CAS 2020/A/7468 Sao Paulo FC v. FIFA & Federacion de Fútbol de Chile & CD la Serena & Lucas Fasson Dos Santos

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Ricardo de Buen Rodríguez, Attorney-at-law, México City, México

in the arbitration between

São Paulo FC, Morumbi, São Paulo, Brasil
Represented by Mr Alexandre Pássaro Filho and Mr Felipe Ramos Carvalho, Attorneys-at-law, Morumbi, São Paulo, Brasil

- Appellant -

and

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Jaime Cambreleng Contreras and Mr Saverio Paolo Spera, Litigation Department, Zurich, Switzerland

- First Respondent -

and

Federación de Fútbol de Chile, Santiago, Chile
Represented by Mr Ulises Cerda Pecarevic, Attorney-at-law, Santiago, Chile

- Second Respondent -

and

CD La Serena, Coquimbo, Chile
Represented by Mr Eduardo Carlezzo and Mr Eduardo Diamante, Attorneys-at-law, São Paulo, Brasil

- Third Respondent -

and

Mr Lucas Fasson Dos Santos, São Paulo, Brasil
Represented by Mr Brena Costa Ramos Tannuri, Attorney-at-law, São Paulo, Brasil

- Fourth Respondent -

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

I. THE PARTIES

1. São Paulo FC (the "Appellant" or "São Paulo") is a professional football club based in São Paulo, Brasil, and affiliated with the Confederação Brasileira de Futebol (the "CBF").

2. The Fédération Internationale de Football Association (the "First Respondent" or "FIFA") is the governing body of football worldwide, with its headquarters in Zurich, Switzerland.

3. The Federación de Fútbol de Chile (the "Second Respondent" or "FFCH") is the governing body of football in Chile.

4. CD La Serena (the "Third Respondent" or "La Serena") is a professional football club based in La Serena, Chile, and affiliated with the FFCH.

5. Mr Lucas Fasson Dos Santos (the "Fourth Respondent" or the "Player") is a Brazilian football player born on 30 May 2001.

II. FACTUAL BACKGROUND

6. The following is a summary of the relevant facts based on the Parties' written submissions. Although the Sole Arbitrator has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

7. On 6 July 2017, the Appellant and the Player signed an employment contract valid from 7 July 2017 to 30 June 2021 (the "First Contract").

8. On 1 June 2020, the Player notified São Paulo that the First Contract had a validity limited to 3 years and of his intention to terminate the First Contract as of 7 July 2020.

9. On 8 July 2020, the Player and La Serena entered into a contract valid from the date of its execution until 1 July 2021 (the "Second Contract").

10. On 31 August 2020, São Paulo sent a letter to La Serena expressing that the Player was under contract with São Paulo until 30 June 2021 and requesting La Serena's representatives to confirm that they had not signed any document with the Player.

11. On 8 September 2020, the FFCH requested the electronic International Transfer Certificate (the "ITC") through the FIFA Transfer Matching System (the "TMS") for the Player from the CBF in order to register him as an amateur player for La Serena. The CBF rejected the ITC request of the FFCH through the FIFA TMS, on the basis that the First Contract had not expired.

12. Also on 8 September 2020, La Serena sent a letter to the FFCH to express its opposition to CBF's rejection and requested to be granted a provisional ITC in case

CBF would persist refusing the transfer. This letter was sent by the FFCH to FIFA on 10 September 2020.

III. PROCEDURE BEFORE FIFA

13. In a nutshell, the following is a description of what happened in front of FIFA that lead to the decision being appealed.

14. On 16 September 2020, FIFA rejected CBF´s request to cancel the transfer instruction.

15. On 21 September 2020, the Second Respondent disputed the CBF's cancelation of the ITC and requested the First Respondent´s intervention, through the FIFA Players´ Status Committee (the "FIFA PSC") to deliver the Fourth Respondent´s provisional ITC, as was requested by the Third Respondent.

16. On 23 September 2020, the Single Judge of the FIFA PSC (the "Single Judge") issued a decision (the "Appealed Decision"), deciding the following:

"1. The request of the Federación de Fútbol de Chile to provisionally register the player Lucas Fasson Dos Santos for its affiliated club, CD La Serena, is granted with immediate effect.

2. The present decision is a provisional measure, and, as such, without prejudice to any possible decision from the competent deciding body on the substance of the potential or existing contractual dispute between the player and his former club (as well as his new club)."

17. The grounds of the Appealed Decision were notified to the Appellant on 2 October 2020.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 23 October 2020, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (the "CAS"), pursuant to the Code of Sports-related Arbitration (2020 edition) (the "Code"), challenging the Appealed Decision. The Appellant requested that the case be submitted to a Sole Arbitrator.

19. On 26 October 2020, the CAS Court Office *inter alia* acknowledged receipt of the Statement of Appeal, and invited the Respondents to inform the CAS Court Office by 2 November 2020 whether they agreed to the appointment of a Sole Arbitrator and that the language of the arbitration be English.

20. On 2 November 2020, FIFA sent a letter to CAS, expressing that it agreed to refer the matter to a Sole Arbitrator, and to the proposal to establishing English as the language of the arbitration proceedings.

21. On 2 November 2020, the Appellant filed its Appeal Brief, together with supporting documents, further to Article R51 of the Code.

22. On 3 November 2020, the CAS Court Office inter alia notified the Appeal Brief. Among other issues, the CAS Court Office informed the Parties that the Respondents had 20 days, upon receipt of the letter by email, to submit to the CAS their respective Answers, further to Article R55 of the Code.

23. Also on 3 November 2021, the Third Respondent stated that it did not agree to the appointment of a Sole Arbitrator in this proceeding and instead requested the appointment of a three-Member Panel of arbitrators. The Third Respondent also subsequently indicated that it would not pay its share of the advance of costs for this proceeding.

24. On 9 November 2020, the Fourth Respondent indicated that it agreed with *inter alia* the dispute being referred to a Sole Arbitrator. On the same date, the CAS Court Office notified the Parties that the Deputy President of the CAS Appeals Arbitration Division decided to submit the present case to a Sole Arbitrator.

25. On 10 November 2020, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Ricardo de Buen Rodríguez, Attorney-at-law in México City, México, as Sole Arbitrator, further to Article R54 of the Code, and transmitted a disclosure made by Mr de Buen to the Parties further to Article R33 of the Code, which none of the Parties subsequently challenged further to Article R34 of the Code.

26. On 17 December 2020, and after some extensions given to the different Respondents, including re-setting their various Answer deadlines after they all requested that their Answer deadline be reset after the Appellant paid its share of the advance of costs further to Article R55 of the Code, the First Respondent filed its Answer in accordance with Article R55 of the Code.

27. On 11 January 2021, the Second Respondent filed its Answer, further to Article R55 of the Code.

28. On 14 January 2021, the Third and Fourth Respondent filed their respective Answers, further to Article R55 of the Code.

29. On 15 January 2021, the CAS Court Office acknowledged receipt of the Respondents' respective Answers and invited the Appellant to file, within 15 days of receipt of the letter by email, its Reply to the Third Respondent's arguments concerning the Appellant's standing to appeal and the Third Respondent's lack of standing to be sued.

30. On 1 February 2021, the Appellant filed its Reply to Third Respondent's objections to the Appellant's standing to appeal and the Third Respondent's arguments of lack of standing to be sued.

31. On 2 February 2021, the CAS Court Office invited the Parties to indicate by 9 February 2021 whether they preferred a hearing to be held in this matter or for the

Sole Arbitrator to issue an award based solely on the Parties' written submissions. Ultimately, none of the Parties insisted on holding a hearing.

32. On 19 February 2021, the Sole Arbitrator, after having considered the Parties' positions, informed the Parties that he determined himself to be sufficiently well-informed to decide the case based solely on the Parties' written submissions, further to Article R57 of the Code.

33. On 1 March 2021, and further to an invitation from the Sole Arbitrator to do so, the Appellant's presented its Reply to the Fourth Respondent's arguments concerning the Fourth Respondent's lack of standing to be sued.

34. On 3 March 2021, the CAS Court Office sent the Parties the Order of Procedure, which was signed by the First Respondent on 3 March 2021, by the Second Respondent also on 3 March 2021, by the Appellant on 4 March 2021, by the Third Respondent on 5 March 2021 and by the Fourth Respondent on 10 March 2021.

V. SUBMISSIONS OF THE PARTIES

35. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant's Position

36. The Appellant's position and arguments can be summarized as follows:

37. Firstly, the Appellant asserts that the Appealed Decision ignored the intention of the Appellant that explicitly requested the return of the Player during the procedure regarding the provisional registration of the Player, and that the Appellant was genuinely and truly interested in maintaining the services of the Player concerned.

38. The Appellant argues, citing "forum shopping", that it is forbidden by the jurisprudence that local courts and FIFA discuss the exact same issues. The Appellant stated that there is an ongoing claim before the Labor Court of the State of São Paulo, Brasil, and the competence was stated in the First Contract, and it was not contested by the Player in the claim.

39. Further, the Appellant argues that there were no exceptional circumstances that could justify the provisional measure taken in the Appealed Decision.

40. Additionally, the Appellant argues that if the Player decides to breach the First Contract, he will be responsible for paying the amount established on penalty clause, because the First Contract is still valid, and the limitation on the duration of the Contract does not apply in this case based in Brazilian Law.

41. The Appellant objects to two specifics parts of the Appealed Decision: 1) *"the Single Judge observed that the CBF provided a copy of the contract concluded between the Player and the Brazilian club, but only in its original language."* Regarding this point, the failure on providing the contract in English does not constitute any reason to simply not consider the actual final period of Player's Employment Contract: 30 June 2021. And 2) *"the Single Judge noted that the Brazilian club did not explicitly request the return of the Player at any point during the procedure regarding the provisional registration of the player having referred instead to an alleged "Player's relevant penalty clause."* Regarding this point, the Single Judge did not take into account all the relevant documents – including the file claimed in Brasil, that shows (without doubt) that the Appellant seeks the return of the Player and the fulfilment of the First Contract at all costs, including paying salaries and calling the Player up to training sessions normally.

42. The Appellant also argues that it has standing to appeal in the present proceedings, because it may be affected by a potential decision in the said proceedings.

43. The Appellant made the following requests for relief in its Statement of Appeal:

"(i) the Player is still under contract until 30 June 2021,

(ii) that it has filed a lawsuit against the Player before a Brazilian competent court prior to his claim before FIFA and

(iii) if the Player decides to breach the contract with SPFC he will be responsible for paying the amount established on penalty clause.

(...)

[T]*hat FIFA Decision has (i) ignored the intention of SPFC, that explicitly requested the return of the Player during the procedure regarding the provisional registration of the Player, and (ii) that the Club is genuinely and truly interested in maintaining the services of the Player concerned."*

44. The Appellant made the following requests for relief in Appeal Brief:

"a) The provisional measure is null, since any requirements should be made before São Paulo State Court, considering that is the competent court chosen in prior to Player's Club and Federation's claim before FIFA and/or;

b) confer to São Paulo State Court exclusive jurisdiction to adjudicate this employment-related dispute and/or;

c) that the Player is still under contract until 30 June 2021 and/or;

d) the immediate return of the player to SPFC until the end of his contract

e) if the Player decides to breach the contract with SPFC he will be responsible for paying the amount established on penalty clause and/or; and

f) finally, due to the Player's bad faith and breach to the Contract, which originated the entire legal dispute, SPFC hereby requests this Court to condemn the Player to

bear the arbitration costs in its entirety and reimburse SPFC for his legal expenses in the amount of CHF10,000 (ten thousand Swiss Francs)".

B. The First Respondent's Position

45. The First Respondent's position and arguments can be summarized as follows:

46. The First Respondent alleges that the Appealed Decision, which concerns the provisional release of the ITC, is not by any means a decision on the substance of the underlying labour dispute between a football club and a player. As such, it is not impacted by the labour dispute (even in case it might be already pending) and, in turn, it does not have an impact on it.

47. FIFA argues that the Appellant is not left without legal means to obtain justice if it deems that the Player prematurely terminated the First Contract without just cause.

48. *In casu*, apparently the Appellant brought a claim before the Labor Court of the State of São Paulo and, allegedly, the Player has not contested the competence of said tribunal. If the Appellant is eventually victorious in the labour dispute with the Player, it will receive the compensation according to the relevant national applicable rules.

49. The present case, therefore, appears to be a textbook example of a labour dispute falling under the scope of Article 22(a) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"): the Player apparently terminated the employment contract before its predetermined expiry and decided to join a club affiliated with another association, for which an ITC release is required, and a provisional registration needs to be granted. In this case, an employment-related dispute that could not in principle be heard by FIFA falls within the competence of the FIFA DRC due to the link with the ITC request. To a certain extent, the domestic claim acquires an international character, also in relation to the fact that the labour dispute might lead to a decision ordering compensation for breach of contract and possibly imposing sporting sanctions on the new club, thus necessarily crossing the national border.

50. Apart from the Appellant's confusion between the concept of *lis pendens* and forum shopping, FIFA points out once more that the Appealed Decision has an entirely different scope from any underlying labour dispute. It was not directed at ascertaining whether the Player terminated the employment contract with the Appellant with just cause or not. Moreover, FIFA was not even seized by the Parties with the aim of establishing that question.

51. The First Respondent made the following requests for relief in its Answer:

"(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellant to make a contribution to FIFA's legal costs."

C. The Second Respondent's Position

52. The Second Respondent's position and arguments can be summarized as follows:

53. The Second Respondent argues that that the clauses of the First Contract signed between the Appellant and the Player constantly refers to the application of the Pelé Law as the *lex fori*. But the present arbitral proceedings involve a dispute of an international nature, in which at least three of its parties, FIFA, FFCH and La Serena, were not parties to the First Contract, so the applicable choice-of-law pact contained therein cannot be applicable to them. So, this leads to the conclusion that the *lex causae* are the FIFA Statutes and Regulations.

54. In addition, the Second Respondent adds that if a provisional registration has been granted by FIFA, the former club (in the present case, São Paulo), will always have safeguarded the right to file a claim against the player and the new club for alleged breach of contract.

55. In the present case, as the Player was registered by the Third Respondent as an amateur player, the freedom most compromised by a possible denial of provisional registration would be his freedom of movement and his right to continue playing football.

56. As an act of pure administrative nature, all requests linked to a contractual labor dispute are outside of the current appeal´s scope. Therefore, for this only reason, the requests from letter b) to e), included in the Appeal Brief´s REQUEST section, should be rejected without further discussion, as they are part of a contractual dispute.

57. The exception of *litis pendens* alleged by the Appellant must be rejected regarding CAS doctrine.

58. The Second Respondent made the following requests for relief in its Answer:

> *"a. Rejecting the reliefs sought by the Appellant*
>
> *b. That the appealed decision be confirmed.*
>
> *c. Order the Appellant to pay the arbitral costs.*
>
> *d. That the Appellant is ordered to make a contribution to FFCH legal costs in the amount of CHF 10.000"*

D. The Third Respondent's Position

59. The Third Respondent's position and arguments can be summarized as follows:

60. Firstly, the Appellant was not part of the procedure before the first instance, which was between the FFCH (who asked the issuance of the ITC) and CBF (who denied the issuance of the ITC). The Appellant was not part of the procedure before FIFA for a very simple reason: the object of the procedure was of an administrative nature,

more precisely regarding the power of FIFA to enforce its own regulations and authorize the provisional registration of a player when the former association denies the issuance of the ITC. For the following reasons, the Appellant has no standing to appeal.

61. The Third Respondent argues that just like São Paulo, La Serena was not part of the procedure before FIFA as well and has no standing to be sued. It would be totally different if the contractual relation was the object of the procedure, in which case La Serena could be eventually named as a respondent to assess if the club had some sort of liability over an eventual breach committed by the Player. But that is not the case at hand.

62. Emphasizing that the contractual dispute is not the object of the present procedure, it is crystal clear that the Player did not breach the First Contract with the Appellant, once the contractual length was null and void and, therefore, he was free to leave the Appellant after 3 years, in accordance with FIFA's Regulations.

63. The Third Respondent made the following requests for relief in its Answer:

"a) Confirm that the Appellant has no standing to appeal in the case at hand;

b) Confirm that CD La Serena has no standing to be sued in the case at hand;

c) Fully dismiss the Appeal filed by São Paulo Futebol Clube, upholding the decision of FIFA in its entirety;

d) Condemn São Paulo Futebol Clube to pay CHF 20,000 for the legal expenses of Club de Deportes La Serena, as well as all the expenses eventually incurred during this procedure, and finally, paying the totality of the costs."

E. The Fourth Respondent's Position

64. The Fourth Respondent's position and arguments can be summarized as follows:

65. The Fourth Respondent argues that is very clear according to Article 9, par. 2 of the FIFA RSTP that only national football associations are involved in the process of issuance of an ITC. Moreover, the new football association of a player has no claim of its own against the former football association to grant the ITC.

66. When assuming its competence to render (or not) an ITC, the FIFA PSC is exercising an administrative function and, consequently, having an impact on the rights and duties of its individual members.

67. Considering the lack of standing to be sued, there would not be any reason for the Player to discuss the other motions submitted by the Appellant in its Appeal Brief since the former has no standing to be sued by the latter whatsoever the scenario or context in relation to the Appealed Decision.

68. However, the Fourth Respondent adds that it is undisputed that if a player under the age of 18 and a club sign an employment contract for a period longer than 3 years,

after the third year, the former will be free to leave the latter and to sign a new contract with a new club as it is provided in Article 18, par. 2 of the FIFA RSTP.

69. Further, it is undisputed that the Player had the necessary legal basis to communicate to the Appellant about the decision not to remain under the First Contract once the third year concluded.

70. There was never any breach of the First Contract by the Player, but the simple exercise of a universal rule established by FIFA, which all its members must (or should) compulsorily respect. In contrast, it is undisputed that the Appellant breached the obligation to respect "the Statutes, regulations, directions" of FIFA when it lodged a claim before the ordinary courts in Brasil, as well as by submitting the appeal at hand before CAS.

71. The Fourth Respondent filed the following requests for relief in his Answer:

"FIRST – To set aside the Appeal Brief in full;

SECOND – To confirm the terms and conditions of the Appealed Decision in full;

THIRD - To order the Appellant to pay the full amount of the CAS arbitration costs relating the present dispute at the end of the ongoing arbitration; and

FOURTH – To order the Appellant to also pay a contribution towards the legal costs, fees and other related expenses of the Player regarding the ongoing matter, in the form of CHF 5,000."

VI. JURISDICTION

72. Article R47 of the Code states the following:

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

73. CAS jurisdiction derives from Article R47 of the Code and from Article 58(1) of the FIFA Statutes (the "FIFA Statutes").

74. In addition, all of the Parties have agreed that CAS has jurisdiction by signing the Order of Procedure.

75. It follows that CAS has jurisdiction to rule on this dispute.

VII. ADMISSIBILITY

76. According to Article R49 of the Code, "[I]*n 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".

77. Furthermore, pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal before CAS is 21 days from receipt of the appealed decision.

78. The Appealed Decision was issued on 23 September 2020 and notified on 2 October 2020, and the Statement of Appeal was filed on 21 October 2020, within the 21 day deadline specified in the FIFA Statutes and the Code. No further stages of appeal against the Appealed Decision were available at the FIFA level.

79. The appeal therefore complies with the requirements of Article R48 of the Code. Accordingly, the appeal is admissible.

VIII. APPLICABLE LAW

80. Article R58 of the Code provides as follows:

> "*The Panel decides the dispute according to the applicable regulations and 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 the application of which the Panel deems appropriate. In the latter case the Panel gives reasons for its decision.*"

81. In this case, the Sole Arbitrator notes that the Parties have different points of view regarding the applicable law.

82. The Appellant agrees with the application of the FIFA Regulations in general but considers that Brazilian Law must be applied regarding the First Contract.

83. The Respondents agree on the application of the FIFA Regulations.

84. It is recalled that the Appealed Decision was issued by FIFA, which is a federation domiciled in Switzerland.

85. After analyzing the position of each of the Parties and based on Article R58 of the Code, the Sole Arbitrator concludes that FIFA Rules and Regulations, specifically the FIFA RSTP (August 2020 version), must be applied primarily, with Swiss law applying subsidiarily.

VIII. MERITS

86. As a preliminary matter, the Sole Arbitrator notes that, according to Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law of the case, i.e. to undertake a *de novo* review. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

87. According to the Parties' written submissions, the Sole Arbitrator considers that, also as a preliminary matter, the first analysis that has to be made is the legal nature of the proceedings that led to the Appealed Decision.

A. The legal nature of the proceedings that led to the Appealed Decision

88. In order to solve all the other issues, and mainly another preliminary matter that follows, consisting of the possible lack of standing to appeal by the Appellant, it is important, first of all, to make a preliminary legal analysis of the procedure in front of FIFA that led to the Appealed Decision. A clear understanding of the nature of the mentioned proceedings, given the different approaches expressed by the Parties, is essential to get to the final conclusions.

89. In a nutshell, the origin of the dispute in front of FIFA was that, after the denial of an ITC from the CBF to the FFCH, which had made the request on behalf of La Serena, the FFCH requested the FIFA PSC to issue a provisional ITC, and the case was sent to the Single Judge for his resolution.

90. In a few words, the initial reason of the whole proceedings was a simple request from FFCH to FIFA, to get a provisional ITC in relation to the Player, and no more. This being said, it is then imperative to analyse the respective regulations in which FIFA based its decision to receive the request and submit the case to the Single Judge.

91. There are some articles in the FIFA RSTP that refer to the way an ITC may be requested and the reasons to grant or deny it, which will be examined below. Focusing only on the procedure regarding the issuance of provisional registration by FIFA, specifically in Article 8.2(7) of Annexe 3 of the FIFA RSTP:

> *"The former association shall not deliver an ITC for a professional player if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, article 8.2 paragraph 4 b) has arisen between the former club and the professional player. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. In this respect, it will take into account the arguments presented by the former association to justify the rejection of the ITC request (cf. Annexe 3, article 8.2 paragraphs3 and 4). If the competent body authorizes the provisional registration (cf. article 23 paragraph 4), the new association shall complete the relevant player registration information in TMS (cf. Annexe 3, article 5.2 paragraph 6). Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with article 22. The decision on the provisional registration of the player shall be without prejudice to the merits of such possible contractual dispute."*

92. The issues to highlight after the analysis of Article 8.2(7) of Annexe 3 of the FIFA RSTP are:

a. In case of a contract dispute between the former club and the player (the contract of the player with the former club has not expired for example), the former association shall not deliver the ITC.

b. Upon request of the new association, FIFA may authorize the provisional registration.

c. The players and the clubs involved are entitled to lodge a claim according with Article 22[1] of the FIFA RSTP. This article refers to the possibility for the players and clubs to redress employment related disputes before civil courts or in front of FIFA.

d. The decision on the provisional registration shall be without prejudice to the merits of such possible contractual dispute.

93. The relevant general conclusions that the Sole Arbitrator draws, in relation to Article 8.2(7) of Annexe 3 of the FIFA RSTP, after taking into account all the arguments presented by the Parties, are:

a. The mechanism to get a provisional ITC is, materially speaking, a mere administrative procedure in which FIFA, without taking any decision regarding a possible contract dispute, may allow the procedure of registering a player to continue. The principal aim of this possibility is not to interfere with the potential career of a player, and especially his fundamental rights to freedom of movement and to work.

b. The said administrative proceeding does not interfere with the possibility for a club or a player to address an employment dispute in front of a civil court or FIFA. The content of Article 8.2(7) of Annexe 3 of the FIFA RSTP is very

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[1] **22 Competence of FIFA**
Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

1. a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;
2. b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;
3. c) employment-related disputes 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;
4. d) disputes relating to training compensation (article20)and the solidarity mechanism (article 21) between clubs belonging to different associations;
5. e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;
6. f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

clear and specific: "*The decision on the provisional registration of the player shall be without prejudice to the merits of such possible contractual dispute*".

c. The only parties involved in the mentioned proceedings are the National Associations.

d. With this structure, on one side the right to work and freedom of movement of players is protected, and on the other side, the contractual stability and the consequences for any party that breaks contractual stability are also protected.

94. Applying the aforementioned content to the case-at-hand, and analyzing other related rules, the Sole Arbitrator has reached the following initial conclusions with respect to this case:

a. What FFCH started by requesting from FIFA the issuance of a provisional ITC in relation to the Player was only the administrative proceeding exclusively for the issuance of the said ITC and nothing more.

b. Then, even though the employment dispute in this case is a national dispute (as the Club and the Player are both from Brasil), in the case of the ITC, it is clear that the case has an international dimension, since the dispute involves federations, clubs and players from Brasil and Chile. Thus, there is no doubt that FIFA has jurisdiction over the possible issuance of this specific provisional ITC in the case at stake, through the FIFA PSC and the Single Judge, as established in Article 23[2] and 24[3] of the FIFA RSTP.

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[2] **23 Players' Status Committee**

1. The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24.

2. The Players' Status Committee has no jurisdiction to hear any contractual dispute involving intermediaries.

3. In case of uncertainty as to the jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber, the chairman of the Players' Status Committee shall decide which body has jurisdiction.

4. The Players' Status Committee shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of such a nature that it may be settled by a single judge. In cases that are urgent or raise no difficult factual or legal issues, and for decisions on the provisional registration of a player in relation to international clearance in accordance with Annexe 3, article 8, and Annexe 3a, the chairman or a person appointed by him, who must be a member of the committee, may adjudicate as a single judge. Each party shall be heard once during the proceedings. In the case of the international clearance of a player the former association will be heard upon receipt of the ITC request (cf. Annexe 3, article 8.2 paragraphs 3 and 4). Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS).

[3] **24 Dispute Resolution Chamber**

1. The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.

c. Returning to the reasoning in the part of this Award addressing the Applicable Law, taking into account that the scope of the first instance proceedings was exclusively the analysis of the request to get a provisional ITC and that the employment-related legal conflict is not part of this proceeding, and thus the applicable law in this arbitration, which scope is only to review the FIFA ITC proceedings, is the FIFA RSTP and subsidiarily Swiss Law, according to Article 57.2 of the FIFA Statutes. Brasilian Law is not applicable.

d. The only parties in front of the Single Judge were the CBF and the FFCH.

95. Now, having made the previous analysis, the Sole Arbitrator will go through the other issues to be solved, the next being also a preliminary matter, the decision to take regarding the Appellant's standing to appeal. If the conclusion is that the Appellant does not have standing to appeal, it will not be necessary to analyze the rest of the arguments presented by the Parties.

B. Does São Paulo have standing to appeal?

96. La Serena, in its Answer, claims that the Appellant does not have standing to appeal in the present arbitration. The main argument for this is that the Appellant was not part of the procedure in the first instance. La Serena also claims that the Appealed Decision did not analyse any aspect of the contractual relationship between the Appellant and the Player.

97. The Appellant argues, in a nutshell, that it has standing to appeal, because all the parties involved will be affected by the decision that the CAS may render on this case. It also refers to the fact that the Appellant is asking the CAS to determine the return of the Player to play with the Appellant.

98. As concluded by the Sole Arbitrator before, only the CBF and the FFCH were the parties involved in the procedure that led to the Appealed Decision. São Paulo, La Serena and the Player were not part of it. It is true that the Appealed Decision refers to some documents provided by the mentioned clubs, but these documents are not provided directly by those clubs, they were always presented to the Single Judge by the CBF and the FFCH.

99. In other words, the CBF and the FFCH as parties, sent the documents previously provided by the respective clubs, only as information to help the Single Judge to get to a decision. The request for the provisional registration of the Player was made only by the FFCH, and the CBF was the responding party.

100. Departing from the fact that São Paulo was not a party in the first instance proceedings, it can be preliminary concluded that it does not have standing to appeal. However, the Sole Arbitrator considers it important, and given the CAS jurisprudence and what the Appellant has argued, to analyse if there is any legitimate interest to appeal by the Appellant.

101. The Sole Arbitrator has analysed the specific situation of the case and has taken into account that the only object of the procedure in front of FIFA was the issuance of the

ITC, and no more – based on the FFCH petition and in the scope of Article 8.2(7) of Annexe 3 of the FIFA RSTP – and that the Appealed Decision has been clear by expressing "(...) *that the present decision related to the authorization to provisionally register the Player is a provisional measure and, as such, without prejudice to any decision as to the substance of the existing contractual dispute between the Brazilian club and the Player (as well as his new club)*(...)". The Sole Arbitrator concludes that, regarding the mentioned administrative proceedings, the Appellant does not have a legitimate interest and its rights are not affected.

102. The fact that the Appellant is asking the CAS to rule over the contractual relationship with the Player does not affect the Sole Arbitrator´s decision on the lack of standing to sue, because: a) even though the arguments regarding the labour relationship were mentioned in front of the Single Judge, they were never the object of the proceedings; b) the scope of this appeal cannot exceed the limits of the scope of the Appealed Decision, and the fact that the Appellant made contractual arguments cannot cause standing to appeal when there is none; and c) the Appellant has exercised its rights regarding the consquences of the termination of the labour relationship with the Player in front of the Brasilian Courts.

103. The Sole Arbitrator concludes that the Appellant does not have standing to appeal, and thus the Appeal has to be dismissed. With this conclusion, it is not necessary that the Sole Arbitrator address the Parties' other arguments in relation to the merits.

C. Final Conclusions

104. Being that the Appellant does not have standing to appeal, the appeal presented by São Paulo is dismissed. Thus, the Appealed Decision is confirmed.

105. Therefore, all other and further motions or prayers for relief are dismissed.

IX. COSTS

106. Article R64.4 of the Code, which is applicable to this proceeding, provides the following:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
>
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid*

by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

107. Article R64.5 of the Code reads 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.*"

108. Having taken into account the outcome of the arbitration, in particular that the appeal is dismissed, the Sole Arbitrator holds that the Appellant shall bear 100% of the costs of the arbitration, in an amount that will be determined and served on the Parties by the CAS Court Office.

109. Furthermore, pursuant to Article R64.5 of the Code and in consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the Parties, and considering that FIFA was not represented by external counsel, the Sole Arbitrator orders that the Appellant shall bear its own costs and shall pay a contribution of CHF 3,000 towards each of the Second, Third and Fourth Respondents' legal fees and other expenses incurred in connection with these arbitration proceedings, while the First Respondent must bear its own legal fees and expenses.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 October 2020 by São Paulo FC against the decision issued on 23 September 2020 by the Single Judge of the FIFA Player's Status Committee is dismissed.

2. The decision issued on 23 September 2020 by the Single Judge of the FIFA Player's Status Committee is confirmed.

3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be paid in full by São Paulo FC.

4. São Paulo FC shall bear its own costs and pay an amount of CHF 3,000 each to the Federación de Fútbol de Chile, CD La Serena and Lucas Fasson Dos Santos as a contribution towards legal fees and other expenses incurred in connection with the present proceedings. FIFA shall bear its own costs and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 27 April 2022

THE COURT OF ARBITRATION FOR SPORT

Ricardo de Buen Rodríguez
Sole Arbitrator