CAS 2019/A/6490 Taizhou Yuanda Football Club v. Vicente Girona Izquierdo & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

Taizhou Yuanda Football Club, People´s Republic of China
Represented by Mr Yu Shengjie, Attorney-at-Law with T&C Law Firm, Hangzhou City, People's Republic of China

-Appellant-

and

Vicente Girona Izquierdo, Spain
Represented by Mr Juan de Dios Crespo Pérez and Mr Alejandro Pascual Madrid, Attorneys-at-Law with Ruiz-Huerta & Crespo, Valencia, Spain

-First Respondent-

&

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

-Second Respondent-

I. PARTIES

1. Taizhou Yuanda Football Club (the "Appellant" or the "Club") is a professional football club based in Taizhou, Jiangsu Province, the People´s Republic of China, and which is affiliated with the Chinese Football Association (the "CFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Vicente Girona Izquierdo (the "First Respondent" or the "Coach") is a professional football coach of Spanish nationality.

3. FIFA (the "Second Respondent") is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the Single Judge of the FIFA Players' Status Committee (the "FIFA PSC") on 19 June 2019 (the "Appealed Decision"), as well as the written and oral submissions of the Parties and the evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the 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 he considers necessary to explain his reasoning.

5. On 8 August 2017, the Club and the Coach signed a Professional Employment Contract for Head Coach (the "Contract"), valid from 8 August 2017 until 4 October 2020.

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

"*Article 2: [the Club] hereby employs [the Coach] and [the Coach] accepts employment from [the Club] as the professional first team Head Coach. [the Club] shall not suspend or subordinate [the Coach]. [The Club] determines [the Coach´s] duties as set forth below. […]*.

Article 5 Salary and Bonuses
1. During the contract, [the Club] shall pay [the Coach] a net amount of RMB 65,000 (Sixty-five thousand Renminbi) per month.
*2. From August 5, 2017 to May 4, 2018, [the Club] shall pay [the Coach] the 85% of the monthly salary amounting to RMB 55,250 on the 15th every month. [the Club] will pay the remaining 15% of the total amount RMB 9,750 * 9 = 87,750 to [the Coach] once the Contract comes into effect. From May 5, 2018, [the Club] shall pay [the Coach] salary in accordance with the provisions of Paragraph 1 of Article 5.*

3.[the Club] shall pay the bank account designated by [the Coach] with currency RMB and all payments shall be after taxes. Handle fees and other expenses (ie [the Club] shall provide [the Coach] with the proof of the corresponding payment of the

relevant tax authorities and any other required documents or assistance, at the same time bear the additional costs or expenses that may arise in the process).[…]"

Article 7 Welfare
1. During the Contract, [the Club] shall provide [the Coach] with four round-trip economy class air tickets from China to Spain every year.[…]

Article 8 Obligations and Discipline
1. [the Coach] must fulfil the following obligations:
(1) Observe all laws and regulations of People´s republic of China:
(2) Observe all regulations, rules and statutes of [FIFA] and [CFA]. […]

Article 10 Liability for breach of contract
1. If any Party seriously breaches this Contract at any time without just cause and after three written warnings the breaching Party still does not remedies [sic] *the situation, the Party in breach shall pay to the aggrieved Party a compensation in an amount equal to the remaining salaries of the Contract at the moment of the breach.[…]"*

7. By letter of 15 March 2018 the Club wrote to the Coach as follows:

"*This is to notify you that [the Club] is making a final decision about your job arrangement and from the day of this letter, you have until 23 March 2018 of vacation.*

The Club will provide you with air tickets and you will have to be at the Taixing Viena Hotel on 23 March 2018 at 6pm at the latest. Arriving late will be considered as absenteeism."

8. At the same date, it was announced that the Club had assigned Mr Yin Tiesheng (the "New Coach") as first coach of the Club, while it was announced that *"[the Coach] is still the assistant and technical director of the Club cooperating fully with the new coach of technical analysis, training management and the youth football planning*."

9. On 27 March 2018, the Coach sent a letter to the Club, stating, *inter alia*, as follows:

"*After my return, I noticed that a new coach team was hired and is in charge of the team now and furthermore you did not allow me to sit in the bench during the first official league match and the club played this past Saturday. Up to this date, you have not clarified anything to me and you even requested me to record the mentioned match and act as analyst. I have been removed from my functions, which is not in accordance with our employment contract.*

I have always acted in very good faith with the club and performing my duties very professionally, Therefore, I kindly request you to solve this situation as soon as possible since this uncertainty is obviously affecting me negatively."

10. On 30 March 2018, and without any answer from the Club, the Coach wrote the Club as follows:

"*I make reference to my last letter which remains answered. Up to this date, the situation has not changed and seems the club just wants me to act as analyst.*

You told me that you will fix the situation but you do not even allow me to attend the training sessions. You have not clarified anything to me and you have removed me from my functions, which is not in accordance with our employment contract.

The situation is obviously affecting me negatively and I request you to solve this situation immediately."

11. Furthermore, on 4 April 2018, and still without any written response from the Club, the Coach had a formal notification sent to the Club granting the Club a deadline of 10 days as follows:

"*[…] As you perfectly know, the Coach was unreasonably removed from his functions on 15th March 2018, date in which you hired a new full coach team.*

The Coach has sent you two previous written notifications dated 24th and 30th March 2018, clearly stating his disagreement towards the unjust situation he is leaving at your club and requesting to be reinstated as the head coach of the team. As a matter of fact, the mentioned notifications remain unanswered.

The club's decision of removing the Coach's position clearly violates article 2.1 of the employment contract signed by and between the parties, which states that 'Party A shall not suspend or subordinate Party B.'

Due to the said contractual violation plus your silence with regard to the previous notifications, we hereby grant you a final deadline of 10 (ten) days, until Saturday 14th April 2018, the latest, in order to reinstate the Coach in the position he signed for. If by the said deadline, your club does not comply with the Coach's request, the employment contract will be considered as breached without just cause by your club, having the Coach no other option but to submit the dispute to FIFA, informing the CFA as well, and claim against the mistreatment the Coach suffered from Taizhou Yuanda FC.

In such event, we would like to warn you about the potential consequences your club will suffer in case the said breach is confirmed since Taizhou Yuanda FC will have to pay the Coach (i) all the remaining salaries until October 2020 which up to date amount to RMB 1,995,500 plus interests, and (ii) an extra compensation for damages based on the principle of the specificity of sport. In addition, your club will be condemned to the corresponding sporting sanctions for breaching the contract within the protected period as established in Article 17 of the FIFA Regulations.

The Coach has been trying to solve this matter amicably, however, your club has not responded to any of the Coach's attempts. In any case and besides the above, we again reiterate that the Coach is willing to have a friendly termination and we are open to negotiate a settlement."

12. On 13 April 2018, the Club answered the Coach as follows:

"*[…] 1. For the job content, both job positions and remuneration, the strategic adjustment of the company has not prejudiced your interests and the behavior of the company is not a breach of the contract.*

After March 15, 2018, you are absent frequently without justification, without approval of the company director, you are not fulfilling your responsibilities, and this has had a great impact in the company.

The company deeply regrets that you are using the method of refusing to attend the job, and for this means we inform you to return to the position within 3 days after receiving this letter. Otherwise, the company will based on the agreement between the two parties to ask the corresponding responsibility for breach of contract."

13. By letter of 14 April 2018, the Coach replied to the Club´s letter through his legal representative, stating, *inter alia*, as follows:

"*[…] First of all, you are fully aware that Mr. Girona never ignored his job, with the club substantially modifying its role as first coach. Moreover, on 15 March 2018, the club hired a new coaching staff demoting my client from his first coach duties and preventing him from holding the position for which he was hired.*

In addition, after a meeting with the club and the new coach, my client was informed that he should focus on performing the duties of technical analyst only and that it was not mandatory that he attended training, since there was already a technical staff to do so.

You also report that since 15 March 2018 my client has been absent from the job when the President, Mr. Li Yang, granted him a forced holiday until March 23 2018. That is why we do not understand that the club now denounces the fact that Mr. Girona does not attend his job when you have created this situation.

Mr. Girona has been at the disposal of the club since 23 March 2018, attending the first league match day where, by the way, he was not allowed to sit on the bench with the rest of the new technical staff and was sent to the stands of the stadium as an ordinary supporter.

Secondly, the modification of Mr. Girona's functions constitutes a clear breach of the employment contract concluded between the parties and it is causing a serious harm to his interests.

Despite this, Mr. Girona, as a sign of his good faith, is complying with all the club's instructions in order to get the job from which he has been unfairly removed, but he is not getting a satisfactory result. Three notifications were sent on 27 and 30 March and 4 April 2018 stating the abovementioned, and no response was received by the club until yesterday, being the same quite far from reality.

To this day, Mr. Girona is not well aware of his duties, even though they are not the ones he has signed by contract as first coach.

Finally, my client does not understand what you mean in your letter when you require him to 'return to the job' because Mr. Girona never left it and he goes every day to the team's premises, always being available to the club as he has done since the signing of the aforementioned employment contract.

[…]

Therefore, we require you to immediately give back Mr. Girona his coaching position, warning you that otherwise my client reserves his right to take the appropriate legal actions in defence of his legitimate interests and to claim all the amounts and the sanctions we mentioned in our previous letter."

14. Furthermore, on 17 April 2018, the Coach once again wrote to the Club through his legal representative, granting the Club a final 5-day deadline to reinstate the Coach, stating, *inter alia*, as follows:

"*[…] The Coach has sent you four previous written notifications dated 24th and 30th March, 4th and 14th April 2018, clearly stating his disagreement towards the unjust situation he is leaving at your club. However, the situation of the Coach has not changed at all.*

The Club's decision of removing the Coach's position clearly violates article 2.1 of the employment contract signed by and between the parties, which states that 'Party A shall not suspend or subordinate Party B.'

Due to the said contractual violations and your lack of reaction from your side, we hereby grant you a last final deadline of 5 (five) days, until Sunday 22nd April 2018, the latest, in order to reinstate the Coach in the position he signed for. If by the said deadline, your club does not comply with the Coach's request, the Coach will be released from his obligations and the employment contract will be considered as terminated without the just cause by the club.

Please note that this is the last warning we are sending and, if the Coach's requests are not satisfied within the given deadline, we will directly submit the matter to the FIFA bodies, informing the CFA as well about the mistreatment the Coach suffered from Taizhou Yuanda FC. In such event, we would like to warn you about the potential consequences your club will suffer in case the said breach is confirmed since Taizhou Yuanda FC will have to pay the Coach (i) all the remaining salaries until October 2020 which up to date amount to RMB 1,995,500 plus interests, and (ii) an extra compensation for damages based on the principle of the specificity of sport. In addition, your club will be condemned to the corresponding sporting sanctions for breaching the contract within the protected period, as established in Article 17 of the FIFA Regulations."

15. On 24 April 2018, the Club wrote to the Coach as follows:

"*Since you have not been to work in the company and have not been approved by the company after April 23, 2018, you are notified that you should return to work within 3 days after you receive the letter. Otherwise, the company will ask you to bear the corresponding liability for breach of contract in accordance with the contract signed by both parties.*"

16. By letter of 25 April 2018, again through his legal representative, the Coach answered the Club, *inter alia*, as follows:

"[…] Your letter is once more describing false facts and, what is more important, it was delivered after the Employment Contract signed by the parties was already terminated. As you know, the Employment Contract was terminated on 23rd April 2018 due to your severe violations and the Coach was released from his obligations towards your club.

[…]

The club's decision of removing the Coach's positions clearly violates article 2.1 of the employment contract signed by and between the parties, which states that 'Party A shall not suspend or subordinate Party B.'

Please note that this is the last chance we are giving you to settle this termination amicably without the need of initiating a claim before the FIFA Players Status Committee.

[…]

The Coach has been trying to solve this matter amicably, however, your club has not responded to any of the Coach's attempts. You know for a fact that the claim is almost already to be submitted to the FIFA Players Status Committee, reason why the Coach grants you until Monday 30th April 2018 to solve the present situation amicably."

17. On 26 April 2018, the Club answered the Coach, *inter alia*, as follows:

"[…] I. As you said in the letter, you are insisting that we took away your position as First Coach but we believe:

1. The behaviour of employing a Chinese coach is an adaptation of Yuanda's coaching staff. The objective is to cooperate with the Spanish technical staff to better serve the Club. On the other hand, in the employment contract we signed, it is not prohibited or restricted to increase employees in the technical body by a unilateral act of the employer. Therefore, the hiring of the Chinese coach does not constitute any infringement;

[…]

3. Regarding 'your functions were removed unreasonably', and 'the contract was terminated on 23 April 2018', from your various letters, you have a strong desire to terminate the contract from the beginning, and you terminated the contract with the letter on your side, we do not approve your act. Conversely, during the period in which you did not show up at work, the Club paid you the full salary as usual, as well as the bonuses due the first coach for the League match. In fact, you received the above money, and your interests have not suffered any loss. We never wanted to terminate the contract with you, and it is not really over, but you did not come to work very often, even when you attended and only as a fan with his arms crossed, and less enthusiastic than a fan, and the Club has always been in good faith.

We sincerely hope that you will return to your position as First Coach and resume your employment responsibilities within of 3 working days after receiving this letter, and working together with the new coaches of the team as the three Spanish are doing. If you insist to refuse to work, according to the contract, we require you to assume your responsibility for the unilateral termination of the Contract. So that you must pay all the amount of salary until October 2020, i.e. RMB 1,875,250.00, plus the costs to solve the conflict. We hope you will think about the situation.[…]"

18. Finally, on 27 April 2018, the Coach answered the Club through his legal representative, following the same line of arguments as in his previous communication.

B. Proceedings before the FIFA PSC

19. On 3 May 2018, the Coach filed a claim before the FIFA PSC, maintaining that the Club terminated the Contract without just cause and requested to be awarded, *inter alia*, the following:

a) EUR 243,601.07 as compensation for breach of contract, plus 5% interest p.a. as of 23 April 2018;
b) EUR 1,370 as reimbursement for flight tickets;
c) EUR 50,686.94 based on the "*specificity of sport*", plus 5% interest p.a. as of 23 April 2018.

20. The Coach, *inter alia*, explained that by hiring a full new coaching staff and requesting him to act as football analyst, the Club had deprived him of the activity he had been employed for by means of an act of "subordination". By taking this measure, the Club showed its real intention, which was to dismiss him and terminate the Contract.

21. Thus, the Club´s decision to remove him from the main task agreed in the Contract constitutes a termination of the Contract without just cause, for which, pursuant to Clause 10 of the same, the Coach was supposed to receive a compensation equal to "*the remaining salaries of the Contract at the moment of the breach*".

22. In its reply, the Club rejected the Coach´s claim and filed a counterclaim requesting, *inter alia*:

a. that the Contract be declared "*null or void or have it rescinded*" and, as a consequence, that the Club be reimbursed for "*all the payments done* […] *as a result of the consequence of the nullity of the Contract"* in the amount of RMB 529,750, equal to EUR 68,816.25, plus 5% interest p.a. as of 8 August 2017; or

b. subsidiarily, that it be declared that the Coach breached the Contract and, consequently, be awarded compensation in the amount of RMB 1,875,250, equal to EUR 243,601.07, plus 5% interest p.a. as of 23 April 2018.

23. The Club requested that Chinese law be applied as the allegedly "*most closely connected*" and since the Coach was contractually obligated to "*observe all laws and regulations of the People´s Republic of China*".

24. The Club stated that it had signed the Contract based on the Coach's "*impressive resume*", but that it was quickly disappointed with the training skills, etc., of the Coach.

25. During a meeting with the Club, the Coach accepted a new position as assistant coach plus technical director; however, on his return from a short vacation, and after the Club had hired a new head coach, the Coach apparently changed his mind and refused to accept his new position with the Club, even if the salary and bonuses remained unchanged.

26. Furthermore, the Club found it important to point out that the Coach had deceived it into signing the Contract by means of untrue statements and misrepresentation in his curriculum vitae ("CV"). Based on that, an relying on the Labour Contract Law of the People´s Republic of China, the Club concluded that the Contract should be declared null and void.

27. Furthermore, and in case the Contract was not declared null and void, the Contract should be considered terminated by the Coach without just cause.

28. In his reply, the Coach rejected the counterclaim and reiterated his position expressed with his claim, and furthermore rejected the alleged application of Chinese law.

29. With regard to the alleged misrepresentation, the Coach refused this as groundless and noted that he could in no case be held liable for the Club´s negligence in following "*the business care required for any diligent person*".

30. Finally, the Coach noted that he had never received any concerns from the Club regarding his skills, and he further concluded that "*sporting performance has never been considered as just cause to remove a coach from his functions*".

31. In its final comments, the Club substantially reiterated its position and pointed out that the Coach had in fact been warned about the situation in advance.

32. After being invited by FIFA to do so, the Coach informed FIFA that, on 10 October 2018, he signed an employment contract with the Algerian Football Federation, valid from 1 October 2018 until 30 May 2019, for a monthly remuneration of EUR 6,000.

33. On 19 June 2019, the Single Judge of the FIFA PSC issued the decision (the "Appealed Decision"), in which, after having confirmed his competence, he concluded, *inter alia*, that the 2018 edition of the Regulations on the Status and Transfer of Players (the "RSTP") was applicable to the case.

34. In relation to the Contract, the Single Judge observed, *inter alia*, that the Coach was employed by the Club as "*the professional first team Head Coach*" without the possibility for the club to "*suspend or subordinate*" him. Furthermore, note was taken of the remuneration provisions included in the Contract, including the fact that the Club had to remit the Coach according to his entitlement "*with currency RMB and all payments shall be after taxes"*.

35. Subsequently, the Single Judge took note that the Coach argued that the Club had unilaterally terminated the Contract without just cause by its decision to demote him from the position for which he had been employed, i.e. the Club´s Head Coach.

36. Furthermore, it was observed that, for its part, the Club acknowledged having appointed a new head coach in March 2018 to replace the Coach due to the poor performance of the Coach, and that the Club also deemed that the Coach had been in bad faith when presenting himself as an experienced coach, which he was not, thus unlawfully breaching the Contract.

37. With regard to the applicable law, the Single Judge first of all recalled that the contractual provision invoked by the Club is not an explicit choice of law clause but rather a general obligation according to which the Coach undertook to act in compliance with the law of the country where he was providing his professional services.

38. Furthermore, it was recalled that when deciding a dispute before a FIFA judicial body, FIFA´s regulations prevail over any national law chosen by the parties, which is in line with the main objective of the FIFA regulations, which is to create a standard set of rules that all the actors within the football community are subject to and can rely on.

39. This should apply, in particular, also to termination of contracts, which should be based on uniform criteria rather than on provisions of national law that may vary considerably from one country to another. Therefore, the Single Judge found that it would not be appropriate to apply the principles of a particular national law to the termination of the Contract, but rather the RSTP, the general principles of law and, where relevant, the FIFA

PSC´s well-established jurisprudence. Thus, it was concluded that Chinese law was not applicable.

40. Based on the above, the Single Judge then observed that the underlying issue in this matter was to determine which party terminated the Contract and to establish the consequences thereof.

41. The Single Judge observed that the Coach had been employed as the first team´s head coach and that he could not be suspended or subordinated, but that on 15 March 2018, the Coach had undisputedly been demoted from head coach to assistant coach (due to his alleged poor performance).

42. By doing so, the Club had violated an obligation it had expressly assumed when signing the Contract with the Coach, and it was furthermore observed that between March and April 2018, the Coach had repeatedly asked to be reinstated as head coach, thus showing an interest in continuing the employment relationship with the Club, provided that he could do so in the position he had been originally appointed to.

43. Furthermore, the Single Judge found that the demotion seemed to be of a definite nature and that the Coach was supposed to work as an assistant coach for the rest of the contract period, which would carry the risk of jeopardising the Coach´s future employability as head coach and, consequently, his professional career.

44. Based on that, the Single Judge found that the Coach had just cause to terminate the Contract and, consequently, the Club´s counterclaim was rejected.

45. Without any termination letter from the Coach, the Single Judge noted that he considered that the Coach had terminated the Contract on the day when he lodged his claim before FIFA, i.e. 3 May 2018.

46. With regard to the compensation, it was noted that according to the Contract "*If any Party seriously breaches this Contract at any time without just cause and after three written warnings the breaching Party still does not remedies* [sic] *the situation, the Party in breach shall pay to the aggrieved Party a compensation in an amount equal to the remaining salaries of the Contract at the moment of the breach.[…]"*

47. The Single Judge acknowledged that this provision provided for the amount of compensation payable in the event of the termination of the Contact without just cause by both parties, and even if it did not provide for a specific amount of compensation, it did in fact clearly provide for a determinable amount of compensation payable, i.e. the remaining value of the Contract and, as a result, was not considered disproportionate.

48. Based on that, the Coach was awarded the said compensation and it was further decided that any remuneration payable under any other employment contract was irrelevant.

49. Having calculated the compensation, the Single Judge found that the under the terms of the Contract as from its termination, i.e. 3 May 2018, the Coach would have been entitled to receive the total amount of RMB 1,885,000 as remuneration had the employment contract been executed until its regular expiry date, i.e. 4 October 2020. Therefore, the Single Judge decided that the Club should pay RMB 1,885,000 to the Coach as compensation, plus 5% interest p.a. from 3 May 2018 until the effective date of payment.

50. Finally, the Single Judge rejected the Coach´s request for reimbursement of his flight tickets since he found that it was not sufficiently documented.

51. The Operative Part of the Appealed Decision stated in particular that:

"*1. The claim of [the Coach] is partially accepted.*

2. The counterclaim of [the Club] is rejected.

3. [the Club] has to pay to [the Player] within 30 days as from the date and notification of this decision compensation for breach of contract in the amount of Chinese Yuan Renminbi (CNY) 1,885,000 plus 5% interest p.a. as from 3 May 2018 until the date of effective payment

4. Any further claim lodged by [the Coach] is rejected.

5. […]

6. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by both parties, within 30 days as from the date of notification of the present decision, as follows:

6.1 The amount of CHF 5,000 has to be paid by [the Coach]. […]

6.2 The amount of CHF 20,000 has to be paid by [the Club].[…]"

52. On 4 September 2019, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

53. On 24 September 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code") against the Respondent with respect to the Appealed Decision. In its Statement of Appeal, the Appellant proposed that the dispute be submitted to a sole arbitrator, with which the Respondents eventually agreed.

54. On 8 October 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

55. By letter of 11 October 2019 to the CAS Court Office, FIFA wrote, *inter alia*, as follows:

"[…] *As it results from the content of the Appealed Decision, we would like to emphasise that the present procedure relates to a purely contractual dispute between the Appellant and the Respondent and does not concern FIFA. In particular, we have to stress that FIFA, more precisely the FIFA Single Judge of the Players' Status Committee, acted in the matter at stake in its role as the competent deciding body of the first instance and was not a party to the dispute. Moreover, we would like to emphasise that the appealed decision of the FIFA Dispute Resolution Chamber dated 19 June 2019 is not one of disciplinary nature. Equally, it should be noted that the appeal in question does not appear to contain any substantial request against FIFA.*

Therefore, we deem that FIFA cannot be considered as a respondent in the present affair, and, in consequence, we request to be excluded from the procedure at stake. If this should not be the case, we reserve our right to claim against the Appellant for the

legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure. […]"

56. On 25 October 2019, and following several letters between the Appellant and the CAS Court Office, the Appellant informed the CAS Court office as follows:

"[…] *The Appellant insists that it is wrong for FIFA PSC to ignore the Appellant's repeated request to make final rebuttal to the First Respondent's final submission. Also, it is wrong for FIFA to ignore the remaining contract value claimed by both parties and decided in Point 3 of its decision a number which is clearly wrong (i.e., the amount shall be Chinese Yuan Renminbi CNY 1,875,200, not Chinese Yuan Renminbi CNY 1,885,000).*

Therefore, Appellant does NOT agree to the Second Respondent's request to be removed as a Respondent in this proceeding, ***unless*** *the Second Respondent agrees the following.*

(1) Acknowledge that FIFA PSC has received the Appellant's correspondences dated 13 Feb 2019, 26 Feb 2019, 15 June 2019 and 1 July 2019 but has not made any reply, and

(2) Waives the Appellant's obligation to pay CHF 20,000 to FIFA as procedural costs at FIFA stage." (emphasis in original)

57. By letter of 29 October 2019, FIFA wrote, *inter alia*, as follows:

"[…] *Secondly, in what concerns the Appellant´s attempt to leverage FIFA´s request to be excluded in order to have a part of the Appealed Decision is, at the very least, surprising. It is evident that FIFA will not accept or agree to such kind of demand.*

Having stated the above, we insist on the fact, as a matter of law, FIFA has no standing to be sued in the present affair and we reiterate our request to be excluded from it.

If this should not be the case, we reserve our right to claim against the Appellant for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure. […]"

58. On 14 November 2020, the Parties were informed that Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator in the above-referenced proceeding by the Division President in accordance with Article R54 of the CAS Code, but that Mr Hilliger wished to make a disclosure to the Parties further to Article R33 of the CAS Code.

59. On 21 November 2019, the Appellant submitted a petition to challenge the nomination of Mr Hilliger as Sole Arbitrator pursuant to Article R34 of the CAS Code, *inter alia* submitting its fear of a "*concession decision*" due to the fact that Mr Hilliger previously acted in another CAS case where a party was represented by the counsel of the First Respondent.

60. On 26 November 2019, Mr Hilliger maintained that he was in fact impartial and independent of all the Parties and would remain so, and he further confirmed that the

Appellant´s alleged fear of a so-called "*concession decision*" was unfounded and redundant.

61. On 9 and 11 December 2019, the First and the Second Respondents, respectively, filed their Answers in accordance with Article R55 of the CAS Code.

62. By letter of 24 December 2019, the Appellant maintained its challenge of the nomination of Mr Lars Hilliger and submitted additional arguments, while the Respondent subsequently informed the CAS Court Office that they found the challenge groundless. The Parties exchanged several rounds of submissions on the challenge to Mr Hilliger.

63. By email of 31 January 2020, the Appellant requested "*a temporary suspension of the case due to impediments caused by the outbreak of novel coronavirus in China.*"

64. On 5 February 2020, and upon the Respondents´ objection to this request, the Parties were informed that the President of the CAS Appeals Arbitration Division had denied the requested suspension of the case.

65. On 2 March 2020, the ICAS Challenge Commission rendered an Order on Application for Challenge, dismissing the Appellant´s challenge of the Sole Arbitrator's appointment.

66. Therefore, also on 2 March 2020, the Parties were informed in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, that the Sole Arbitrator had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

67. On 9 March 2020 and after consulting with the Parties, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this case further to Article R57 of the CAS Code.

68. On 19 March 2020, the Appellant informed the CAS Court Office as follows:

"*Because FIFA argues that it is not bound to Article 11 Clause 2 of the Employment Contract entered into between the Appellant and the First Respondent, and also because FIFA still argues that it shall not be a party to this legal proceedings, the Appellant respectfully requests that the Sole Arbitrator before deciding the place of hearing, firstly decide if FIFA is a party to this legal proceeding or not."*

69. Finally, on 24 March 2020, and after the Sole Arbitrator had invited the Appellant to inform the CAS whether it wished to exclude FIFA as a respondent, the Appellant informed the CAS Court Office that it "*wishes to exclude FIFA as a respondent in this proceeding.*"

70. By letter of 25 March 2020, FIFA informed the CAS, *inter alia*, that it maintained its request against the Appellant for a contribution towards its legal costs and other expenses.

71. Based on that, the Parties were informed on 27 March 2020 that the Sole Arbitrator had decided to maintain FIFA as a respondent in these proceedings and that the issue of costs would therefore be determined in the final award of the case.

72. In this regard, on 30 March 2020, FIFA informed the CAS Court Office as follows: "*In light of the Appellant´s withdrawal of the appeal against FIFA, we understand that FIFA*

remaining a respondent in these proceedings is merely a technicality based on the request for a contribution towards the unnecessary cost incurred. We therefore consider that FIFA´s intervention in the hearing is unnecessary and respectfully decline to participate in said hearing."

73. On 28 May 2020, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed on 2 June 2020 by the Second Respondent, 4 June 2020 by the Appellant and also on 4 June 2020 by the First Respondent.

74. Also on 4 June 2020, the Appellant requested that the First Respondent provide his position on whether he had an objection to "*Mr Huang Xintao´s written testimony during the FIFA PSC stage*", to which the First Respondent replied later on the same date "*In this respect, please note that the Appellant is free to call as many witnesses as he wants and upon which it intends to rely. In any event, please be kindly informed that First Respondent does not object the written testimony of the mentioned witness insofar as to what is expressly stated in the said testimony.*"

75. On 9 June 2019, a hearing was held by video-conference via Cisco Webex further to Articles R44.2 and R57 of the CAS Code.

76. In addition to the Sole Arbitrator and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

For the Appellant:

- Mr Yu Shengjie, Legal Counsel;
- Mr Zhnag Ying, In-house Counsel;
- Mr Li Yang, Chairman;
- Mr Dong Wei, Translator;
- Mr Luo Duan, Translator;
- Mr Xi Xin, Witness;
- Mr Shen Longyuan, Witness; and
- Mr Liu Jumpeng, Witness.

For the First Respondent:

- Mr Vicente Girona Izquierdo, Coach;
- Mr Alejandro Pascual, Counsel; and
- Mr Alessandro Mosca, Counsel (and unofficial translator).

77. As stated in its letter dated 30 March 2020, the Second Respondent did not attend the hearing.

78. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Sole Arbitrator.

79. The Panel heard the evidence of the Coach and Mr Li Yang, Mr Xi Xin, Mr Shen Longyuan and Mr Liu Jumpeng, the witnesses called by the Appellant, who were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties present at the hearing and the Sole Arbitrator had the opportunity to examine and cross-examine both the Coach and the witnesses.

80. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

81. After the Parties' final submissions, the Sole Arbitrator closed the hearing. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

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

IV. PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

A) The Appellant

83. In its Appeal Brief, the Appellant requested CAS to rule as follows on the merits of the case:

"[…]

(5) Fully accept the present appeal against the (Appealed Decision), by declaring:

a) *that the employment contract be declared null and void or have it rescinded, and as a consequence, the Appellant shall be reimbursed of all the payment done as a result of the consequence of the nullity of the employment contract; or*

b) *that the Coach did not have just cause to termninate the emplotment contract, and as a consequence, the Coach shall pay the Appellant compensation for breach of employment contract in the mount of RMB 1,875,250;*

(6) Declare that the Coach shall bear the entire costs of the FIFA PSC proceedings in the amount of CHF 25,000 to FIFA;

On a subsidiary basis

(7) Reduce the amount to be rewarded in favour of the Coach in consideration of (i) the specific circumstances of the case and (ii) the evidence which will be produced by the Appellant;

In alternative

(8) Send back the case to FIFA Players´ Status Committee for a new examination on the case on the basis of the facts and evidence produces.

In any case

(9) Order both Respondents to bear in full the procedural costs of these arbitration proceedings as well as a contribution for the legal costs and expenses borne by the Appellant, in relation to this appeal, in the amount to be determined at the discretion of the Sole Arbitrator.

(10) Grant any other relief or orders it deems reasonable and fit to the case at hand."

84. The Appellant´s submissions, in essence, may be summarised as follows:

- The Coach deceived the Club into signing the Contract.

- Therefore, the Contract must be declared null and void.
- The evidence submitted by the Coach in his final submission before the FIFA PSC caused the FIFA PSC to decide that the Coach did not deceive the Club into signing the Contract.
- The FIFA PSC failed to allow the Appellant´s final rebuttal into the file and, consequently, ignored the Appellant´s final submission despite the procedural rules, which assure the parties to the proceedings of their right to be heard.
- This final rebuttal would have caused the FIFA PSC to issue a different decision on the matter.
- In any case, the FIFA PSC was wrong in deciding that the position adjustment in question constituted a subordination and that the Coach had just cause to terminate the Contract.
- First of all, the Coach initially accepted the position adjustment, which was induced by his slack and perfunctory performance while working for the Appellant.
- The first team players and the rest of the staff lost trust in him due to this behaviour.
- Secondly, the position of "*assistant coach plus technical director*" is of the same level of importance as the position of head coach and is an important role.
- Furthermore, the salary and bonuses etc. of the Coach remained unchanged following the adjustment of position.
- The Coach´s actual experience as head coach was very limited and unsuccessful, and the position adjustment could not in any way jeopardise the Coach´s future career.
- Even if the CAS should eventually decide that the Coach had just cause to terminate the Contract, the amount of compensation to be awarded in favour of the Coach should be reduced in consideration of the specific circumstances of the case and the evidence submitted.
- In these circumstances, the intentional misrepresentation in the Coach´s CV and the slack and perfunctory behaviour of the Coach are some of the factors to be taken into consideration.
- In any case, it must be noted that the remaining contractual value was RMB 1,875,250 as claimed by the Parties, and not RMB 1,885,000.
- Furthermore, any amount of compensation payable to the Coach should be reduced by the salary earned by the Coach following his employment with the Algerian Football Federation as from 1 October 2018 until 30 May 2019.
- Finally, and taking into consideration the behaviour of the Coach, the Coach should be ordered to pay to the Appellant all legal fees and costs incurred in connection with this case.

B) **The Respondents**

85. In its answer, the First Respondent requested the Sole Arbitrator to decide as follows:

"*a. To accept this claim.*

b. To reject in full the allegations from the Club.

c. Confirm [the Appealed Decision].

d. Declare that the amount shall be net of any taxes and order the Appellant to provide the tax certificates after the payment.

e. In any case to fix a sum to be paid by the Club, in order to contribute to the payment of the Coach´s legal fees and expenses in the amount of 10,000EUR or any other amount to be determined ex aequo et bono by the Panel.

f. To order the Club to assume the entirety of the CAS administration and procedural fees, including the Sole Arbitrator´s fees.

Alternatively

a. Confirm that the Club breached the Employment Contract without just cause and the Coach had just cause to terminate the Employment Contract;

b. To issue a decision requiring the Club to:

1. Pay the Coach the amount of EUR 244,107 NET (i.e. RMB 1,885,000 net), as per article 10 of the Employment Contract, plus five percent (5%) per annum interest rate, starting from 23 April 2018 until its effective and entire payment:

a. Alternatively, to pay the Coach the amount of EUR 242,845 NET (i.e. RMB 1,875,250 net) plus five percent (5%) per annum interest rate, starting from 23 April 2018 until its effective and entire payment.

b. Alternatively, to pay the Coash the amount of EUR 242,845 NET (i.e. RMB 1,875,250 net) reduced by EUR 48,000 earned by the Coach in after the Club´s breach, plus five percent (5%) per annum interest rate, starting from 23 April 2018 until its effective and entire payment.

2. Pay the Coach the flight tickets for returning home amounting to EUR 1,370 (One Thousand Three Hundred and Seventy Euros).

c. Declare that the amount shall be net of any taxes and order the Appellant to provide the tax certificates after the payment.

d. In any case to fix a sum to be paid by the Club, in order to contribute to the payment of the Coach´s legal fees and expenses in the amount of 10,000 EUR or any other amount to be determined ex aequo et bono by the Panel;

e. To order the Club to assume the entirety of the CAS administration and procedural fees, including the Sole Arbitrator´s fees."

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

- First of all, the Coach did not deceive the Appellant into signing the Contract.

- The Appellant never submitted any evidence in support of this allegation.

- Most witnesses relied upon by the Appellant regarding such alleged deceit have a direct professional interest in the Appellant, and their statements and testimony should therefore be assessed in a very careful manner and should, accordingly, be disregarded in the present proceedings.

- The Coach´s CV provided to the Appellant does not contain any material misrepresentation or untrue statement about the Coach´s previous work experience.

- In any case, even if the Appellant was right and the Coach was not prepared to act as head coach – *quod non* – the Appellant was in any way negligent in not exercising the usual care expected in business and in not taking all the necessary research and appropriate steps before concluding the Contract with the Coach.

- Moreover, and in accordance with the jurisprudence of FIFA and the CAS, it must be stressed that the validity of a contract cannot be subject to mere formalities.

- Furthermore, the alleged "*slack, perfunctory and capricious*" performance of the Coach is disputed.

- The Coach was in fact working for the Appellant as a head coach for around seven months without ever receiving any notice or information from the Club about the alleged problems.

- Moreover, the Coach first heard about the alleged misbehaviour after the third warning sent by the Coach.

- With regard to the illegitimate demotion of the Coach from Head Coach to Assistant Coach plus technical director, it is disputed that the new position is of the same level, and it is also disputed that the position adjustment does not constitute a demotion of the Coach.

- In any case, the Coach was never offered such a new position as *Assistant Coach plus technical director*, and the argument was only raised by the Appellant during the proceedings before FIFA.

- Furthermore, it would have been impossible for the Coach to render such services to the Club, since the new coach of the Club already had a full team of assistants.

- Moreover, the Coach was in fact removed from his functions and was sent to watch the trainings and matches from the stands.

- The demotion of the Coach was in itself a severe violation of his personal rights, but it is a more crucial factor that the Contract expressly prevents the Club from acting in such a way since it is agreed that "*Party A shall not suspend or subordinate Party B*".

- The FIFA PSC rightfully confirmed this illegitimate subordination of the Coach, which constitutes a clear violation of the principle of *pacta sunt servanda*.

- In view of the foregoing, the demotion of the Coach must be regarded as a severe breach of the Contract without just cause by the Club, which is not only explicitly prohibited under the Contract, but also forbidden, in the way it happened, under the FIFA regulations, Swiss law and related FIFA and CAS jurisprudence.

- What is more, the actual intention behind the demotion of the Coach was to fully dismiss him and terminate the Contract.

- The Club hired a new coaching staff, thus preventing the Coach from rendering his services as head coach and irrefutably confirming the Club´s lack of any interest in the services to be rendered by the Coach.

- As the Contract was terminated by the Coach with just cause due to the Appellant´s severe breach of contract, the Coach is entitled to compensation for breach of contract.

- The compensation was expressly and clearly agreed in advance by the Parties in the Contract and consequently no reduction or mitigation should apply.

- Pursuant to the Contract, such compensation must be set as the *amount equal to the remaining salaries of the Contract at the moment of the breach*.

- Based on the foregoing, the amount of compensation was evidently agreed by the Parties and is not disproportionate, and the jurisprudence of FIFA and CAS furthermore has confirmed the legal principle of contractual freedom in line with Article 17 of the FIFA RSTP.

- Furthermore, the provision in the Contract fulfils the requisite of reciprocity, granting the same rights to both parties.

- In line with that, and since an explicit agreement of the parties on a certain sum to be paid as compensation in case of breach of contract, no reduction should be made for any other salary earned with a third party during the original period of the Contract.

- Accordingly, the compensation awarded in the Appealed Decision in the amount of RMB 1,885,000 net should be confirmed.

- Alternatively, and in case the Sole Arbitrator finds that the calculation of the compensation in the Appealed Decision was not correct, the amount of compensation should be set at RMB 1,875,250 net.

- In any event, the amount of compensation should be labelled "*net of any taxes*" in accordance with the relevant provisions of the Contract.

- Finally, the Coach is entitled to be reimbursed for his travel expenses, and the Appellant should pay a contribution towards the legal costs incurred by the Coach in relation to these proceedings.

87. In its Answer, the Second Respondent requested the Sole Arbitrator to issue an award on the merits:

   a. "*Rejecting the reliefs sought by the Appellant;*

   b. Dismissing the appeal;

   c. Confirming the Appealed Decision;

   d. Ordering the Appellant to bear the full costs of these arbitration proceedings; and

   e. *Ordering the Appellant to make a contribution to FIFA´s legal costs.*"

88. The Second Respondent´s submission on costs, in essence, may be summarised as follows:

- FIFA, even with no standing to be sued due to the Appellant's procedural conduct, was obliged to become unnecessarily involved in the case, including an obligation to prepare an Answer and respond to numerous requests from the CAS initiated by the Appellant.
- In the light of these circumstances, the Appellant must be ordered to pay a contribution towards the Second Appellant's legal costs.

V. JURISDICTION

89. 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*. […]"

90. Clause 11.2 of the Contract reads as follows:

> "*In case no settlement can be reached through consultation, the dispute shall be submitted to the competent dispute resolution body of FIFA with the express waiver to the national courts and with the consequent option of appealing to the Court of Arbitration for Sport (TAS-CAS). In any case, the Parties hereby choose the CAS Shanghai Alternative Hearing Center as the hearing place.*"

91. With respect to the Appealed Decision, and in accordance with the above-mentioned provision, the jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes as it determines that "[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*".

92. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and the Parties furthermore confirmed CAS jurisdiction when signing the Order of Procedure.

93. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

VI. ADMISSIBILITY

94. The grounds of the Appealed Decision were notified to the Appellant on 4 September 2019, and the Statement of Appeal was lodged on 24 September 2019, i.e. within the statutory time limit of 21 days set out in Article 58(1) of the FIFA Statutes, which is not disputed.

95. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

96. It follows that the appeal is admissible.

VII. APPLICABLE LAW

97. 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."

98. Article 57(2) of the FIFA Statutes reads as follows*:*

"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."

99. The Respondents submit that the applicable regulations in these proceedings for the purposes of Article R58 of the CAS Code are the rules and regulations of FIFA and, additionally, that Swiss law applies since the present Appeal is directed against a decision issued by the FIFA PSC applying the rules and regulations of the same.

100. However, the Sole Arbitrator notes that the Appellant submits that pursuant to Clause 8.1 of the Contract, according to which the Coach must "*observe all laws and regulations of the People´s Republic of China*", the present case should be decided in accordance with the FIFA Regulations and Chinese law in order to fill any gap.

101. However, the Sole Arbitrator first of all notes that the full wording of Clause 8.1 of the Contract is as follows:

" *Article 8 Obligations and Discipline*
1. [the Coach] must fulfil the following obligations:
(1) Observe all laws and regulations of People´s republic of China:
(2) Observe all regulations, rules and statutes of [FIFA] and [CFA]. […]"

102. Besides the fact that the said clause thus not only mentions the Coach's obligation to observe all laws and regulations of the People´s Republic of China, but also mentions the obligation to observe all regulations, rules and statutes of both FIFA and the CFA, the Sole Arbitrator finds that Clause 8.1 of the Contract does not constitute a valid choice of law clause, which in this way would justify the application of Chinese law, not even subsidiarily.

103. The fact that the Contract is signed and performed in China does not, as submitted by the Appellant, change that in any way.

104. 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, subsidiarily, Swiss law.

VIII. MERITS

105. Initially, the Sole Arbitrator notes that it in undisputed that on 8 August 2017, the Parties signed the Contract, valid as from 8 August 2017 until 4 October 2020, which, *inter alia*, contained the following provisions:

"*Article 2: [the Club] hereby employs [the Coach] and [the Coach] accepts employment from [the Club] as the professional first team Head Coach. [the Club] shall not suspend or subordinate [the Coach]. [the Club] determines [the Coach´s] duties as set forth below.* […].

Article 5 Salary and Bonuses
1. During the contract, [the Club] shall pay [the Coach] a net amount of RMB 65,000 (Sixty-five thousand Renminbi) per month.
*2. From August 5, 2017 to May 4, 2018, [the Club] shall pay [the Coach] the 85% of the monthly salary amounting to RMB 55,250 on the 15th every month. [the Club] will pay the remaining 15% of the total amount RMB 9,750 * 9 = 87,750 to [the Coach] once the Contract comes into effect. From May 5, 2018, [the Club] shall pay [the Coach] salary in accordance with the provisions of Paragraph 1 of Article 5.*

3.[the Club] shall pay the bank account designated by [the Coach] with currency RMB and all payments shall be after taxes. Handle fees and other expenses (ie [the Club] shall provide [the Coach] with the proof of the corresponding payment of the relevant tax authorities and any other required documents or assistance, at the same time bear the additional costs or expenses that may arise in the process).[…]"

Article 7 Welfare
1. During the Contract, [the Club] shall provide [the Coach] with four round-trip economy class air tickets from China to Spain every year.[…]

Article 10 Liability for breach of contract
1. If any Party seriously breaches this Contract at any time without just cause and after three written warnings the breaching Party still does not remedies [sic] *the situation, the Party in breach shall pay to the aggrieved Party a compensation in an amount equal to the remaining salaries of the Contract at the moment of the breach.*[…]"

106. It is furthermore undisputed that by letter of 15 March 2018, the Club wrote to the Coach, *inter alia*, as follows: "*This is to notify you that [the Club] is making a final decision about your job arrangement and from the day of this letter, you have until 23 March 2018 of vacation."*

107. Furthermore, and on the same date, the Club publicly announced that it had assigned Mr Yin Tiesheng as first coach of the Club and announced that *"[the Coach] is still the assistant and technical director of the Club cooperating fully with the new coach of technical analysis, training management and the youth football planning*. "

108. Moreover, it in undisputed that following some correspondence between the Parties regarding the alleged, but disputed, subordination of the Coach, by letter of 17 April 2018, the Coach wrote to the Club as follows:

"[…] *The Coach has sent you four previous written notifications dated 24th and 30th March, 4th and 14th April 2018, clearly stating his disagreement towards the unjust situation he is leaving at your club. However, the situation of the Coach has not changed at all.*

The Club's decision of removing the Coach's position clearly violates article 2.1 of the employment contract signed by and between the parties, which states that 'Party A shall not suspend or subordinate Party B.'

Due to the said contractual violations and your lack of reaction from your side, we hereby grant you a last final deadline of 5 (five) days, until Sunday 22nd April 2018, the latest, in order to reinstate the Coach in the position he signed for. If by the said deadline, your club does not comply with the Coach's request, the Coach will be released from his obligations and the employment contract will be considered as terminated without the just cause by the club.

Please note that this is the last warning we are sending and, if the Coach's requests are not satisfied within the given deadline, we will directly submit the matter to the FIFA bodies, informing the CFA as well about the mistreatment the Coach suffered from Taizhou Yuanda FC. In such event, we would like to warn you about the potential consequences your club will suffer in case the said breach is confirmed since Taizhou Yuanda FC will have to pay the Coach (i) all the remaining salaries until October 2020 which up to date amount to RMB 1,995,500 plus interests, and (ii) an extra compensation for damages based on the principle of the specificity of sport. In addition, your club will be condemned to the corresponding sporting sanctions for breaching the contract within the protected period, as established in Article 17 of the FIFA Regulations."

109. Finally, and based on the above, the Parties agree that it was the Coach who unilaterally terminated the contractual relationship between the Parties.

110. The Coach submits that the Club severely breached the Contract by demoting him, for which reason the Coach terminated the Contract with just cause and, thus, obligated the Club to pay compensation for breach of contract in accordance with Clause 10 of the Contract.

111. The Club, on the other hand, firstly submits that it was deceived by the Coach into signing the Contract and that the Contract must therefore be declared null and void.

112. Secondly, and in any case, the Club argues that the Coach did initially accept the adjustment of his position, which did not constitute a subordination.

113. And finally, even if it is decided by the Sole Arbitrator that the Coach had just cause to terminate the Contract, any amount of compensation payable to the Coach must be reduced in consideration of the specific circumstances of the case and the evidence submitted.

114. Thus, the main issues to be resolved by the Sole Arbitrator are:

A) Is the Contract null and void?

B) In case the Contract is not declared null and void, did the Coach terminate the Contract with or without just cause? and, in any case,

C) What are the financial consequences, if any, of the termination of the Contract?

A) Is the Contract null and void?

115. The Club submits that it was deceived by the Coach into signing the Contract.

116. In this connection, the Club, *inter alia*, makes reference to Article 28 of the Swiss Code of Obligations, according to which a party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental.

117. According to the Club, the Coach´s CV, which was presented to the Club before entering into the Contract and which was decisive for its decision to hire the Coach, was heavily misleading and untrue.

118. Furthermore, it quickly became clear to the Club that the actual experience of the Coach was very limited and unsuccessful, which fact was not reflected in the CV presented to the Club.

119. The Club would never have signed the Contract if it had been aware of the true career and skills level of the Coach.

120. Based on that, the Club submits that it is not in any way bound by the Contract.

121. The Coach, on the other hand, disputes that the Club was deceived into signing the Contract, which, in any case, was never proved by the Club.

122. Furthermore, the CV, which was presented to the Club before the signing of the Contract, did not contain any material misrepresentation or untrue statement, and in any case, the Club was negligent in not exercising the usual care expected in business and in not doing the necessary research before signing the Contract.

123. Consequently, the Club is bound by the legally valid Contract.

124. The Sole Arbitrator initially notes that he finds, based on the facts of the case and the Parties´ submissions, that it is up to the Appellant to discharge the burden of proof to establish that it was in fact deceived into signing the Contract with the Coach.

125. In doing so, the Sole Arbitrator adheres to the principle of *actori incumbit probatio*, which has been consistently observed in CAS jurisprudence, and according to which "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. *CAS 2003/A/506*, para 54; *CAS 2009/A/1810&1811*, para 46; and *CAS 2009/A/1975*, para 71ff).

126. However, the Sole Arbitrator finds that the Appellant has not adequately discharged the burden of proof to establish that the Club was deceived into signing the Contract with the Coach.

127. To reach this decision, the Sole Arbitrator has conducted an in-depth analysis of the facts of the case, as well as the information and evidence gathered during the

proceedings, including the testimony from the Club, the Coach and both Parties' witnesses during the hearing.

128. The Sole Arbitrator initially notes that even if, based on the information and evidence produced, some of the items listed in the Coach's CV might have been more precise and less flattering, the Sole Arbitrator finds no grounds for concluding that the contents, to any material extent, can be assumed to be incorrect or misleading, nor does the Sole Arbitrator find that adequate evidence is available to prove that the Coach should have provided such information to the Club in any other manner before entering into the Contract.

129. The Sole Arbitrator further notes that the contents of a CV cannot be directly perceived as a quality stamp of the person concerned or of his or her skills.

130. Moreover, the Sole Arbitrator does not agree with the Appellant that the Coach, in the case-at-hand, should be substantially blamed for not necessarily being able to prove the accuracy of the contents of his CV, not least because the Sole Arbitrator finds that inadequate evidence has been produced to prove that the Coach, during his employment relationship with the Club, was presented with any objections in this regard or with objections concerning his alleged lack of skills and experience as a high-level coach.

131. Finally, and in any case, the Sole Arbitrator attaches particular importance to the failure of the Appellant to produce evidence to prove that it was in fact the CV of the Coach which was the deciding factor for the Club's decision to hire the Coach as head coach, in which connection the Sole Arbitrator notes, among other factors, that a meeting between the Club and the Coach was held prior to the signing of the Contract, as explained during the hearing.

132. Moreover, and even if that would be the case, the Sole Arbitrator notes that the Club failed to prove that it had exercised, or at least tried to exercise, the usual care and undertook the investigations that are duly expected in business and, consequently, failed to conduct a reasonable effort to research the Coach's career and skills before signing the Contract.

133. Based on the above, the Appellant´s submission regarding not being legally bound by the Contract due to the alleged deceit is dismissed.

134. For the sake of good order, the Sole Arbitrator notes that the submission of the Appellant that the FIFA PSC failed to take into due consideration the Appellant's final submission is of no significant importance since the Sole Arbitrator, with reference to Article R57 of the CAS Code, has considered the case de novo, which means that the alleged procedural flaw, if it were to exist, is in any way cured. For similar reasons this case will not be remanded to the FIFA PSC, as requested by the Appellant in its requests for relief.

B) In case the Contract is not declared null and void, did the Coach terminate the Contract with or without just cause?

135. Based on the above, and since the Parties agree that it was the Coach who unilaterally terminated the employment relationship between them, the Sole Arbitrator must now decide whether such termination was made with or without just cause.

136. While the Coach submits that the adjustment of his position constitutes a subordination in direct conflict, *inter alia*, with the Contract and that he was removed from his original duties, the Club disputes that and furthermore submits that the Coach initially accepted the position adjustment and that, in any case, the Coach's lack of experience and actual performance for the Club justified such adjustment.

137. Based on that, the Sole Arbitrator finds that it is up to the Coach to discharge the burden of proof to establish that the Club did in fact breach its contractual obligations towards the Coach in a manner that gave the Coach just cause to terminate the Contract.

138. However, the Sole Arbitrator finds that the Coach has discharged this burden of proof to prove that the Club did in fact breach its contractual obligations towards the Coach in such a way that the Coach had just cause to terminate the Contract.

139. The Sole Arbitrator initially notes that, according to Clause 2 of the Contract, the Coach was contractually employed as the "*professional Head Coach*", in which connection it is further stated that the Club "*shall not suspend or subordinate*" the Coach.

140. The Sole Arbitrator further notes that it is not disputed that from the beginning of his employment with the Club and until the receipt of the Club's letter of 15 March 2018, which, *inter alia*, states "[t]*his is to notify you that [the Club] is making a final decision about your job arrangement*", the Coach was in fact acting as the head coach of the Club's first team with the responsibilities of a head coach.

141. Moreover, it is undisputed that the Club, also on 15 March 2018, publicly announced that it had assigned Mr Yin Tiesheng as the first coach of the Club, and it was also announced that the Coach "*is still the assistant and technical director of the Club cooperating fully with the new coach of technical analysis, training management and the youth football.*"

142. Based on the evidence submitted during these proceedings, the Sole Arbitrator finds it has been proven that from this date the Coach was removed from his responsibilities as a head coach of the Club´s first team, which role was instead taken over by Mr Yin Tiesheng.

143. Furthermore, and even if the Coach was, at least in the view of the Club, still to be considered as a part of the team of coaches around the first team and would allegedly still be an important part of it, and notwithstanding the fact that it was apparently not the intention of the Club to adjust the salaries and possible bonuses of the Coach, the Sole Arbitrator finds that the position adjustment of the Coach is to be considered as a clear demotion of the Coach, since he was no longer to be considered as the Head Coach in charge of the team.

144. Such subordination is to be considered a material breach of the provision in Clause 2 of the Contract, which literally states that the Club *shall not suspend or subordinate the Coach*.

145. The Sole Arbitrator does not find that a position as assistant coach plus technical director can be considered of the same level, and the Sole Arbitrator further notes that the Coach's interest in keeping his original position, responsibilities and title is a legitimate interest worthy of protection for the Coach, also with a view to his future career.

146. Since the Sole Arbitrator thus finds that the Club's position adjustment of the Coach constitutes a material breach of the contractual obligation not to subordinate the Coach, the Sole Arbitrator does not find any reason to deal with the submission of the Coach that the subordination also violates his personal rights, which is also forbidden under the FIFA RSTP and Swiss law.

147. For the sake of good order, the Sole Arbitrator notes that the Club was unable to discharge the burden of proof to establish that the Coach did in fact accept such subordination, for which reason the Sole Arbitrator has to dismiss this argument upon the Coach's dispute.

148. Furthermore, the Sole Arbitrator notes that even if the Club was to be considered correct in its allegations towards the Coach for his lack of experience and skills, the Sole Arbitrator does not find that this would constitute a sufficient basis for the subordination of the Coach in conflict with the provisions of the Contract, and the Sole Arbitrator further notes that the Coach was apparently never duly notified about the Club's alleged disapproval of his performance before the subordination was in fact executed.

149. Finally, the Sole Arbitrator notes that the Coach offered the Club a chance to reinstate him in his original position as a head coach, which the Club failed to do.

150. Based on the above, and since the Coach could not reasonably have been expected to continue his employment relationship with the Club following his subordination, which constitutes a breach of their contractual relationship, the Sole Arbitrator finds that the Coach indeed had just cause to terminate the Contract due to the substantial breach of contract by the Club.

C) What are the financial consequences, if any, of the termination of the Contract?

151. The Sole Arbitrator initially notes that since the Contract was terminated with just cause by the Coach, the Sole Arbitrator has to address the Coach's claim for compensation.

152. The Coach submits that he is entitled to compensation for breach of contract and that the compensation was clearly and expressly agreed in advance between the parties to the Contract and, consequently, no reduction or mitigation should apply.

153. The Club, on the other hand, submits that in case the Sole Arbitrator decides that the Club should pay any compensation to the Coach, such compensation should be reduced by the salary earned by the Coach following his subsequent employment with the Algerian Football Federation, and any amount of compensation payable to the Coach should be reduced in consideration of the specific circumstances of this case, including

the intentional misrepresentation in the Coach's CV and the slack behaviour of the Coach.

154. The Sole Arbitrator initially notes that it follows from Clause 10 of the Contract:

"*1. If any Party seriously breaches this Contract at any time without just cause and after three written warnings the breaching Party still does not remedies* [sic] *the situation, the Party in breach shall pay to the aggrieved Party a compensation in an amount equal to the remaining salaries of the Contract at the moment of the breach.*[…]"

155. The Sole Arbitrator further notes that the Club never disputed the validity of the said contractual provision, and it was never disputed that the Coach sent at least three written warnings to the Club before terminating the Contract.

156. Moreover, the Sole Arbitrator notes that it follows from Article 17 paragraph 1 of the FIFA RSTP that:

"*In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*"

157. Even if the FIFA RSTP are not directly applicable to an employment relationship between a club and a coach, the Sole Arbitrator notes that both Parties agree that this dispute should be decided in accordance with the FIFA regulations.

158. In accordance with Swiss law, and in accordance with the principle set out in Article 17(1) of the FIFA RSTP, the Sole Arbitrator finds that the contractual freedom of the parties to a contract is to be given the utmost importance.

159. In exercising their contractual autonomy, the Parties have agreed on the criteria to be applied in the calculation of the compensation to be paid to the other party in case of a material breach of contract which has not been remedied following at least three written warnings from the other party.

160. The Sole Arbitrator notes that even if the said contractual provision does not specifically state the actually amount of compensation to be paid in such case, it clearly and expressly sets out the criteria to be used in the calculation of the payable compensation.

161. Furthermore, the said criteria do not result in a disproportionate amount of compensation, and the criteria are to be used no matter which party is in breach, and thus fulfilling the common requisite of reciprocity.

162. Based on that, the Sole Arbitrator finds that the Parties, validly and with binding effect, agreed on a liquidated damages clause which must be used to calculate the amount of compensation payable to the Coach.

163. It follows from Clause 5 of the Contract that the Coach was entitled to receive the monthly amount of RMB 65,000 net in the contract period until 4 October 2020.

164. The Sole Arbitrator agrees with the Club that the remaining contractual value until 4 October 2020 is RMB 1,875,250, and not RMB 1,885,000 as set out in the Appealed Decision.

165. Thus, in accordance with Clause 10 of the Contract, the calculated compensation payable to the Coach is RMB 1,875,250 net.

166. In is undisputed between the Parties that following the termination of the Contract, the Coach was employed by the Algerian Football Federation from 1 October 2018 until 30 May 2019 for a monthly remuneration of EUR 6,000.

167. The Club submits that this amount (EUR 48,000) should be deducted from the calculated amount of compensation while, on the other hand, the Coach submits that Clause 10 of the Contract constitutes a liquidated damages clause and, accordingly, that no reduction is to be made.

168. The Sole Arbitrator initially notes that according to Swiss law, the parties to a contract may validly agree on a derogation from the general principle of mitigation of loss.

169. Against the background of an interpretation of the wording of Clause 10 of the Contract, the Sole Arbitrator finds no grounds for deducting the amount the Coach earned after the termination of the Contract.

170. Furthermore, the Sole Arbitrator dismisses the submission made by the Club that the amount of compensation should be reduced in consideration of the specific circumstances of the case and the evidence submitted.

171. With regard to the submission by the Coach regarding the payment of the flight tickets, the Sole Arbitrator notes that counterclaims are not admissible in CAS appeals proceedings pursuant to the CAS Code, and the Sole Arbitrator therefore finds no grounds for deciding on this issue.

172. Finally, and as a matter of form, the Sole Arbitrator makes reference to Clause 5(3) of the Contract, which states as follows:

> "*3.* [the Club] *shall pay the bank account designated by [the Coach] with currency RMB and all payments shall be after taxes. Handle fees and other expenses (i.e. [the Club] shall provide [the Coach] with the proof of the corresponding payment of the relevant tax authorities and any other required documents or assistance, at the same time bear the additional costs or expenses that may arise in the process).*[…]"

173. In these circumstances, the Sole Arbitrator agrees with the Coach that the payment of compensation must be net of any taxes and that the Club is obligated to subsequently provide the Coach with the relevant documents.

IX. COSTS

174. Article R64.4 of the CAS Code, which is applicable to the proceeding, provides as follows:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs 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. 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.*"

175. 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.*"

176. 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 (even if the Appellant's request for interest is only partly dismissed), as well as of the conduct of the Parties, 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.

177. Furthermore, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondents legal costs in the amount of CHF 4,000 (four thousand Swiss Francs) and to the Second Respondent's legal costs in the amount of CHF 1,000 (one thousand Swiss Francs).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Taizhou Yuanda Football Club on 24 September 2019 against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 19 June 2019 is partially upheld.

2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 19 June 2019 is confirmed, except for paragraph 3 of the Operative Part, which is amended as follows:

   "3. Taizhou Yuanda Football Club has to pay to Vicente Girona Izquierdo within 30 days as from the date and notification of this decision compensation for breach of contract in the amount of Chinese Yuan Renminbi (CNY) 1,875,250 plus 5% interest p.a. as from 3 May 2018 until the date of effective payment."

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by Taizhou Yuanda Football Club.

4. Taizhou Yuanda Football Club is ordered to pay to Vicente Girona Izquierdo an amount of CHF 4,000 (four thousand Swiss Francs) and to FIFA an amount of CHF 1,000 (one thousand Swiss Francs) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 22 February 2021

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator