Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Jordy Josue Caicedo Medina

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France), member
MD Abu Nayeem Shohag (Bangladesh), member

CLAIMANT / COUNTER-RESPONDENT 1:

Jordy Josue Caicedo Medina, Ecuador
Represented by Jaime Castillo

RESPONDENT / COUNTER-CLAIMANT:

EC Vitoria, Brazil
Represented by Bichara & Motta Advogados

COUNTER-RESPONDENT 2:

PFC CSKA Sofia, Bulgaria
Represented by Bär & Kerrer

I. FACTS OF THE CASE

1. On 9 July 2019, a draft pre-contact of the employment, stipulating the essential terms of the future employment relationship between the Ecuadorian player, Jordy Josue Caicedo Medina (hereinafter: *the player* or *the Claimant/Counter-Respondent 1*), and the Brazilian club, EC Vitória (hereinafter: *the club, Vitória* or *the Respondent/Counter-Claimant*) was prepared, outlining the following conditions (hereinafter: *the pre-contract*):

    a. Term: 4 years;
    b. Monthly salary of USD 15,000 for the season of 2019/2020;
    c. monthly salary of USD 20,000 for the season of 2020/2021;
    d. monthly salary of USD 25,000 for the season of 2021/2022;
    e. monthly salary of USD 30,000 for the season of 2022/2023;
    f. monthly housing allowance in the amount of BRL 2,000.

2. It remained undisputed between the parties that the pre-contract was not executed between the player and the club.

3. On 25 July 2019, the club and the Ecuadorian club, Universidad Católica, agreed on the permanent transfer of the player against payment of a transfer fee of USD 830,000 (hereinafter: *the transfer agreement*).

4. On 24 July 2019, the player and the club concluded an employment contract (hereinafter: *the labour agreement*) valid as from its date of execution until 30 June 2023.

5. According to clauses 2 and 3 of the labour agreement, the club undertook to pay the player a gross monthly remuneration comprising of image rights and salary *"in obedience to the proportion foreseen by Brazilian Law 9.615/98)"*, as follows:

    a. From 24 July 2019 to 30 June 2020: USD 9,000 as salary and USD 6,000 as image rights;
    b. From 1 July 2020 to 30 June 2021: USD 12,000 as salary and USD 8,000 as image rights;
    c. From 1 July 2021 to 30 June 2022: USD 15,000 as salary and USD 10,000 as image rights; and
    d. From 1 July 2022 to 30 June 2023: USD 18,000 as salary and USD 12,000 as image rights.

6. The abovementioned amounts were payable in local currency by the 5th business day of each following month, as well as BRL 2,000 per month as housing allowance for the contract period.

7. The labour agreement established that the image rights consideration would be paid to a company indicated by the player.

8. The labour agreement further established the amounts would suffer the corresponding deductions as per the local legislation, but that at the end of each contractual year parties would perform a "compensation right" check. More in particular, the clause at stake (clause 5d) stated the following (freely translated to English): "*By the end of each contractual year, the parties will promote a math check, as follows: 1) verification of the total amount due to the [player]. Without any discount, as per clauses 2 and 3; 2) deductions of amounts corresponding to Social Security Funding (FGTS), vacation and Christmas bonus (13th salary) paid to the [player]; 3) checking the balance, if inferior to the amount owed [the club] shall bay the balance in the next due date, in order for the player to receive exactly the gross amounts under clauses 2 and 3".* The "math check" balance would be paid using the exchange rate at the end of each contractual year.

9. The labour agreement contains a jurisdiction clause referring to FIFA and to the Court of Arbitration for Sport (CAS) as competent courts, as well the courts of the City of Salvador, Brazil.

10. Allegedly on 26 July 2019, Vitória, the player and the Company *"Jordy Josue Caicedo Medina Micro-Empresa"* (hereinafter: *the Company*) concluded a "*Licensing agreement for the use of professional football athlete's image*" (hereinafter: *Image Rights agreement*), valid as from the same date until 18 July 2021, with an automatic extension until 18 July 2023 in case the labour agreement was extended.

11. The Image Rights agreement, in its preamble, states *inter alia* that the Company was duly authorized on an exclusive basis to use the player's image rights.

12. Clause 4.1.2 of the Image Rights agreement establishes that such contract would be automatically terminated in case of termination of the labour agreement.

13. According to clause 5 of the Image Rights agreement, Vitória undertook to pay to the Company a monthly gross amount of BRL 22,638, "*equivalent to USD 6,000 at the exchange rate of execution of this instrument".* Said clause further established that such amount would be increased, as follows:

    a. As of 26 July 2020 to USD 8,000 at the exchange rate of 26 July 2020;
    b. As of 26 July 2021 to USD 10,000 at the exchange rate of 26 July 2021; and
    c. As of 26 July 2022 to USD 12,000 at the exchange rate of 26 July 2022.

14. According to clause 6.1 of the Image Rights agreement, payments to the Company would be subject to the issuance of the proper invoice by the Company.

15. According to clause 14 of the Image Rights agreement, the jurisdiction for resolving disputes refers to the courts on the City of Salvador on an exclusive basis.

16. On 27 July 2019, the player and the club concluded an employment contract (hereinafter: *the federative contract*) valid as from 27 July 2019 until 18 July 2021 in the standard form of the *Confederação Brasileira de Futebol* (CBF).

17. According to the federative contract, the club undertook to pay the player a monthly salary of BRL 33,921.90.

18. Furthermore, the federative contract establishes that in case of breach of contract:

    a. By the player without just cause, joining a Brazilian club thereafter, a compensation of BRL 67,000,000 would be due;
    b. By the player without just cause, joining a foreign club thereafter, a compensation of EUR 30,000,000 would be due;
    c. By the club without just cause, a compensation corresponding to the residual value of the federative contract would be due.

19. On 11 April 2020, the club presented its player with an unsigned document reducing his salaries by 25% due the COVID pandemic for the months of May and June 2020, and a full suspension of any payments relating to the Image Rights agreement. Such document, titled *memorandum*, contained an area for the player to sign, which he did not.

20. On 7 December 2020, the player put the club in default of payment of his remuneration for March (partially), April, May, June, July, August, September, October and November 2020, in the total amount of USD 152,660.74, granting the club 15 days to cure the breach.

21. On 24 December 2020, the player wrote to the club and acknowledged having received BRL 176,962.28 or USD 32,410.67, and requested payment of USD 120,250.07 within 15 days. The player furthermore outlined that he deemed any reduction in his earnings illegal.

22. On 7 January 2021, the club wrote to the player and highlighted that in line with Brazilian Law, it was entitled to deduct amounts from the player's earnings due to the pandemic. It also indicated the pandemic's negative effects towards the club as a *force majeure* situation. The club hence rejected that it owed the player any amounts.

23. On 15 January 2021, the player wrote to the club, denying the latter's assertions and terminating the employment relationship.

24. On 5 February 2021, the player and the Bulgarian club, PFC CSKA Sofia (hereinafter: *CSKA*) signed an employment contract, according to which the player is entitled to EUR 175,000 as remuneration for the cited period.

25. On 11 February 2021, the club wrote to the player *inter alia* objecting to the termination of the employment relationship.

26. Following a dispute regarding the issuance of the player's International Transfer Certificate (ITC), the Single Judge of the Players' Status Committee on 16 February 2021 allowed the provisional registration of the player with CSKA.

II. PROCEEDINGS BEFORE FIFA

27. On 3 March 2021, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. The claim of the player

28. In his claim, the player maintained that he had just cause to terminate the employment relationship with the clubon the basis of art. 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP), and subsidiarily on the basis of art. 14 of the FIFA RSTP.

29. In this context, the player outlined that the club was frequent in paying his remuneration late, or not paying at all. He argued that notwithstanding this situation he remained carrying on with this duties. He clarified in this respect that he could not confirm the authenticity of the federative contract, but conceded that he might have been forced or lured by the club to sign such document.

30. The player explained that in spite of the legal structure regarding his Image Rights agreement, he never received royalties for the use of his image, in fact he only received his salary as monthly remuneration. He also noted that he had one bank account only, and that these amounts were never paid to the Company.

31. The player in continuation addressed the matter of the reduction of his earnings, and deemed those illegal. He referred to the FIFA COVID Guidelines in this respect as well as to the fact that he never agreed to any reduction. More in particular, the player deemed that by reducing 25% of his salary and the entire image rights payments, the reduction in fact meant a 55% reduction.

32. The player also referred to the tax-related deductions made by the club and argued that his remuneration was net, albeit the "*unconventional way to cover said net amounts*". The player is of the position that "*by the time the Player terminated the employment contract on 15 January 2021 all net amounts accrued to that date must be considered as overdue remuneration. The Player agreed a fixed net remuneration with the Club and, having rendered his services to the Club until 15 January 2021, it is quite clear that he earned his full remuneration up to that date, regardless of the irregular payment conditions established by Vitoria".*

33. The player requested payment of USD 569,238 as mitigated compensation, calculated as follows, as well as additional compensation:

a. USD 780,000 as residual value of the labour agreement (from January 2021 to June 2023);
b. Minus USD 210,762 as his earnings at CSKA;
c. Plus USD 135,000 (*i.e.* 6 salaries) as additional compensation, or alternatively no less than USD 67,500.

34. The player also requested payment of USD 110,668.15 as overdue remuneration by the time of the termination. He explained that because the club always paid irregularly, it is difficult to precise which amounts were due, but that this amount represents a little over six monthly payments. He clarified also that on 18 January 2021, that is, after the termination, the club paid USD 13,429.69. He detailed his calculation of the amounts received as follows: (a) remuneration paid between 3 September 2019 and 30 December 2020 in the total of BRL 715,536.37, and (b) bonus payments between 16 August 2019 and 29 September 2020 in the total of BRL 15,194.62.

35. The player made the following remarks as to his calculation:

Exchange rates:

- 1 USD = 3.76 BRL, which was the exchange rate on 24 July 2019, for payments effectively made during the first year of the labour agreement (24 July 2019/30 June 2020, as per articles 2 and 3 of the labour agreement);

- 1 USD = 5.47 BRL, which was the exchange rate on 30 June 2020, for overdue payments that were to be paid within the five working days following the end of the first year of the labour agreement to duly complete the net amounts established in the labour agreement (as per articles 5.d and 5.e of the labour agreement);

- 1 USD = 5.46 BRL, which was the exchange rate on 1 July 2020, for overdue payments corresponding to the second year of the labour agreement (1 July 2020/31 December 2020, as per articles 2 and 3 of the labour agreement).

Outstanding remuneration:

a. From 24 July 2019 to 30 June 2020:
- Total net amount due for 1st contractual year: USD 168,500 or BRL 633,560;
- Total amount effectively paid after deductions: USD 94,220.89;
- Housing allowances deduction: USD 13,966.78;
- Total amount overdue for 1st contractual year: USD 80,254.11 or BRL 438,989.98.

b. From 1 July 2020 to 31 December 2020:
- Total net amount due the period: USD 120,000 or BRL 655,200;
- Total amount effectively paid after deductions: USD 78,354.27;
- Total amount overdue for period: USD 43,843.73 or BRL 438,989.98.

Housing allowances:

"It is also important to take into consideration that the amounts pertaining to housing (BRL 2,000.00 monthly) have been lumped together in our total calculations, as this contribution was in fact paid together with the Player's salary, and therefore constitutes part of the Player's total remuneration. We are taking into account that all housing payments have been made, and therefore this amount (a total of BRL 34,000.00 for 17 months in which the contribution was effectively paid) also needs to be deducted from the total payments performed by the Club (i.e. this amount does not constitute salary and must be subtracted from the total sum paid by the Club during the employment relationship)".

36. Hence, as per the player, the total amount overdue equals to USD 124,097.84, minus USD 13,429.69 paid by Vitoria on 18 January 2021, arriving at USD 110,668.15.

b. The reply and counterclaim of the club

37. The club objected as to the competence of FIFA. In particular, it held that FIFA is not competent to hear any disputes arising from the Image Rights agreement as it does not pertain to an employment-related dispute and such contract also possesses a clear and exclusive jurisdiction clause in favour of the local courts.

38. As to the substance, the club argued that the player has no standing to sue regarding the Image Rights agreement since the Company and not the player was entitled to receive the monies under such contract.

39. The club furthermore submitted that both the Image Rights agreement and the federative contract superseded the labour agreement, especially in view of the fact that the latter did not comply with the mandatory requirements of Brazilian law, namely the inclusion of the penalty clauses in favour of both the player and the club.

40. The club clarified in this respect that only the federative contract contains such clauses, and that this contract was validly executed between the parties.

41. Additionally, the club explained that the Image Rights agreement was signed in accordance with national law, and based on the foregoing FIFA is not to consider the labour agreement.

42. The club then turned to the issue of the termination, and argued that the player did not have just cause to terminate the employment relationship on the following grounds: (a) In his default notices of December and January 2021, the player never specified which amounts were due; (b) The club lawfully reduced between April and December 25% of the player's remuneration due to COVID.

43. As to COVID, the club explained that under Swiss Law the theory of *clausula rebus sic stantibus* allows for such unilateral reduction, and that the Brazilian Law (Provisional Measure No. 936 and Federal Law No. 14.020/2020) also allow it. The club quoted the following provision:

"Section III
Proportional Reduction of Working Hours and Wages
Art. 7. During the state of public calamity referred to in article 1, the employer may agree to the proportional reduction in the working hours and salary of its employees, for up to ninety days, subject to the following requirements:
I –preservation of the number of hourly wages for work;
II –agreement by individual written agreement between employer and employee, which will be forwarded to the employee at least two calendar days in advance; and
III –reduction of working hours and wages, exclusively, in the following percentages:
a)Twenty-five percent;
b)Fifty per cent; or
c)Seventy percent.
Sole paragraph: The working day and the salary previously paid will be re-established within two calendar days, counting:
I –from the cessation of the state of public calamity;
II –from the date established in the individual agreement as the end of the period and reduction agreed upon; or
III –the date of communication by the employer informing the employee of his decision to anticipate the end of the agreed reduction period."

44. The club also argued that this provision is in line with the Brazilian Labour code, as follows:

"Art. 501-Force majeure is understood as all unavoidable events, in relation to the employer's will, and for the accomplishment of which the employer did not contribute, directly or indirectly.
§ 1° -The employer's lack of foresight shall exclude the reason of force majeure.

§ 2 -In the occurrence of force majeure that does not substantially affect, nor is likely to affect, under such conditions, the economic and financial situation of the company, the restrictions of this Law concerning the provisions of this Chapter shall not apply.(...)
Article 503-It is lawful, in case of force majeure or duly proven losses, the general reduction of the company's employees' salaries, in proportion to their salaries, however, such reduction cannot be superior to 25% (twenty-five per cent), respected, in any case, the minimum wage of the region.
Sole paragraph: Once the effects of force majeure have ceased, the restoration of the reduced wages is guaranteed."

45. The club argued that the reduction applied to all of its squad, except the player. The club deems that the reduction was proportionate.

46. The club then proceeded to calculate the player's entitlement to salaries under the federative contract and concluded that while the player was entitled to BRL 506,001.68 by the time of termination, the club only fell short of payment of BRL 41,856.06, that is, a little over one salary only. The club thus filed a counterclaim against the player and CSKA and requested the following amounts:

"a) Residual value of the relevant contract:
•As the Employment Contract was due to expire on 18 July 2021, this amount shall correspond approximately 6 (six) monthly salaries, as follows:BRL33,921.90 x 5 months (1 January to 30 June 2021) + BRL33,921.90x 18/30 days (July 2021) = BRL189,962.64 (one hundred eighty-nine thousand nine hundred sixty-two Brazilian Reais and sixty-four cents).

b) Fees and expenses for the acquisition of the Player amortised over the term of the Contract:

•USD 830,000.00 (eight hundred thirty thousand US Dollars) of the transfer fee (ExhibitR23).

c) Loss of the Player's services and replacement value: EUR 675,000".

c. The reply to counterclaim by CSKA

47. As to the admissibility, CSKA rejected the position of Vitória and argued that FIFA is clearly competent since the payment of *"image rights"* derives from clause 8 of the labour agreement. It also advanced the argument that should that not be the case, the image rights of the player were never exploited by Vitória, entailing that as per the contents of such agreement the player was only performing his activities as footballer. CSKA concluded by stating that the Image Rights agreement is nothing more than an *addendum* or supplementary agreement.

48. CSKA argued that the player had just cause to terminate the employment relationship. It outlined in this respect that Vitória confirmed by its letter dated 7 January 2021 that the player was entitled to the exact remuneration agreed under the labour agreement, and that it made no sense that only 3 days after such agreement was signed to replace it by one with a duration much shorter (*i.e.* the federative contract).

49. CSKA then turned to the issue of the player's signing and argued that it learned about the player being a free agent via an intermediary only on 18 January 2021, that is, after the termination of the contract with Vitória. CSKA then added and that only by late January, after having assessed the player's situation in depth it came to the conclusion of the employment contract with the player.

50. As to the COVID reductions, CSKA is of the opinion that Vitória did not make attempts to reach an amicable settlement with the player and that there has been no evidence filed

regarding Vitória's economic crisis caused by the pandemic. It also argued that the reductions were not proportional.

51. CSKA then turned to the calculations and proof of payment filed by Vitória and noted that in the unlikely scenario that FIFA recognizes the federative contract as the sole valid one, the COVID reductions were illegal and Vitória only paid BRL 464,145.62 to the player, while he was entitled to BRL 576,672.30 between 1 August 2019 and 31 December 2020, thus falling short of BRL 112,526.68, which is more than 3 salaries.

52. CSKA also argued that the compensation sought by Vitória is excessive and that it did not induce the player to terminate his contractual relationship with the club.

53. CSKA requested that the counterclaim be rejected.

d. The reply to counterclaim by the player

54. As to the admissibility, the player argued that FIFA is competent and explained that he is seeking the amounts agreed under the labour agreement and not the image rights one, since the latter was merely concluded under national law to be more tax-advantageous to Vitória.

55. As to the substance, the player reiterated that the labour agreement is valid and enforceable and contains all the *essentialia negotii*. As to the image rights, the player outlined that the Company was only created in 4 November 2019 as per the evidence on file presented by Vitória, and thus it was impossible that the Image Rights agreement was executed before that date.

56. As to the COVID reductions, the player argued that *"the unilateral reductions were not applied in good faith, nor reasonable, nor proportionate. As said in our claim, Vitoria has clearly acted in bad faith to justify its failure to duly pay the Player's salary and is attempting to benefit from the Covid situation to justify a behavior that was actually present for many months before the Covid pandemic even started. The simple fact that Vitoria imposed salary deductions on the Player, despite the fact that the Player refused to sign the "Memorando de Entendimiento" agreement (which established said deductions), already proves that Vitoria acted in bad faith toward the Player."*

57. The player reiterated that he had just cause to terminate the contractual relationship and challenged the amounts sought by Vitória.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

58. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 3 March 2021 and submitted for decision on 15 July 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

59. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition February 2021), the Dispute Resolution Chamber is in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Ecuadorian player and a Brazilian club with the involvement of a Bulgarian club.

60. However, the DRC noted that the club objected to the competence of FIFA insofar as the claim refers to the Image Rights agreement. The club argued in this respect that the labour agreement had been superseded by the Image Rights Agreement and the federative contract, in a structure akin to a "pre-contract".

61. In this respect, the Chamber noted – conversely to the argumentation of the club – that the tripartite structure of the contractual relationship between the parties was an intertwined one. To this end, the Chamber confirmed that in fact the Image Rights agreement and the federative contract did not supersede the labour agreement, but in fact further detailed the parties' relationship. This was inferred by the Chamber from the following:

    a. The labour agreement's "whereas" section clearly states that the player and the club agreed to sign the contract "at their free will", the player having passed his medical examination. In the Chamber's eyes, such situation denotes that the labour agreement was not akin to a pre-contract, but in fact a binding employment contract containing all the *essentialia negotii* between the parties;

    b. Clauses 2 and 3 of the labour agreement denoted how payments would be performed, and clause 7 further established that the player's work contract would be registered before the CBF used the standard form required by such entity. Such situations were exactly the ones that followed with the execution of the Image Rights agreement and the federative contract;

    c. The jurisdiction clauses in all three agreements are contradictory, the one in the labour agreement referring to FIFA/CAS and local courts, the one in the Image Rights agreement to local courts only, and the federative contract being silent.

62. It followed from the above that the dispute (irrespective of how payments would be performed, if to the player or to the Company, especially because both the player and the Company have the same name, demonstrating that it was all one entire agreement) in an employment related-one and with an international dimension, and absent a clear and exclusive jurisdiction clause in favour of the local courts, the DRC is competent to entertain the claim.

63. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Player (edition February 2021), and considering that the present claim was lodged on 3 March 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

64. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

65. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

c. Merits of the dispute

66. The competence of the DRC and the applicable regulations having been established, the DRC entered into the merits of the dispute. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

1. Standing to sue of the player

67. Before entering the substance at the centre of the dispute, the DRC deemed worthy to recall that the club challenged the standing to sue of the player in light of the structure of the Image Rights agreement, claiming that the Company was the only one entitled to receive payments.

68. Following the same reasoning outlined in the admissibility section, the Chamber wished to highlight that the labour agreement outlined the general obligations of the parties while the Image Rights agreement detailed these obligations only.

69. The DRC was observant of the fact that it could not be overlooked in this respect that while in a seemingly valid structure under local law, the remuneration agreed with the player derives from the labour agreement – and from which the player bases his claim. It follows that he (and not the company) is the one entitled to receive the amounts indicated therein as its true beneficiary.

70. The DRC underlined in this respect that the player himself is a party to the Image Rights agreement, carrying material obligations and qualified as an intervening party to such contract. Also noteworthy is the fact that payments have been performed always by the club to the player himself and never to the Company, as per the receipts filed by the club itself in support of its allegations.

71. Lastly, the DRC was mindful of the fact that the club itself has filed evidence, which demonstrates that the date of creation of the Company is 4 November 2019. This is in the DRC's view a strong signal that the Image Rights agreement was a pre-dated one, which supports the Chamber's considerations above, entailing that the Image Rights agreement could be deemed null and void. However, no specific request is made in this respect by the player, who bases his claim in the labour agreement alone. The Chamber thus deemed it was not necessary to analyse this question.

72. It followed that the player has standing to sue.

2. The issue of just cause and its consequences

73. The foregoing having been established, the Chamber moved to the core of the matter, and took note of the fact that the parties strongly dispute if the player had just cause to terminate the employment relationship of the parties.

74. Having established that the above, the DRC turned to the argumentation of the club that the only the federative contract is to be taken into account.

75. The Chamber was firm to conclude that this reasoning cannot be followed. The DRC clarified that the amount established under the federative contract matches exactly the salary agreed under the labour agreement at the exchange rate of the date of execution of the latter, 24 July 2019, therefore further confirming the assessment of the main obligation set out by the labour agreement.

76. As such, the DRC once again referred to the remuneration (image rights included) agreed under the labour agreement in order to determine whether the club had breached the latter as per the player's argumentation.

77. The player claims he was unpaid USD 110,668.15. The club, in turn, filed several proofs of payment of remuneration which however amount to BRL 464,145.62 only. The DRC outlined that this figure does not comprise of the Social Security Amounts ("FGTS" - which were paid to the corresponding scroll account) and bonuses, both of which do not seem to be particularly requested by the player.

78. More in particular, the DRC was observant that the club presented evidence of having paid the following amounts:

Date	Amount (BRL)	
03-09-19	$	4,744.24
10-10-19	$	26,447.05
12-11-19	$	26,797.05
29-11-19	$	26,797.05
18-12-19	$	26,327.05
07-02-20	$	26,976.19
10-03-20	$	26,976.19
28-04-20	$	26,843.49
15-06-20	$	20,695.14
10-07-20	$	20,695.14
31-07-20	$	20,695.14
01-09-20	$	36,950.06
01-10-20	$	36,550.06
19-11-20	$	36,550.06
14-12-20	$	36,452.33
16-12-20	$	26,997.05
30-12-20	$	36,652.33
TOTAL	**$**	**464,145.62**

79. The DRC then turned to the argumentation and evidence presented by the player and duly observed that every single payment made by the club had been already confirmed by the player in his statement of claim.

80. At this point, the Chamber wished to address the matter of the reduction of the player's salaries raised by the club.

81. The Chamber firstly wished to highlight that FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection

with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.

82. The DRC also wished to refer to the fact that said guidelines – as per the explicit wording of FAQ no. 16, as well as pages 6 and 7 of the FIFA COVID-19 Guidelines – are only applicable to "unilateral variations to existing employment agreements". Therefore, except where a termination of a contract occurred following a unilateral variation made as a result of COVID-19 (in which case the validity of the variation must first be assessed under the guidelines), said guidelines do not apply to assess unilateral terminations of existing employment agreements. The Chamber further noted that for the assessment of disputes that are presented before the FIFA judicial bodies concerning the unilateral termination of a contract, the FIFA Regulations as well as the established jurisprudence of the Chamber shall apply.

83. To this end and in line with the FIFA guidelines, the DRC considered that the club's decision to unilaterally reduce the player's salaries by 25% and his image rights by 100% has to be considered as a unilateral variation of the employment contract between the parties, which hence should be examined in accordance with the FIFA Guidelines and FAQ.

84. In this respect, the DRC recalled that unilateral decisions to vary agreements will only be recognised where they are made in accordance with national law or are permissible within collective bargained agreements (CBA) structures or another collective agreement mechanism.

85. Turning to the evidence on file as well as the submissions of the parties, the Chamber observed that the club has not adduced sufficient evidence capable of demonstrating that the unilateral variation of the player's remuneration was legally made on the basis of the national law, or any collective agreement. The club has only filed evidence that it reached agreements with several players, but the DRC was not persuaded that these agreements indeed correspond to the entire squad as the sole corroborating evidence in this respect is a news article published by a Brazilian news outlet.

86. The DRC also confirmed that there did not seem to be an attempt to amicably negotiate in good faith any salary reduction, nor an adequate information by the club to the player that his salary had been reduced. Rather, the club presented an unsigned letter to the player, determining the reduction of his salaries, which the latter refused to sign, which was found to be unacceptable by the Chamber for either case.

87. Furthermore, it was the Chamber's view the club has not demonstrated that it complied with national law by reducing the player's working hours together with his wage (as per the wording of Provisional Decree filed by the club itself, coupled with the lack of a written agreement duly sign by the player); and finally the DRC was of the firm opinion that the reduction proposal outlined in the *memorandum* corresponded to a few months only, while the club admits that it reduced the player's wage between April and December 2020.

88. It shall be highlighted in this respect that the club admits that the competitions in Brazil were paused in March 2020 and resumed in June 2020, that is, the reduction affected the player's earnings for more than 6 months after competitions resumed in the country. The DRC was adamant to find that such reduction, in any event, cannot be deemed reasonable nor proportionate.

89. As a consequence and in light with the DRC's jurisprudence, the DRC decided that the club failed to demonstrate that the unilateral variation of the labour agreement was licit, entailing that on the basis of the principle *pacta sunt servanda* it should have paid the player's agreed remuneration. It has nonetheless failed to demonstrate that such payments were correctly performed.

90. Based on the foregoing as well as the unequivocal contents of art. 14bis of the Regulations, coupled with the undisputed notices sent by the player to the club, the DRC concluded that the player had just cause to terminate the employment relationship with the club. The club's counterclaim is accordingly dismissed entirely and the club is to bear the consequences that follow.

91. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the club.

92. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, have been miscalculated by the latter. As such, the DRC proceeded to analyse the amounts outstanding to the player by the time of termination. The DRC observed in this respect that the amounts agreed under the labour agreement are gross and not net, conversely to the player's assertion in his statement of claim.

93. In line with the player's assertions and the contents of the labour agreement, the player was to receive USD 168,500 for the first season and USD 120,000 for the second season. By the time of termination, the player acknowledged to have been paid USD 94,220.89 for the first season and USD 78,354.27 for the second season. As such, the amount outstanding to the player is the following:

    a. First season: USD 168,500 minus USD 94,220.89 equals USD 74,279.11 (and not USD 80,254.11 as argued by the player); and

    b. Second season: USD 120,000 minus USD 78,354.27 equals USD 41,645.73 (and not USD 43,843.73 as argued by the player).

94. Consequently, the DRC confirmed that by the time of termination the club had defaulted payment of USD 115,924.84. Additionally, after the player had terminated the contractual relationship with just cause, the club paid (and the player confirmed having received) USD 13,429.96.

95. It followed thus that USD 102,495.15 remained unpaid by the club to the player.

96. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the amounts which were outstanding under the labour agreement at the moment of the termination, *i.e.* USD 102,495.15.

97. In addition, taking into consideration the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from the date of termination of the labour agreement until the date of effective payment.

98. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including 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, and depending on whether the contractual breach falls within the protected period.

99. In application of the relevant provision, the Chamber held that it first had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that while it appeared that a liquidated damages clause had been inserted in the federative agreement, the player is not requesting any amounts on that basis, therefore the Chamber needed not to analyse whether such clause was reasonable and proportionate.

100. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

101. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the labour agreement until its term. Consequently, the Chamber concluded that the amount of USD 780,000 serves as the basis for the determination of the amount of compensation for breach of contract.

102. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

103. Indeed, the player found employment with CSKA. In accordance with the pertinent employment contract, the player was entitled to approximately USD 210,000 in total. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of USD 210,000.

104. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason *i.e.* overdue payables by the club, and therefore decided that the player shall receive additional compensation.

105. In this respect, the DRC decided to award the amount of additional compensation of USD 60,000, *i.e.* three times USD 20,000 as the monthly remuneration of the player.

106. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 630,000 to the player *(i.e.* USD 780,000 minus USD 210,000 plus USD 60,000), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

107. Lastly, taking into consideration the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided to award the player interest on said compensation at the rate of 5% *p.a.* as of the date of claim until the date of effective payment.

ii. Compliance with monetary decisions

108. Finally, taking into account the consideration the applicable Regulations, the Chamber referred to par. 1 lit. and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

109. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum

duration of the registration ban shall be of up to three entire and consecutive registration periods.

110. Therefore, bearing in mind the above, the DRC decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the club in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.

111. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.

112. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 8 of the Regulations.

d. Costs

113. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which *"DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

114. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

115. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant/Counter-Respondent 1, Jordy Josue Caicedo Medina, is admissible.

2. The claim of the Claimant/Counter-Respondent 1 is partially accepted.

3. The counterclaim of the Respondent/Counter-Claimant, EC Vitória, is rejected.

4. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent 1 the following amounts:
   - **USD 102,495.15** as outstanding remuneration plus 5% interest *p.a.* as from 15 January 2021 until the date of effective payment;
   - **USD 630,000** as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 3 March 2021 until the date of effective payment.

5. Any further claims of the Claimant/Counter-Respondent 1 are rejected.

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

7. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:

   1. The Respondent/Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods.
   2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.

8. The consequences **shall only be enforced at the request of the Claimant/Counter-Respondent 1** in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.

9. This decision is rendered without costs.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

CONTACT INFORMATION:

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