Second Respondent complied with the scope of the submission of documents specified by the Sole Arbitrator and admitted such documents to the case file. The Sole Arbitrator notes that these documents were referenced in FIFA's Answer and are cases and articles which are readily available.

C. Appellant's request to submit additional evidence

112. On 8 February 2024, the Appellant requested that it be allowed to submit additional evidence relating to a separate procedure (the "Cosic Case").

113. The admission of the Cosic Case was objected to by both Respondents in their respective letters of 13 February 2024.

114. On 19 February 2024, CAS Court Office advised the Parties that the Sole Arbitrator has decided not to admit the new evidence provided by the Appellant.

115. Article R56 para. 1 of the CAS Code provides that:

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

116. The Appellant did indicate that the Cosic Case decision was just issued in February 2024 and alleged its relevance to the present proceedings. However, the Appellant did not argue let alone demonstrated "*exceptional circumstances*" requiring its admission.

117. The Sole Arbitrator decided not to admit the Cosic Case as no exceptional circumstances requiring admission were demonstrated by the Appellant. The Sole Arbitrator also notes that the Cosic Case does not relate to the timeliness of this appeal which is the main issue in these proceedings.

D. Request for termination of the present procedure

118. Fourth, on 28 February 2024, the CAS Court Office provided the Player's "*Petition for the termination of the cases*" dated 27 February 2024, in which the Player requested to terminate these proceedings indicating that the Club had paid the Player the amounts due under the DRC Decision in order to avoid the registration ban.

119. The Sole Arbitrator confirms that it is not up to a respondent to request the termination of a case, and that the Club, being the Appellant in this case, should have withdrawn its appeal if it wanted to terminate the present procedure. Since the Club has not done so, the Sole Arbitrator proceeded to issue the present Award.

IX. MERITS

120. In light of the submissions of the Parties, and given that the Sole Arbitrator concluded that the Club was duly notified of the Player's claim and the DRC Decision, the Sole Arbitrator is required to deal with only one remaining issue; namely, whether or not the Registration Ban Decision was rightly issued.

121. The Sole Arbitrator has concluded that the DRC Decision is final and binding and, therefore, the Club must comply with it.

122. The DRC Decision clearly established that if the Club did not pay the amounts set therein within 45 days of its notification, upon the Player's request, the Club would be banned from registering any new players up until the due amounts were paid.

123. In its pertinent part to this matter, the DRC Decision states:

> "*4. 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.*
>
> *5. 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.*"

124. Since the Club failed to pay the amounts provided in the DRC Decision within 45 days and since the Player requested the imposition of the consequences foreseen therein, FIFA was required to issue the Registration Ban Decision.

125. Such registration ban is an effective mechanism to enforce compliance with FIFA decisions and is clearly provided for in the applicable rules and regulations.

126. The Club has not explained nor proven why the Registration Ban Decision was not duly rendered or why it should be set aside. The Club merely argued that since the Player's underlying claim and the DRC Decision were allegedly not properly communicated to the Club and should be set aside, so should the Registration Ban Decision.

127. The Sole Arbitrator concluded that the DRC Decision is final and binding and that this appeal as it relates to such decision is untimely and therefore inadmissible. It follows that the Registration Ban Decision was properly taken and is binding on the Parties.

X. COSTS

128. Pursuant to Article R64.4 of the CAS Code, the Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of this arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any.

129. Article R64.5 of the CAS Code provides that:

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

130. Thus, in addition to the payment of the arbitration costs, the award may also grant to the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings.

131. Considering the outcome of the present proceedings, the Sole Arbitrator finds that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the Appellant.

132. In light of the complexity and outcome of the present proceedings, the fact that the First Respondent's Answer was inadmissible, the First Respondent's request to terminate the proceedings, the fact that the Second Respondent was not was represented by an external counsel, and the fact that no hearing took place in these proceedings and no witnesses or experts were presented, but the Appellant pursued the matter despite early indications of

the inadmissibility of its appeal against the DRC Decision necessitating the filing of numerous documents including detailed Answers, the Sole Arbitrator finds that the Appellant shall pay to the Second Respondent an amount of CHF 1,000 (one thousand Swiss Francs) as a contribution towards the Second Respondent's costs incurred in connection with these arbitration proceedings.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Qingdao Hainiu FC on 22 August 2023 against Uros Deric and the Fédération Internationale de Football Association with respect to the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal dated 1 June 2023 and notified on 5 June 2023 is inadmissible.

2. The appeal filed by Qingdao Hainiu FC on 22 August 2023 against Uros Deric and the Fédération Internationale de Football Association with respect to the decision implementing a registration ban rendered by FIFA on 3 August 2023 is dismissed.

3. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal dated 1 June 2023 and notified on 5 June 2023 and the decision implementing a registration ban rendered by FIFA on 3 August 2023 are confirmed.

4. The costs of the present proceedings, to be determined and served on the Parties by the CAS Court Office, shall be borne entirely by Qingdao Hainiu FC.

5. Qingdao Hainiu FC and Uros Deric shall bear their own costs.

6. Qingdao Hainiu FC is ordered to pay the Fédération Internationale de Football Association the total amount of CHF 1,000 (one thousand Swiss Francs) as a contribution towards its costs incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 7 May 2024

THE COURT OF ARBITRATION FOR SPORT

Ken E. Lalo
Sole Arbitrator