CAS 2020/A/7117 Antonio Luís Servera Santandreu v. Guizhou Hengfeng FC & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

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

in the arbitration between

Mr Antonio Luís Servera Santandreu, Spain

Represented by Mr Iñigo de Lacalle Baigorri and Mr Juan Ignacio Triguero Gea, Attorneys-at-Law, Senn, Ferrero, Asociados, Sport & Entertainment SLP, Madrid, Spain

- Appellant -

and

Guizhou Hengfeng FC, China PR

Represented by Mr Bing Zhang and Mr Yu Zhuang, Attorneys-at-Law, Landing Lawyer, Shanghai, China

- First Respondent -

&

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

- Second Respondent -

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I. PARTIES

1. Mr Antonio Luís Servera Santandreu (the "Appellant") is a coach of Spanish nationality, who has been issued an UEFA A Licence by the Royal Spanish Football Federation (the "RFEF").

2. Guizhou Hengfeng FC (the "First Respondent" or the "Club") is a professional Chinese football club affiliated with the Chinese Football Association (the "CFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA"). The Club is currently competing in the Chinese League One.

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 Players Status Committee (the "FIFA PSC") on 14 February 2020 (the "Appealed Decision"), the written submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties' written submissions and the 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 his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 28 April 2017, the Appellant, a member of the staff of the Head Coach, Mr Gregorio Manzano (the "Head Coach"), and the Club signed an employment contract entitled "Employment Contract for Physical Coach" (the "First Employment Contract"), valid as from 1 May 2017 until 31 December 2017, and stating, *inter alia*, as follows:

"[...] ARTICLE 2 Work Arrangements

1. [The Club] hereby appoints [the Appellant] and [the Appellant] accepts appointment from [the CLub] as the professional Physical coach working in Guizhou Hengfeng Zhicheng FC Football Team. [the Appellant] must fulfill all duties as Second Assistant coach, and do his best to reach season target as set out by [the Club]. [the Appellant] must take care and manage of all the players in the first team, subject to Head Coach instructions.

[...]

ARTICLE 5 Salary and Bonuses

5.1 [the Club] shall unconditionally pay [the Appellant] for the 8 months contract a basic salary (net of Chinese taxes as specified in Article 5.5) of EUR 320,000.00 net of taxes as specified in article and paid as follows:

> *EURO 320,000.00 divided in 8 monthly equal instalments of EUR 40,000.00 net of Chinese taxes to be paid with the last five (5) business days of each month.*

[...]

5.5. The amounts to be paid under the present contract are net of taxes (including, but not limited to personal income tax, municipal tax, or any other tax according to the legislation in force) and withholding tax. Therefore the [the Club] will be liable for any tax liability derived from the payments to be made to [Appellant] pursuant to this Contract.

[...]

ARTICLE 7 Obligations and Discipline

[The Appellant] must fulfil the following obligations:

[...]

1.5 Participate in [the Club's] all training, matches and related activities and make effort to complete specified training and matches.[...]" (emphasis in original)

6. On 23 November 2017, the Appellant and the Club signed a new employment contract, also entitled "Employment Contract for Physical Coach" (the "Second Employment Contract"), valid as from 1 January 2018 until 31 December 2018.

7. The Second Employment Contract stated, *inter alia*, as follows (Party A being the Club and Party B being the Appellant):

"[...]

ARTICLE 2 Work Arrangements

1. [The Club] hereby appoints [the Appellant] and [the Appellant] accepts appointment from [the Club] as the professional Physical coach working in Guizhou Hengfeng Zhicheng FC Football Team ("Team"). [The Appellant] must fulfil all duties as physical coach, and do his best to reach season target as set out by [the Club]. [The Appellant] must take care and assist in managing of all the players in the first team.

[...]

ARTICLE 5 Salary and Bonuses

5.1. [the Club] shall unconditionally pay [the Appellant] for the 12 months contract a basic salary (net of Chinese taxes as specified in Article 5.5.) of EUR 350,000 net of taxes as specified in article and paid as follows:

EURO 350,000.00 divided in 12 monthly equal instalments of EUR 29,166.66 net of Chinese taxes to be paid with the last five (5) business days of each month.

[...]

5.2. Party A shall pay Party B the following bonuses (all amounts are indicated net of Chinese taxes):

5.2.1. EUR 70,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team maintains its current status at the Chinese Superleague at the end of the 2018 season, as a consequence of its sport results. Such payment would be paid, due and claimable to Party B to Party A no later than December 31, 2018.

5.2.2. EUR 80,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team qualifies between position 10th and 8th at the Chinese Superleague at the end of the 2018 season, as a consequence of its sport results. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.3. EUR 90,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team qualifies between position 7th and 4th at the Chinese Superleague at the end of the 2018 season, as a consequence of its sport results. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.4. EUR 100,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team qualifies for the AFC Champions League e at the end of the 2018 season, as a consequence of its sport results. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.5. EUR 25,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team for qualifies for CFA Cup semifinal in 2018, as a consequence of its sport results. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.6. EUR 50,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team for qualifies for CFA Cup final in 2018, as a consequence of its sport results. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.7. EUR 100,000 (net of Chinese taxes as specified in Article 5.5.) in case the Team wins CFA Cup in 2018. Such payment would be paid, due and claimable by Party B to Party A no later than December 31, 2018.

5.2.8. Bonus from 5.2.1 to 5.2.4 are cumulative among them and bound from 5.2.5 to 5.2.7. are non-cumulative among them.

5.2.9. Party B shall be entitled to receive 45,000.00 Yuans for each victory in an official game. Said bonuses are to be paid net and within 15 days from the respective game.

5.3. In addition to salary, bonuses and subsidies, Party A shall not pay any money to Party B, except for the compensations as stipulated herein.

5.4. The salary payment shall be carried out within the last five (5) business days of each month.
5.5. The amounts to be paid under the present contract are net of taxes(including, but not limited to personal income tax, regional tax, municipal tax, or any other tax according to the legislation in force) and withholding tax. [...]

[...]

ARTICLE 7 Obligations and Discipline

1. [The Appellant] must fulfil the following obligations:

1.1. Observe all laws and regulations of People's Republic of China.

1.2. Observe all regulations, rules and statutes of [FIFA], China Football Association Super League Committee and China Football Association Super League Match.

[...]

1.5. Participate in [the Club's] all training, matches and related activities and make effort to complete specified training and matches; [...]

[...]

ARTICLE 9

If [the Appellant]or [the Club] cancel (terminates) this contract prematurely without just cause, or if [the Appellant] terminates this contract prematurely but with just cause (unless just cause emanates from a force major circumstances, e.g. Flood, earthquake etc.) pursuant to Article 7 of Regulations on the Status and Transfer of Players of the FIFA, the fulfilling party will be entitled to terminate the contract with a just cause reason and request the breaching party the amount all the salaries and bonuses (those accrued on the termination date and also those corresponding to the Team maintaining its current status at the Chinese Superleague at the end of the 2018 season if when the termination occurs the team has mathematically achieved the objective) pending at the date of termination until 31 of December 2018 in accordance with article 5. The amount to be paid resulting from the anticipated termination shall be paid taken into consideration the tax residence of [the Appellant] in 2018.

ARTICLE 10 Settlement of Dispute

1. *The disputes arising from the fulfilment of, or in connection with the contract shall be settled through friendly consultations between both parties.*

2. *In case no settlement can be reached through consultation and due to the international nature of the present contact, any dispute related to the contract should be submitted in first instance to the Players Status Committee of FIFA (or the competent body at the time of the dispute) and in appeal to the Court of Arbitration for Sports (CAS), both proceedings will follow the Swiss legislation and the FIFA regulations for the merits of the case as well as its own rules about procedure and enforce at the time of any possible dispute. Both parties expressly renounce the submission of any dispute to any other body different from FIFA and the CAS."*

8. By letter of 5 June 2018, the Club terminated the Second Employment Contract stating, *inter alia*, as follows:

"[...] We write this letter in order to thank you for your services but also to express the Club´s disappointment for the sporting results achieved so far.

We hope that you will understand the huge financial investment the Club made in order to have you and the entire Coaching Staff.

We also hope that you appreciate all efforts our Club displayed in trying to put you and the players in the best conditions to play.

Unfortunately, despite our mutual endeavours, the sporting results have been very poor and the Club is relegated to the last position in the Charter.

In light of the above we are sorry to inform you that as of the day of the notification of this letter, there are no longer the conditions to go ahead in our employment relationship.

Therefore we would be very grateful if you could consider the opportunity to find an amicable solution in order to negotiate the economic terms of the termination of our employment relationship. [...]"

9. On the same date, the Club also terminated the employment relationships with the other members of the Head Coach's staff, including the employment relationship with the Head Coach, and on 7 June 2018, the Club announced the appointment of its new coach, Mr Dan Petrescu.

10. By email of 11 June 2018, the representative of the Appellant replied, *inter alia*, as follows:

"[...] We hereby write you following express instructions of our client, Mr Antonio Luis Servera ("the Physical Coach"), and regarding the termination letter herein attached by virtue of which GUZHOU HENGFENG ZHICHENG FC ("the Club") unilaterally and without just cause reason terminates the employment agreement signed between the parties on November 24, 2017 ("the Agreement").

Firstly, we would like to highlight the disagreement on said unilateral and without just cause reason termination of the Agreement by the Club.

Said this, we hereby request the Club to proceed within the term of seven (7) days from receipt of the present communication with the proposal of liquidation to the Physical Coach of the, specifically but limited to, (i) due and outstanding salaries to the date of the unlawful termination, (ii) any amounts derived from the execution of the Agreement such as accrued bonuses and/or benefits, (iii) taxes to be paid to the Chinese Tax Authorities (along with the issuance of the corresponding certificates), and (iv) the amounts stipulated in clause 9 of the Agreement and derived from the unlawful termination of the Agreement by the Club.

Should the Club not attend, within the deadline granted, the formal request, we will proceed with all necessary legal actions in order to protect our clients legal interests.[...]"

11. Furthermore, by email of 12 June 2018, the representative of the Appellant specified the due and outstanding amounts referred to in the email of 11 June 2018.

B. Proceedings before the FIFA PSC

12. On 2 July 2018, the Appellant lodged a claim against the Club for breach of contract in front of the FIFA PSC, requesting the following:

"a) ordering [the Club] to pay all the taxes corresponding to:

i) The salary corresponding to December 2017 under the [Employment Contract 1];

ii) The bonus for maintaining the category at the Chinese Superleague corresponding to last season under the [Employment Contract 1];

iii) The salaries of January, February, March and April 2018;

iv) As well as to provide [the Appellant] with the corresponding tax withholding certificates corresponding to said amounts and with tax residence certificate.

b) Ordering [the Club] to pay the following outstanding salaries broken down as follows:

i) EUR 34,027.77 "net" corresponding to the entire May 2018 salary, as well as 5 days of the June 2018 salary, plus 5% interest p.a. as from 6 June 2018 until the date of effective payment;

ii) Chinese Yuan (CNY) 77,500 corresponding to the accommodations costs borne by the coach, plus 5% interest p.a. as from "the due dates" until the date of effective payment;

iii) CNY 45,000 "corresponding to the coach for the victory against Heilongjiang Lava Spring FC (Cup Match)", plus 5% interest p.a. as from "the due dates" until the date of effective payment.

c) *EUR 199,305.51 "net" as compensation for breach of contract plus 5% interest p.a. as from 6 June 2018 until the date of effective;*

d) *"Ordering [the Club] to pay all the taxes corresponding to the agreed outstanding and compensation, as well as to provide [the Appellant] with the corresponding tax withholding certificates corresponding to said amounts;*

e) *That the [Club] pay all the legal and procedural costs."*

13. Regarding the admissibility of the claim, the Appellant argued that he was "*hired to fulfil duties as Second Assistant Coach*", and that, in this context, he participated "*also in trainings and official matches of the players of the first team of the club.*" Therefore, according to the Appellant, FIFA had jurisdiction to deal with the matter.

14. Regarding the substance of the claim, the Appellant stated, *inter alia*, that the Club rejected his request of 12 June 2018, and the Appellant consequently lodged a claim in front of FIFA for termination of contract without just cause, requesting to be paid the outstanding remuneration and compensation for breach of contract.

15. In its reply, the Club argued that the Appellant's claim should be declared inadmissible and stated, *inter alia*, as follows:

> *"on the basis of the well-established FIFA and CAS jurisprudence, a physical trainer, as the [Appellant], is not comparable with the activity of the coach (or assistant coach) and, therefore, the relevant dispute is not considered an employment-related dispute in accordance with article 6 of the FIFA Procedural Rules".*

16. The Club further argued, *inter alia*, that the Parties had agreed that the CFA Arbitration Commission had jurisdiction in the matter at stake and that the dispute should be resolved by the application of Chinese law.

17. With regard to the substance of the claim, the Club submitted, *inter alia*, that any compensation payable to the Appellant should be calculated in accordance with Chinese labour law, resulting in any case in a compensation of "*no more than EUR 87,499.98.*"

18. With regard to the Appellant's request for outstanding salary, the Club informed the FIFA PSC that it would *"not hesitate to pay this claimed amount at the end of this procedure in case the FIFA PSC shall decide in that sense.*"

19. In his replica, the Appellant found, *inter alia*, that the Second Employment Contract did not provide for a choice of law in favour of Chinese law, and further submitted that in accordance with FIFA jurisprudence, FIFA regulations prevail over any national law.

20. In its duplica, the Club submitted, *inter alia*, that FIFA does not have competence to decide on whether the payments were to be made net, adding that the Appellant had failed to

demonstrate whether he was a resident of China in the year 2018, which is why he cannot "*request to receive a gross-up amount of an additional 45%.*"

21. The FIFA PSC initially noted that the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") was applicable to the matter at hand.

22. In accordance with Article 3 par. 1 of the FIFA Procedural Rules in combination with Article 23(1) of the Regulations on the Status and Transfer of Players (the "FIFA RSTP"), the FIFA PSC is in principle competent to deal with employment-related disputes between a club or an association and a coach of an international dimension.

23. However, only members of FIFA, clubs, players, coaches or licensed match agents are admitted as parties in front of the relevant decision-making bodies of FIFA. In this connection, the FIFA PSC recalled that neither Article 6 par. 1 of the FIFA Procedural Rules nor Article 22 c) of the FIFA RSTP or any other provision of any of FIFA's rules and regulations establishes FIFA's competence to hear disputes involving physical trainers.

24. The FIFA PSC paid close attention to the arguments of the Appellant, who, in spite of the terms of the Second Employment Contract, alleged that he had been employed "*to fulfil all duties as Second Assistance coach*" and that he participated "*in training and official matches of the players of the first team of the club.*"

25. On that basis, the FIFA PSC noted that in accordance with the rule of burden of proof mentioned under Article 12 par. 3 of the FIFA Procedural Rules, it was undoubtedly upon the Appellant to prove that he was in fact exercising the duties of a coach and that he could thus be considered as a party in front of FIFA in the sense of Article 6 par. 1 of the FIFA Procedural Rules.

26. Consequently, and after a thorough analysis of the arguments as well as the documentation submitted by the Appellant, the FIFA PSC found that the Appellant had not provided any conclusive evidence proving that he had in fact been working as a coach for the First Respondent.

27. The FIFA PSC further analysed the Second Employment Contract and noted that, according to the wording of the Second Employment Contract, the Appellant was in fact hired as "*physical coach*" of the First Respondent and with his duties described as follows: "*[The Appellant] must fulfil all duties as physical coach and do his best to reach season target as set out by [the Club]. [The Appellant] must take care and assist in managing of all the players in the first team.*"

28. Moreover, the FIFA PSC noted that "*the duty as described above is not the one of a coach in the sense of art. 6 of the Procedural Rules and rather refer to the position of fitness trainer with solely physical tasks to enhance the players' physical condition.*"

29. Based on that, the FIFA PSC had no doubt that Second Employment Agreement was concluded in order to acquire the services of the Appellant as a physical coach and not as a coach.

30. In view of the above, the FIFA PSC decided that the Appellant's claim was not admissible in view of the fact that the Appellant, being a physical coach, cannot be viewed as a party who is entitled to seek redress in front of the FIFA decision-making bodies.

31. The FIFA PSC further noted that, in any case, the dispute is based on an employment contract signed by and between a physical coach and a club, and also therefore does not fall within the competence of the FIFA decision-making bodies.

32. Following its deliberations, on 14 February 2020, the FIFA PSC rendered the Appealed Decision and decided as follows:

"*1. The claim of [the Appellant] is inadmissible.*

2. The final costs of the proceedings in the amount of CHF 10,000 are to be paid by [the Appellant] to FIFA, CHF 5,000 of which have already been paid as advance of costs at the start of the present proceedings, Consequently, the additional amount of CHF 5,000 is to be paid by [the Appellant] to FIFA to the following bank account [...]."

33. The grounds of the Appealed Decision were communicated to the Parties on 5 May 2020.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 25 May 2020, the Appellant filed his Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (2019 edition) (the "CAS Code") against the Appealed Decision rendered by the FIFA PSC on 14 February 2020.

35. On 27 May 2020, the Appellant filed an Application for Legal Aid.

36. On 1 June 2020, the Appellant also requested an extension to file his Appeal Brief until the ICAS had issued a decision concerning his Legal Aid Application.

37. On 4 June 2020, the Second Respondent objected to the suspension of the Appellant's time limit to file its Appeal Brief and agreed to refer the dispute to a sole arbitrator.

38. On 8 June 2020, the First Respondent inter alia submitted a power of attorney in favour of its representatives and agreed that the dispute be submitted to a sole arbitrator.

39. On 11 June 2020, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, in accordance with Article R32 of the CAS Code, had denied the Appellant's request for a suspension to file its Appeal Brief. However, in accordance with Article R32 paragraph 2 of the CAS Code, as temporarily modified by the

CAS Covid-19 Emergency Guidelines of 16 March 2020, the Appellant was granted a two-week extension from 11 June 2020 to file his Appeal Brief.

40. On 16 June 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed that Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator and that Mr Hilliger wished to make a disclosure to the Parties further to Article R33 of the CAS Code, which none of the Parties subsequently challenged.

41. On 13 July 2018, after two extensions, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.

42. On 15 July 2020, upon request from the Second Respondent, the CAS Court Office informed the Parties that, further to Article R55 of the CAS Code, the Second Respondent's time limit to file its answer had been set aside and that a new time limit was to be fixed upon the Appellant´s payment of his share of the advance of costs or the resolution of his Application for Legal Aid.

43. On 3 August 2020, and in accordance with Article R54 of the CAS Code and on behalf of the Deputy Division President, the Parties were informed that the Sole Arbitrator constituted to hear this case was:

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

44. On 14 September 2020, after an extension, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code, and the Parties were informed on the same date that the First Respondent had not filed an Answer, but that the Sole Arbitrator would nonetheless proceed with the arbitration and issue an award.

45. On 7 October 2020, and based on confirmation received from the Appellant and the Second Respondent that they preferred to have an award issued solely on the basis of their written submissions, and in light of the First Respondent's silence in this regard, the Parties were informed that the Sole Arbitrator deemed himself sufficiently informed to decide the case and to render an award based solely on the Parties' written submissions and had decided not to hold a hearing, further to Article R57 of the CAS Code.

46. On 21 October 2020, the CAS Court Office transmitted the Order of Procedure to the Parties, which was signed and returned by the Appellant and the Second Respondent on the same date, and the First Respondent on 29 October 2020. In the Order of Procedure, the Parties confirmed inter alia that their right to be heard had been respected.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

47. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

A. The Appellant

48. In his Appeal Brief, the Appellant requested the CAS to deliver an award which:

i. "Sets aside the Decision adopted by the Single Judge of the FIFA Players' Status Committee of February 14th, 2020, (whose grounds where notified on May 5th, Ref.- No 18-01294/osv).

ii. Orders Guizhou to:

(A) Pay all the taxes and provide the Claimant with the corresponding tax withholding certificates corresponding to:

- *The salary corresponding to December 2017 under the First Agreement.*
- *The bonus for maintaining the category at the Chinese Superleague corresponding to last season under the First Agreement.*
- *The salaries of January, February, March and April 2018.*
- *As well as to provide the Claimant with the corresponding tax withholding certificates corresponding to said amounts and with a tax residence certificate.*

(B) Pay OUTSTANDING SALARIES in the total amount of THIRTY-FOUR THOUSAND TWENTY-SEVEN EUROS AND SEVENTY-SEVEN CENTS (€ 34.027,77) net of taxes, as well as a Five percent (5% per annum) interest on said amount accrued from June 6th, 2018, until the full payment.

(C) Pay the following COMPENSATION for breach of the Second Agreement in the total amount of ONE HUNDRED NINETY-NINE THOUSAND THREE HUNDRED FIVE EUROS AND FIFTY-ONE CENTS (€ 199.305,51) net of taxes, as well as a Five percent (5% per annum) interest on said amount accrued from June 6th, 2018 until the full payment.

(D) Ordering Guizhou to pay all the taxes corresponding to the aforesaid outstanding and compensation remuneration, as well as to provide the Claimant with the corresponding tax withholding certificates corresponding to said amounts.

iii. In the alternative to point ii. above, to rule that the FIFA Players' Status Committee has jurisdiction to decide over the matter at hand and to refer the matter back to the FIFA PSC for a decision on the merits.

iv. In all events:

(A) Order the Second Respondent to reimburse the Appellant the procedural costs in the amount of CHF 10,000.00.

(B) Order both Respondents to:
(i) Reimburse the Appellant its legal costs and other expenses pertaining to this arbitration; and
(ii) Bear any and all costs pertaining to the arbitration."

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

- Pursuant to Article 22 of the FIFA RSTP, FIFA is competent to hear any employment-related dispute between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.

- Article 6 par. 1 of the FIFA Procedural Rules furthermore establishes that parties in front of the FIFA decision-making bodies are the member associations of FIFA, clubs, players, coaches or licensed match agents.

- Considering that the neither the FIFA Statutes nor any other FIFA regulations contain a definition of "coach", the said term must be defined by way of interpretation of the above-mentioned articles and in accordance with CAS jurisprudence, in order to fill this lacuna.

- Based on the jurisprudence, the following conclusion can be drawn:

  - The main task and aspects of a football coach/assistant coach can be summarised as the person in charge of the team and leading the team on the sports ground, during competition and practice, being also responsible for the tactical choices regarding the team.

  - On the contrary, the physical trainer is the professional only in charge of the fitness (or physical condition) of the players he works with, and thus he performs a non-football specific occupation. In fact, the work of a physical trainer is not only directed to train football players but also other athletes competing in other disciplines.

  - When assessing also if a certain professional has to be considered a coach falling within the scope of Article 22(3) of the FIFA RSTP, it is necessary to examine, (i) the specific content of the contract, but also (ii) the real intention of the parties alongside the rest of the stipulations of the agreement as well as the (iii) duties and tasks effectively performed without stopping on the wording of the relevant contract.

- The Appellant holds a UEFA A License as a coach issued by the RFEF, thus making him more than competent to act as an assistant coach to the First Appellant's team.

- The Appellant was originally hired by the Club to fulfil all duties as assistant coach in accordance with his obligations as set out in the First Employment Contract.

- During his time with the Club, the Appellant also appeared together with the Head Coach on the bench and in connection with press appearances.

- Moreover, pursuant to the wording of the employment contracts between the Appellant and the Club, it was the duty of the Appellant to participate in all training sessions, matches and related activities, and make efforts to complete specified training and matches.

- The fact that the Appellant was employed as an assistant coach was also clear to the Club, since it agreed on the jurisdiction of the FIFA PSC as set out in the contracts between the parties.

- Based on that, and in accordance with the principle of primacy of reality, it must be concluded that despite the title used in the Second Employment Contract, the Appellant was in fact performing activities as an assistant coach, also providing his tactical and technical advice in line with the mutual intentions of the Appellant and the Club, and the FIFA PSC consequently erred in not assuming competence over the claim against the First Appellant.

- In this connection, it must also be recalled that the claims filed against the First Appellant by the rest of the members of the Head Coach' staff were declared admissible before FIFA, following which the FIFA PSC found that the Club had terminated these employment relationships without just cause on 5 June 2018.

- With regard to the merits of the case, the Sole Arbitrator has the power to review the case *de novo,* which power he should exercise to render an award on the merits of the dispute without referring the case back to FIFA.

- Pursuant to Swiss law, a breach of an agreement entitles the non-defaulting party to claim compensation from the defaulting party, and it also follows that in case of termination without just cause of a fixed-term employment contract, the employee is entitled to claim damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.

- The principle of *pacta sunt servanda* applies perfectly to this case in line with the FIFA principle of contractual stability, and the terms of the agreement between the Appellant and the Club must be respected and fulfilled.

- It was the Club that terminated the Second Employment Agreement without just cause and without any prior warning.

- Based on that, the Club is responsible for paying compensation to the Appellant for breach of contract in the amount set out in accordance with Article 9 of the Second Employment Agreement, which article was specifically negotiated between the Appellant and the Club, and is in line with the principle set out in Article 17 of the FIFA RSTP and as confirmed in CAS jurisprudence.

- In accordance with the provision agreed upon in the second Employment Agreement, the Club must pay the taxes in China and provide the Appellant with the corresponding certificates to prove that the said amounts have been paid to the tax authorities.

- Furthermore, it follows from Swiss law that the interest rate of 5% per annum must be applied to the entire amount due to the Appellant.

B. The First Respondent

50. The First Respondent did not provide an Answer in this proceeding.

C. The Second Respondent

51. In its Answer, the Second Respondent requested the CAS to issue an award on the merits:

"*(a) rejecting the relief sought by the Appellant;*

(b) confirming that the PSC did not have competence to entertain the Appellant's claim;

(c) subsidiarily, in case it was found that the PSC had the competence to entertain the Appellant's claim, ordering that the case be referred back to the PSC in order for it to render a decision on the merits of the case;

(d) in any case, exonerating FIFA from bearing any costs of these arbitration proceedings."

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

- It is undisputed that pursuant to Article 22 of the FIFA RSTP, FIFA is competent to hear any employment-related dispute between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at the national level.

- It is further undisputed, that Article 6 par. 1 of the FIFA Procedural Rules furthermore establishes that parties in front of the FIFA decision-making bodies are the member associations of FIFA, clubs, players, coaches or licensed match agents.

- Based on that, physical trainers or physical/fitness coaches do not fall within the jurisdiction of the FIFA PSC, which is not disputed by the Appellant.

- The Appellant's claim is based on the allegedly unlawful termination of the Second Employment Agreement, for which reason, combined with the fact that the Appellant and the Club novated their employment relationship by signing the said agreement, any reference made by the Appellant to the First Employment Contract is of no relevance to this case.

- It follows from the contracts submitted during these proceeding between the Club and the Head Coach and the two assistant coaches that the Appellant was hired by the Club as part of a technical team consisting of one head coach, two assistant coaches and one physical trainer, the Physical Trainer being the Appellant.

- Pursuant to these three contracts, the Head Coach and the assistant coaches were hired as, respectively, "*head coach*" and "*professional Assistant coach*", with the obligation

to fulfil all duties "*as a head coach*" and "*as a assistant coach*", while the Appellant on the other hand was hired "*as the professional Physical coach*" and with the obligation to fulfil all duties "*as physical coach*".

- Nowhere in the Second Employment Contract it is provided that the Appellant was assigned duties other than to "*fulfil all duties as physical coach, and do his best to reach season target as set out by [the Club]. [The Appellant] must take care and assist in managing all of the players in the first team*", thus nowhere any assignment of duties akin to those of a coach can be seen.

- Moreover, the Appellant failed to discharge the burden of proof to prove otherwise, and neither the pictures, the video nor the witness statements submitted by the Appellant constituted proof sufficient to prove to the comfortable satisfaction of the FIFA PSC that the Appellant was exercising coaching duties.

- In addition, it must be noted that the fact that the Appellant carries an UEFA A Licence issued by the RFEF is irrelevant to this dispute, since what matters in this specific case in whether he was hired in order to act as a coach with the Club.

- Based on the above, it is clear that the Appellant was hired by the Club on 23 November 2017, not in the capacity of coach but in the capacity of physical trainer and, as such, his contractual dispute with the Club was not subject to the jurisdiction of the FIFA PSC.

- This is also in line with CAS jurisprudence confirming that "*the fact that a physical trainer is not in a position to have his employment-related dispute against a football club he works for heard by FIFA is also in accordance with FIFA's long practice, i.e. FIFA's constant interpretation of its own relevant regulations.*"

- The allegation of the Appellant that "*FIFA is applying a rather restricting approach when assessing the scope of its making-decision bodies under article 22 of the FIFA RSTP, in order to reduce the number of cases, disregarding important details of the contractual relationships*", must naturally be dismissed.

- With regard to the request of the Appellant to be reimbursed for the FIFA procedural costs if he should prevail in his claims regarding jurisdiction or the compensation due to him, reference must be made to CAS jurisprudence, which confirms that it is not for CAS to reallocate the FIFA procedural costs in the absence of truly exceptional circumstances, which is not the case in this matter. Based on that, this request must be rejected.

- With regard to the merits of the dispute between the Appellant and the Club, the FIFA PSC did not rule on the substance. In the unlikely event that the Sole Arbitrator should decide that FIFA was in fact competent to entertain the claim, the case should be referred back to the FIFA PSC in order for it to assess all the allegations and documentation brought forward by the Appellant in these proceedings for the first time and to rule on the merits of the dispute.

V. JURISDICTION

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

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

54. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 of the FIFA Statutes.

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

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

VI. ADMISSIBILITY

57. Article R49 of the CAS Code provides, *inter alia*, as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

58. Article 58 par. 1 of the FIFA Statutes, reads as follows:

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

59. The grounds of the Appealed Decision were notified to the Appellant on 5 May 2020, and the Appellant's Statement of Appeal was lodged on 25 May 2020, i.e. within the statutory time limit of 21 days set forth in Article 58 par. 1 of the FIFA Statutes, which is not disputed.

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

61. It follows that that the Appeal is admissible.

VII. APPLICABLE LAW

62. According to Article 57 par. 2 of the FIFA Statutes:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law."

63. Furthermore, 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."

64. The Appellant moreover refers to Article 10 of the Second Employment Agreement, which states as follows:

"1. The disputes arising from the fulfilment of, or in connection with the contract shall be settled through friendly consultations between both parties.

2. In case no settlement can be reached through consultation and due to the international nature of the present contact, any dispute related to the contract should be submitted in first instance to the Players Status Committee of FIFA (or the competent body at the time of the dispute) and in appeal to the Court of Arbitration for Sports (CAS), both proceedings will follow the Swiss legislation and the FIFA regulations for the merits of the case as well as its own rules about procedure and enforce at the time of any possible dispute. Both par-ties expressly renounce the submission of any dispute to any other body different from FIFA and the CAS."

65. The Appellant and the Second Respondent agree that the applicable regulations in these proceedings for the purpose of Article 58 of the CAS Code are the rules and regulations of FIFA and, additionally, Swiss law, also since the present appeal is directed against a decision issued by the FIFA DC applying the rules and regulations of the same.

66. 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, additionally, Swiss law.

VIII. MERITS

67. As a preliminary matter, the Sole Arbitrator notes that in its Answer, FIFA requested that the two witness statements submitted together with the Appeal Brief should be excluded from the file pursuant to Article R57(3) of the CAS Code, since, according to FIFA, such evidence was available to the Appellant before the Appealed Decision was rendered. However, and since the Sole Arbitrator did not find any grounds for considering the conduct of the Appellant with regard to this evidence abusive or inappropriate, the Sole Arbitrator decides not to exclude the said witness statements from the file.

68. Further, the Sole Arbitrator notes that the factual circumstances pertaining to the Appellant and the Club entering into the First and the Second Employment Agreements and the Club's termination of their contractual relationship are undisputed by the Parties.

69. In rendering this Award, the Sole Arbitrator has therefore taken into account the following non-exhaustive list of factors and considerations:

- On 28 April 2017, the Appellant, a member of the staff of the Head Coach and the Club, signed the First Employment Contract, valid as from 1 May 2017 until 31 December 2017.

- On 23 November 2017, the Appellant and the Club renewed their contractual relationship and signed the Second Employment Contract, which, just as the First Employment Contract, was entitled "Employment Contract for Physical Coach", valid as from 1 January 2018 until 31 December 2018.

- By letter of 5 June 2018, the Club terminated the Second Employment Contract, and the contractual relationship with the Head Coach and the rest of the staff of the Head Coach was likewise terminated by the Club.

- Finally, on 11 June 2018, the Appellant informed the Club that the termination of the Second Employment Contract was considered to be without just cause, following which, on 2 July 2018, the Appellant lodged a claim against the Club for breach of contract in front of the FIFA PSC.

70. Based on the foregoing, on 14 February 2020, the FIFA PSC rendered the Appealed Decision and decided, *inter alia*, that:

"*1. The claim of [the Appellant] is inadmissible. [...].*"

71. The Appellant submits, *inter alia*, that the FIFA PSC erred in the Appealed Decision, since it was in fact competent to decide on the Appellant's claim, and the Appellant also requests the CAS to decide on the merits of the matter.

72. Based on that, the main issue to be resolved initially by the Sole Arbitrator is whether or not the FIFA PSC was correct in considering the Appellant's claim inadmissible based on its finding that the Appellant was not a party admitted in front of FIFA decision-making bodies at the time of the lodging of his claim.

73. Initially, the Sole Arbitrator notes that it is not disputed by the Parties that any possible jurisdiction of FIFA to decide on the claim of the Appellant must originate from the regulations of FIFA.

74. In this connection, the Sole Arbitrator notes that Article 22(1) of the FIFA RSTP states, *inter alia*, as follows:

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

[...]

c) employment-related disputes between a club or an association and a coach of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. [...]"

75. Furthermore, Article 6 par. 1 of the FIFA Procedural Rules states as follows:

"*Parties are member associations of FIFA, clubs, players, coaches or licensed match agents.*"

76. With regard to the present dispute, it is further undisputed that the dispute between the Appellant and the Club is an employment-related dispute of an international dimension, the Appellant being of Spanish nationality and the First Respondent being a Chinese football club.

77. Moreover, it is not disputed between the Appellant and FIFA that FIFA would be competent to decide on the matter if the Appellant is to be considered a coach, and thus a possible party before FIFA in accordance with Article 6 par. 1 of the FIFA Procedural Rules. Furthermore, it seems undisputed between the Parties that a physical coach is not to be considered a party before FIFA in accordance with the said provision of the FIFA Procedural Rules.

78. As such, the Sole Arbitrator needs to decide whether or not the Appellant was to be considered a coach at the time when the Second Employment Agreement was terminated by the Club.

79. Given these circumstances, the Sole Arbitrator first of all finds it important to try to determine the true intention and will of the Appellant and the Club and, accordingly, to interpret the relevant provisions of the Second Employment Contract.

80. Article 18 par. 1 of the Swiss Code of Obligations (the "SCO") provides as follows regarding the interpretation of contracts:

"*When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.*"

81. Furthermore, according to CAS jurisprudence, under Article 18 of the SCO:

"*the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER B., Commentaire Romand – CO I, Basel 2003, n. 18-20 ad*

Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER B., op. cit., n. 26 ad art. 18 CO; WIEGAND W., Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER B., op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND W., op. cit., n. 29 and 30 ad art. 18 CO)" (CAS 2005/A/871, pg. 19, para. 4.29).

and

"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND B., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party" (CAS 2005/A/871, pg. 19, para. 4.30)." (CAS 2008/A/1468 and more)

82. In his interpretation of the true intention of the Appellant and the First Respondent, the Sole Arbitrator attaches particular importance to the content of Article 2 of the Second Employment Contract, which, *inter alia*, reads as follows:

"*ARTICLE 2 Work Arrangements*

1. [the Club] hereby appoints [the Appellant] and [the Appellant] accepts appointment from [the Club] as the professional Physical coach working in Guizhou Hengfeng Zhicheng FC Football Team ("Team"). [the Appellant] must fulfil all duties as physical coach, and do his best to reach season target as set out by [the Club]. [the Appellant] must take care and assist in managing of all the players in the first team." [...]

83. Pursuant to this provision, and the title of the Second Employment Agreement (*Employment Contract for Physical Coach*) and without any evidence pointing in a different direction, it seems evident to the Sole Arbitrator that it was the common intention of the two parties that the Appellant, at least at the time of the signing of the Second Employment Agreement, was hired as a *Physical coach* with the obligation to "*fulfill all duties as physical coach.*"

84. The Sole Arbitrator further notes in this regard that the Appellant´s obligations under the Second Employment Agreement, i.e. to "*fulfil all duties as physical coach,*" were specifically amended compared to the Appellant´s obligations under the former First Employment Agreement, according to which he was obligated to fulfil "*all duties as Second Assistant*

coach." The Sole Arbitrator notes in this regard, that he does not find the use of the term "physical coach" and not "physical trainer" as a decisive point.

85. Furthermore, it must be stressed that the obligations of the two other members of the staff of the Head Coach were defined in their respective employment contracts with the First Respondent as obligations to "*fulfil all duties as assistant coach*".

86. Based on these circumstances, the Sole Arbitrator does not find any grounds to conclude that it was not the common will of the Appellant and the First Respondent to hire the Appellant as a physical coach.

87. However, the Sole Arbitrator notes that the Appellant submits that, regardless of the wording of the Second Employment Contract and the possible original intentions of the two parties, the Appellant was in fact working as an assistant coach as a member of the staff of the Head Coach at the time of the termination of the Second Employment Contract, and he should therefore be considered a coach.

88. Based on the facts of the case and the Parties' submissions, the Sole Arbitrator finds that it is up to the Appellant to discharge the burden of proof to establish that he was in fact working as an assistant coach at the time of the termination of the Second Employment Agreement and, accordingly, that he should be considered a coach within the meaning of Article 6 par. 1 of the FIFA Procedural Rules.

89. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively 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, paras. 71ff).

90. The Sole Arbitrator finds, however, that the Appellant has not adequately discharged this burden of proof.

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

92. The Sole Arbitrator initially notes that the fact that the Appellant is licensed as a coach holding an UEFA A Licence is not decisive in determining whether or not he was in fact acting as an assistant coach at the time of the termination, but only indicates that he possessed the relevant qualifications to act in such capacity.

93. The Sole Arbitrator further notes that he agrees with the Appellant that, in accordance with the principle of primacy of reality, the wording of a contract or its headline is not in all

situations *per se* decisive for the status of an employee if the reality of the actual employment relationship is in fact different from such wording, for example where the employee's terms and conditions of employment or responsibilities have changed following the conclusion of the contract in question by mutual agreement between the parties.

94. However, based on the arguments and evidence submitted by the Appellant, including the witness statements, which, despite FIFA's request to exclude them, are admitted into the file, and pictures and video of the Appellant during both training and matches, the Sole Arbitrator does not find himself convinced to his comfortable satisfaction that the Appellant, at least to a significant extent, was fulfilling the tasks and obligations of an assistant coach and not as a physical coach.

95. The Sole Arbitrator notes in this regard, *inter alia*, that on most points, and in particular the two relevant passages, the two witness statements seem to be identical, which indicates that they were drafted by the same person, and not separately by the two witnesses in question. These two passages have the following wording: "*I can also fully ascertain that Mr. Antonio Luis Severa Santandreu performed different tasks and functions as an Assistant Coach of the team including specific tactical and technical football related work during trainings and official games, but also certain physical preparation of the team. [...] As a result at to be accurate, in my personal experience as a professional football player of Guizhou Hengfeng FC and under the management of the Head Coach Mr. Gregorio Manzano Ballesteros, the role of Mr. Servera was far beyond the physical preparation and his tasks were more related to tactical and technical football specific advice both during trainings and official games (i.e. as an Assistant Coach).*" Against this background alone, the Sole Arbitrator finds that these statements cannot be considered as decisive.

96. Furthermore, the Sole Arbitrator finds that the fact that the Appellant was apparently present and in the proximity of the Head Coach during training and matches does not in itself prove that the Appellant was fulfilling a position as an assistant coach.

97. The Sole Arbitrator furthermore notes that even the Appellant labels himself as "*the Physical Coach*" in his email of 11 June 2018 to the First Respondent following the Club's termination of the Second Employment Agreement.

98. For the sake of good order, the Sole Arbitrator would like to stress that he appreciates the Appellant's request to and interest in having his claim decided by FIFA in line with the claims of the rest of the Head Coach's staff, who had their claims decided by the FIFA PSC.

99. However, the facts and circumstances of this particular case do not persuade the Sole Arbitrator to his comfortable satisfaction that the Appellant was in fact acting as an assistant coach and not as a physical coach as originally intended by the two parties to the Second Employment Contract.

100. Based on that and with reference to the relevant provisions of the FIFA RSTP and the FIFA Procedural Rules as mentioned above, the Sole Arbitrator is left with no other choice but to agree with FIFA PSC that the Appellant cannot be viewed as a party who is entitled to seek redress in front of the FIFA decision-making bodies.

101. Thus, the Sole Arbitrator agrees with the FIFA PSC that the Appellant´s claim is not admissible.

102. Consequently, the Sole Arbitrator dismisses the Appellant's appeal.

IX. COSTS

103. Article R64 of the CAS Code is applicable to this proceeding.

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

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

105. 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."*

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

107. Furthermore, considering the conduct and financial resources of the Parties, the fact that the First Respondent did not file any submissions and that none of the Parties requested a hearing, and given that the Second Respondent was not represented by external counsel, the Sole Arbitrator rules that each Party will bear its own legal costs and other expenses incurred in connection with this procedure.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Antonio Luís Servera Santandreu on 25 May 2020 against the decision rendered by the FIFA Players' Status Committee on 14 February 2018 is dismissed.

2. The Appealed Decision rendered by the FIFA Players' Status Committee on 14 February 2018 is confirmed.

3. The costs of arbitration, as calculated by the CAS Court Office, will be borne by Antonio Luís Servera Santandreu in their entirety.

4. Each Party shall bear its own costs and other expenses incurred in connection with these proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 20 August 2021

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator