Arbitration CAS 2020/A/6991 Dalian Professional Football Club v. Bernd Schuster & Fédération Internationale de Football Association (FIFA), award of 17 September 2021

Panel: Mr Alain Zahlan de Cayetti (France), President; Prof. Petros Mavroidis (Greece); Mr José Juan Pintó (Spain)

Football
Termination of the employment contract with a coach by the club without just cause
Production of new exhibits after the closure of the written submissions
Just cause of termination
Reciprocity of contractual penalty or "liquidated damages" clauses
Claim for a tax certificate
Claim for reimbursement of procedural costs in the proceedings before the previous instance

1. **Article R56 of the CAS Code allows to submit further evidence, after the submission of the appeal brief and of the answer, if the parties agree or the President of the CAS panel gives an authorization on the basis of exceptional circumstances. The possibility to give an authorization, absent the parties' agreement, represents an exception to the general prohibition, and as such is of strict interpretation. In addition, it leaves no room for an ordinary disregard based on a simple claim that otherwise the parties' right to be heard would be infringed. The application of Article R56 has been endorsed by the Swiss Federal Tribunal: a party's right to be heard is not violated if a CAS panel denies the filing of new evidence not submitted in timely manner. Exceptional circumstances would exist, in particular, in the event that the new (untimely) evidence contains a fact which is a real *novum*. The fact that an appellant could not anticipate the submission by one of the respondents of a *"legal expert report"* does not constitute an exceptional circumstance which would justify its request for production of its *"own"* legal opinion for rebuttal after the closure of written submissions.**

2. **Good or just cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice. Only a material breach of a contract can be considered as just cause for termination without consequences of any kind. Such material breach occurs, in particular, when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it.**

3. **A clause qualifies as a contractual penalty or "liquidated damages" clause ("clause pénale" or "Konventionalstrafe") under Swiss law if it contains all the necessary elements required for such purpose: (i) the parties bound thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the conditions triggering the obligation to pay it are set, (iv) its measure is identifiable In other words, a provision which sets**

an amount of "damages" to be paid "if" the contract is breached, appears to perform a function (the determination of the amount that a party has to pay to the other as damages in the event of breach of contract) perfectly consistent with Swiss law. The FIFA Regulations on the Status and Transfer of Players (RSTP) neither establish a principle of reciprocity nor a prohibition of disparity of penalty or liquidated damages clauses, but instead simply refer to the autonomy of the parties. Likewise, Swiss law does not require such clauses to be "reciprocal" in order to be valid. Furthermore, it might well be that the disparity with respect to the penalty or liquidated damages clause is compensated by other more favourable provisions in the employment contract to the benefit of the player (e.g. a particularly high remuneration). Thus, any substantive review undertaken by a CAS panel cannot be limited to comparing the penalty or liquidated damages clauses clauses only, but instead must look at the overall contract in order to determine whether there is disparity. If the provisions in question reflect the true and clear intent of the contracting parties, the mere existence of different amounts of compensation being applicable depending on which party breaches the contract does not *per se* imply the nullity of these clauses.

4. **FIFA's deciding bodies are in principle not competent to deal with tax-related disputes, as they fall outside the scope of the FIFA RSTP and the FIFA Procedural Rules, unless the claim in relation to the taxes appears to be contractually grounded. A request for the confirmation of the payment by the club of the taxes related to the remuneration of a player or a coach concerns the contractual relationship of the latter with the club and, accordingly, appears to be contractually grounded.**

5. **It is not for the CAS to reallocate the costs of the proceedings before previous instances.**

I. INTRODUCTION AND PARTIES

1. Dalian Professional Football Club (the "Appellant" or the "Club") is a Chinese football club affiliated with the Chinese Football Association ("CFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Bernd Schuster (the "Coach" or the "First Respondent") is a German football coach.

3. FIFA (the "Second Respondent") is the international governing body of football. FIFA has its headquarters in Zurich, Switzerland.

4. The Club, the Coach and FIFA are collectively referred to as the "Parties". The First Respondent and the Second Respondent are collectively referred to as the "Respondents".

5. On the same day the Appellant filed its appeal in this proceeding, it filed four other appeals against the other members of the same coaching team. The Appellant also named FIFA as a Respondent in all four cases.

6. The five cases, which are jointly referred to as the "Five Appeal Proceedings", were assigned the following reference numbers:
   - CAS 2020/A/6990 Dalian Professional Football Club v. José Carlos Pérez-Cascallana Álvarez;
   - CAS 2020/A/6991 Dalian Professional Football Club v. Bernd Schuster & FIFA;
   - CAS 2020/A/6992 Dalian Professional Football Club v. David Cortés Caballero & FIFA;
   - CAS 2020/A/6993 Dalian Professional Football Club v. Henrique Manuel da Silva Calisto & FIFA; and
   - CAS 2020/A/6994 Dalian Professional Football Club v. Ricardo Felipe Rodrigues Matos & FIFA.

7. Mr José Carlos Pérez-Cascallana Álvarez, Mr David Cortés Caballero, Mr Henrique Manuel da Silva Calisto and Mr Ricardo Felipe Rodrigues Matos are collectively referred to as necessary as the "Assistant Coaches". Mr Bernd Schuster is referred to as the "Head Coach". Together they are all referred to as the "First Respondents" or the "Coaches".

8. As will be addressed below, such appeals were filed against five separate decisions and as such could not be consolidated but were rather referred to the same Panel, and a separate Award will be rendered in every case. However, where appropriate or where reference to common facts is necessary for comprehension, the Panel has done so.

II. BACKGROUND FACTS

9. The following is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion which follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

10. On 16 March 2018, the Coach and the Club signed the "Professional Football Head Coach's Contract" (the "Employment Contract"), valid for *"one (1) season, beginning on March 20th, 2018 and will terminate on December 31st, 2018, subject to the provisions below for termination"*. The Employment Contract went on to state in Article 2 – "Term" of the Employment Contract – that:

    "The parties agree that the term of this Contract shall be automatically extended as follows:

    (1) In the event that the Team is not relegated from CSL [Chinese Super League] *in 2018 season, the term of this Contract shall be extended for one (1) additional season, that is, the term of this Contract shall be from March 20th, 2018 to December 31st, 2019;*

(2) In the event that the Team ends the 2018 season in the top 12 teams of the CSL, the term of this Contract shall be extended for two (2) additional seasons, that is, the term of this contract shall be from March 20th, 2018 to December 31st, 2020".

11. Article 5 of the Employment Contract (*"Remuneration"*) provided that the Coach was entitled to the following remuneration:

(a) Fixed remuneration

- For the 2018 season, *"the NET sum of Euro […] payable in equal 9 installments of Euro […], within 15 days after the last day of each month"*;

- For the 2019 season, *"the NET sum of Euro […] payable in equal 12 installments of Euro […], within 15 days after the last day of each month"*;

- For the 2020 season, *"the NET sum of Euro […] payable in equal 12 installments of Euro […], within 15 days after the last day of each month"*.

"(b) Bonus

5.2. In the event that the Team is not relegated from CSL in 2018 season, the Club will pay the Coach a total NET sum of Euro […] as bonus. This bonus shall also be applicable on the same terms and conditions for seasons 2019 and 2020 in case of extension of the contract's term as per Clause 2.1 (1) and (2), respectively.

5.3. In the event that the Team ends the 2018 season in the top 12 teams of CSL, the Club will pay the Coach a total NET sum of Euro […] as bonus. This bonus shall also be applicable on the same terms and conditions for seasons 2019 and 2020 in case of extension of the contract's term as per Clause 2.1 (1) and (2), respectively.

5.4. All the bonuses shall be paid within 45 days after the last day of each season.

5.5. The Coach acknowledges and agrees that all the cash remuneration and the bonuses paid to the Coach shall be paid to the bank account designated by the Coach, provided that such payment shall comply with laws and regulations of China, and the payment liabilities of the Club shall be considered fulfilled after such payments.

5.6. The cash remuneration and the bonuses payable by the Club to the Coach as per this Contract are NET of China's taxes. Furthermore, any Chinese withholding taxes imposed by Chinese Government/law will be born and paid out by the Club.

[…]".

12. Article 7 the Employment Contract (*"Termination"*) included provisions regarding the unilateral termination thereof:

"7.1. In the event the Coach unilaterally terminates the Contract without legal grounds, the Coach will indemnify the Club with a net sum of Euro […] and the Club has the right to stop making any payment to the Coach immediately.

[…]

7.3 . In the event the Club unilaterally terminates the Contract without legal grounds, the Club will pay a severance corresponding to the outstanding NET fixed cash remuneration of the Coach from the moment of its dismissal until the end of the season.

[…]".

13. Article 10 of the Employment Contract (*"Applicable law and jurisdiction"*) stipulates: *"This Contract is subject to the regulations of CFA and FIFA. Any dispute arising out of this Contract shall be submitted to relevant competent body of CFA pursuant to CFA's Regulations. In the event that any parties dissatisfied* [sic] *with decision of CFA, then each party shall have the right to submit the dispute to relevant competent body of FIFA pursuant to the FIFA's Regulations. If there is any conflict between CFA and FIFA, the FIFA's decision shall prevail".*

14. On 11 November 2018, the Club played the last game of the Chinese Super League's (the "CSL") 2018 season and reached the 11th position of the CSL table.

15. On 26 December 2018, the Club informed the Coach in writing that the contractual relationship existing between them would terminate on 31 December 2018.

16. On 3 January 2019, the Coach sent a letter to the Club, indicating, in particular, that the Employment Contract *"is currently from March 20th, 2018 until December 31st, 2020"* and that the Club had unilaterally terminated the Employment Contract and, therefore, owed the Coach compensation *"under Clause 7.3 of the Contract* [Employment Contract]*"* in the amount of the residual value of the Employment Contract, *"a bonus in the net sum of EUR […]"* and *"the bonus payment for Dalian's win on the last match of the 2018 season of the Chinese Super League"*. The Coach further indicated that all of the Club's correspondence should be directed to his attorneys.

17. On 25 January 2019, the Coach's counsel sent a letter to the Club, indicating, in particular, that the Club had unilaterally terminated the Employment Contract which *"was automatically extended until December 31st, 2020"* and, therefore, owed the Coach compensation in the amount of the residual value of the Employment Contract (i.e. EUR […] net), plus a total amount of EUR […] net corresponding to the outstanding bonuses in accordance with Clause 5.2 and 5.3 of the Employment Contract, and other benefits.

18. On 30 January 2019, the Club's attorney replied to the Coach's letter of 25 January 2019, arguing, in particular, that the Employment Contract had not been extended, given that: (i) the achieved *"sporting result of the club […] is not inevitably related to the work of the coaching team"*; (ii) the new conditions of the extension had not been negotiated by the parties thereto; and (iii) the Coach and the Club allegedly had *"huge divergence and dispute"* with regards to the Coach's working hours and duties, which had not reached an agreement. In addition, the Club's

attorney indicated that the Coach had violated his contractual obligations by taking an unauthorized leave from the Club and by not submitting to the Club *"an annual summary report"* in due time, based on which the Club was entitled to receive compensation in the amount of the residual value of the Employment Contract (i.e. EUR […] net), finding that the *"compensation clauses provided in the Employment Contract are inconsistent with the principle of proportionality and the principle of reciprocity on rights and obligations"*.

19. On 1 February 2019, the Coach's attorney replied to the Club's letter insisting that the Employment Contract had been automatically extended, as the extension *"was not subject to any additional negotiation"* and *"there was no need to further sign any new employment agreement nor amend the Employment Agreement* [the Employment Contract] *in force"*. Furthermore, the Coach's attorney denied any violations of the Employment Contract by the Coach and alleged that the Club's real intent for terminating the Employment Contract was to hire a new coaching team, which was announced as early as on 3 January 2019. Finally, the Coach's attorney reiterated the Coach's claims for compensation.

20. On 3 February 2019, the Club's attorney sent another letter to the Coach, denying, in particular, the extension of the Employment Contract and all allegations with regards to the employment by the Club of a new coaching team, and reiterating its claims for compensation owed to it by the Coach based on the latter's breach of the Employment Contract.

III. PROCEEDINGS BEFORE THE FIFA PLAYERS' STATUS COMMITTEE

21. On 4 February 2019, the Coach lodged a claim with the FIFA Players' Status Committee ("PSC") against the Club, arguing that the latter had terminated the Employment Contract without just cause on 26 December 2018 and requesting the following relief:

"I. Ordering the Respondent to pay the following ***outstanding*** *amount:*

A) ***[…]*** *net of taxes corresponding to bonuses stipulated in Clause 5.2 and 5.3, as well as a* ***Five percent (5% per annum) interest on said amount accrued from December 27th, 2018,*** *until the full payment[46];*

B) To pay the amount corresponding to ***[…]*** *corresponding to the* ***bonus for the victory*** *in the last game of the season, as well as a* ***Five percent (5% per annum) interest on said amount accrued from January 1st, 2019****, until the full payment.*

II. Ordering the Respondent to pay the following amount of ***compensation*** *due to the unlawful termination of the Employment Agreement:*

[…] *corresponding to the residual value of the Employment Agreement from the date of termination until December 31st, 2020, as well as a* ***Five percent (5% per annum) interest on said amount accrued from January 1st, 2019****, until the full payment or in the alternative,* ***should this H. PSC consider that Clause 7 of the Employment Agreement must apply, to pay the amount of […]*** *as well as a* ***Five percent (5% per annum) interest on said amount accrued from January 1st, 2019****, until the full payment.*

III. Ordering the Respondent to issue the corresponding ***certificates that proof that all the corresponding taxes for the above mention sums have been paid to the Chinese Tax Authorities*** *or proceed with the payment of the* ***gross sums*** *stipulated in points I. and II. above applying a 45%, corresponding to the personal income tax rate in China*[47].

IV. ***Ordering the Respondent to pay the legal costs and all other expenses of these proceedings*** *"* (emphasis in original).

22. On 27 November 2019, FIFA informed the Coach that the Club had filed a counterclaim against the Coach's claim on 22 April 2019 and had challenged FIFA's jurisdiction to hear the present dispute on 11 July 2019. In its submissions, the Club requested the following relief:

"1. The claim of the Coach is inadmissible given that the FIFA Players' Status Committee is not competent to hear the present dispute(s).

2. Subsidiary to 1., the Employment Agreement was automatically terminated on 31 December 2018 and no breach of contract compensation is due by the Club.

3. Subsidiary to 1. and 2., the Club terminated the Employment Agreement with just cause and the Coach shall consequently pay damages to the Club in the amount of […] euro. An interest rate of 5% p.a. shall apply to these damages and this as from 31 December 2018 until the date of effective payment.

4. Subsidiary to 1., 2. and 3., the Club terminated the Employment Agreement without just cause and the Coach is NOT entitled to damages since the Coach himself gave rise and contributed to the damages as per article 44(1) of the Swiss Code of Obligations.

5. Subsidiary to 1., 2., 3. and 4., the Club terminated the Employment Agreement without just cause and the Coach is entitled to damages as fairly established by the FIFA PSC.

6. Subsidiary to 1., the Coach's claim for match and league bonus is rejected.

7. Subsidiary to 1. And 6. The Club is ordered to pay the Coach an amount of […] euro as outstanding league bonus (article 5.2 and 5.3 of the Employment Agreement).

8. The Coach is ordered to bear the procedural costs of the present proceedings".

23. On 14 February 2020, following the written submissions filed by the Coach and the Club, the Single Judge of the FIFA PSC rendered the following decision (the "Appealed Decision"):

"1. The claim of the Claimant/Counter-Respondent, Bernd Schuster, is admissible.

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

3. The Respondent/Counter-Claimant, Dalian Yifang FC, has to pay to the Claimant/Counter-Respondent, ***within 30 days*** *as from the date of notification of the present decision, the amount of EUR […] net, as outstanding remuneration, plus 5% interest p.a. as from 27 December 2018 until the date of effective payment.*

4. *The Respondent/Counter-Claimant, has to pay to the Claimant/Counter-Respondent,* ***within 30 days*** *as from the date of notification of the present decision, compensation for breach of contract in the amount of EUR […] net, plus 5% interest p.a. as from 1 January 2019 until the date of effective payment.*

5. *The Respondent/Counter-Claimant is ordered to provide the Claimant/Counter-Respondent with the relevant certificate attesting the payment of taxes to the competent authorities in the amount under point 3. and 4. above.*

6. *In the event that the aforementioned sum plus interest is not paid by the Respondent/Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

7. *Any further claim lodged by the Claimant/Counter-Respondent, is rejected.*

8. *The counter-claim of the Respondent/Counter-Claimant is rejected.*

9. *The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent/Counter-Claimant, as follows:*

   9.1 The amount of CHF 20,000 has to be paid to FIFA. Given that the Respondent/Counter-Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the latter shall pay an additional amount of CHF 15,000 to FIFA to the following bank account with reference to case nr. 19-00299/sje: […].

   9.2 The amount of CHF 5,000 has to be paid directly to the Claimant/Counter-Respondent.

10. *The Claimant/Counter-Respondent is directed to inform the Respondent/Counter-Claimant immediately and directly of the account number to which the remittances under points 3., 4. and 9.2 above are to be made and to notify the Players' Status Committee of every payment received"* (emphasis in original).

24. On 3 April 2020, the grounds of the Appealed Decision were communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 22 April 2020, pursuant to the provisions of Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") with respect to the Appealed Decision.

26. In its Statement of Appeal, the Appellant requested, in particular, that the present matter be submitted to a Panel of three arbitrators and nominated Professor Petros Constantinos Mavroidis, Professor, Commugny, Switzerland, as arbitrator. In addition, the Appellant requested that the Five Appeal Proceedings be submitted to the same Panel.

27. On 28 April 2020, the CAS Court Office provided the Respondents with a copy of the Statement of Appeal and requested that the Respondents jointly nominate an arbitrator according to Article R53 of the CAS Code. Furthermore, the Respondents were invited to inform the CAS Court Office whether they agreed that the Five Appeal Proceedings be

referred to the same Panel according to Article 50 of the CAS Code and per the Appellant's request.

28. On 29 April 2020 and on 4 May 2020, respectively, the First Respondent and the Second Respondent accepted that the Five Appeal Proceedings be referred to the same Panel further to Article R50 of the CAS Code.

29. On 4 May 2020, the First Respondents nominated Mr José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain, as arbitrator.

30. On 5 May 2020, in light of the Parties' agreement, the CAS Court Office informed the Parties on behalf of the President of the Appeals Arbitration Decision that the above-referenced proceedings would be referred to the same Panel in accordance with Article R50 of the CAS Code.

31. On 8 May 2020, the Second Respondent agreed to jointly nominate Mr José Juan Pintó Sala as arbitrator in the Five Appeal Proceedings.

32. On 12 May 2020, Mr José Juan Pintó Sala made a disclosure to the Parties further to Article R33 of the CAS Code, which was transmitted to the Parties on the same day.

33. On 18 May 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

34. On 19 and 20 May 2020, respectively, the First Respondent and the Second Respondent requested that the time limits for filing their Answers to the Appeal Brief be set aside and fixed upon the Appellant's payment of its share of the advance of costs in accordance with Articles R55 and 64.2 of the CAS Code.

35. On 27 May 2020, the CAS Court Office noted that none of the Parties had challenged the nomination of Mr José Juan Pintó Sala as arbitrator in these proceedings and that the deadline laid out under Article R34 of the CAS Code to do so had lapsed.

36. On 24 June 2020, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs for the present proceeding and set a time limit for the Respondents to submit their Answers, in accordance with Article R55 of the CAS Code.

37. On the same date, the CAS Court Office informed the Parties, in accordance with Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel appointed to decide the present matter was constituted as follows:

President:	Mr Alain Zahlan de Cayetti, Attorney-at law, Paris, France
Arbitrators:	Mr Petros Constantinos Mavroidis, Professor of Law, Commugny, Switzerland
	Mr José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain

38. On 14 July 2020, the CAS Court Office informed the Parties that Mr Yago Vázquez Moraga, Attorney-at-law in Barcelona, Spain, had been appointed as *ad hoc* Clerk in these proceedings and provided the Parties with a disclosure made by Mr Vázquez, further to which the Parties were informed that any challenge to the appointment of Mr Vázquez must be made within a deadline of seven days.

39. On 15 July 2020, the Appellant filed an objection to the appointment of Mr Vázquez as *ad hoc* Clerk in these proceedings.

40. On 28 July 2020, in accordance with Article R55 of the CAS Code, the Second Respondent filed its Answer to the Appeal Brief.

41. On 29 July 2020, the Parties were informed that Mr Vázquez had resigned as *ad hoc* Clerk in this proceeding.

42. On 12 August 2020, in accordance with Article R55 of the CAS Code, the First Respondent filed its Answer to the Appeal Brief.

43. On 27 August 2020, the CAS Court Office informed the Parties that Mr Peter Rittinger, Attorney-at-law in Salzburg, Austria, had been appointed as *ad hoc* Clerk in these proceedings.

44. On 28 August 2020, FIFA was requested to produce a copy of the complete case file related to these appeal proceedings.

45. On 4 September 2020, after consultation with the Parties, the CAS Court Office informed the Parties that, pursuant to Articles R44.2 and R57 of the CAS Code, the Panel had decided to hold a hearing by video-conference in these proceedings, and provided the Parties with a Draft Tentative Hearing Schedule for their comments.

46. On 10 September 2020, with reference to the designation by the First Respondent of Mr Jean Marguerat, Attorney-at-law in Geneva, Switzerland, as an expert witness, the Appellant objected to the Legal Opinion of Mr Jean Marguerat *"being treated as a legal expert report and to Mr [Jean] Marguerat being heard as a legal expert witness"*. The Appellant requested, in particular, that, should the Panel decide to hear Mr Marguerat as a legal expert witness, it should also provide the Appellant with *"the opportunity to present its own legal expert report in order to be able to address certain conclusions made in the Legal Opinion"*.

47. On 14 September 2020, the CAS Court Office invited the Respondents to provide any observations on the Appellant's objections and request of 10 September 2020.

48. On 16 September 2020, the First Respondents requested that the Appellant's objections/request of 10 September 2020 be dismissed. In the alternative, the First Respondents requested that, if the Appellant's request and objections were not rejected, the First Respondents be granted leave to file comments on the legal opinion produced by the Appellant prior to the hearing.

49. On 22 September 2020, the CAS Court Office invited the Appellant and Second Respondent to submit any comments on the First Respondents' alternative request of 16 September 2020.

50. On the same date, the Second Respondent informed the CAS Court Office that it did not have comments regarding the First Respondents' requests.

51. On 23 September 2020, FIFA produced a copy of the FIFA PSC case file.

52. On 25 September 2020, the Appellant reiterated its objections to the admissibility of Mr Jean Marguerat as an expert witness and of the Legal Opinion as an expert report, and re-submitted its requests for the presentation of its own legal expert report based on the exceptional circumstances, should the Panel decide to reject its objections mentioned above.

53. On 6 October 2020, the Panel informed the Parties that the following requests made by the Appellant were dismissed pursuant to Article R56 of the CAS Code:

"(i) That the First Respondents be prevented from presenting the legal opinion of their appointed expert (i.e. Mr. Jean Marguerat) as an exhibit to their Answer;
(ii) That the First Respondents' appointed expert not be permitted to testify during the hearing; and
(iii) That the Appellant be allowed to present its own legal expert report to rebut the one of the First Respondents".

54. In the same 6 October 2020 letter, the Parties were informed that the Parties would have the possibility to submit their arguments regarding Mr Jean Marguerat's impartiality and independence, as well as his report, during the hearing.

55. On 20 October 2020, the CAS Court Office issued the Order of Procedure in these proceedings, which was duly signed with modifications by the First Respondent on 20 October 2020, the Appellant on 22 October 2020 and the Second Respondent also on 22 October 2020.

56. On 28 October 2020, the CAS Court Office drew the attention of the Parties to the fact that the Five Appeal Proceedings (i.e., CAS 2020/A/6990, CAS 2020/A/6991, CAS 2020/A/6992, CAS 2020/A/6993 and CAS 2020/A/6994) had been referred to the same Panel under Article R50 of the CAS Code, with the result that there must be five separate awards. The Panel however considered that if all Parties agreed, the five separate awards could more conveniently be contained in a single document.

57. On 30 October 2020, the First Respondents informed the CAS Court Office that they deemed *"more reasonable to separate all five awards due to data protection and financial issues".*

58. On 3 November 2020, the Appellant and the Second Respondent informed the CAS Court Office in their respective emails that they did not object to the Panel's proposal that the five awards be contained in a single document.

59. On 12 November 2020, a hearing was held by videoconference via Cisco Webex in accordance with Articles R44.2 and R57 of the CAS Code. The following persons attended the hearing:

- For the Appellant:

  - Mr William Sternheimer, Counsel;
  - Ms Imen Larabi, Counsel;
  - Mr Olivier Yan, Dalian Pro Representative; and
  - Mr Liu (Vincent) Wei, Witness.

- For the First Respondents:

  - Mr Íñigo de Lacalle Baigorri, Counsel;
  - Mr Juan Ignacio Triguero Gea, Counsel;
  - Mr Javier Ferrero Muñoz, Counsel;
  - Mr José Carlos Pérez-Cascallana Álvarez, First Respondent (CAS 2020/A/6990);
  - Mr Bernd Schuster, First Respondent (CAS 2020/A/6991);
  - Mr David Cortés Caballero, First Respondent (CAS 2020/A/6992);
  - Mr Henrique Manuel Da Silva Calisto, First Respondent (CAS 2020/A/6993);
  - Mr Ricardo Felipe Rodrigues Matos, First Respondent (CAS 2020/A/6994);
  - Mr João Manuel Fernandes Camacho, Witness; and
  - Mr Jean Marguerat, Legal Expert.

For the Second Respondent:

  - Mr Miguel Liétard Fernández-Palacios, Director of Litigation; and
  - Mr Saverio Paolo Spera, Senior Legal Counsel.

60. In addition, Ms Kendra Magraw, CAS Counsel, and Mr Peter Rittinger, *ad hoc* Clerk, assisted the Panel at the hearing.

61. At the beginning of the hearing, the Appellant's counsel asked whether Mr Ben Cisneros, a trainee of the Appellant's representative law firm, could attend the hearing as observer. Neither the First Respondent nor the Second Respondent objected. Thus, the Panel allowed the attendance of Mr Cisneros during the hearing as observer.

62. At the outset of the hearing, the Parties confirmed that they had no objections with regards to the constitution and composition of the Panel. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer all the questions posed by the Panel. The Panel heard witness testimony from Mr Liu (Vincent) Wei, Mr Mr João Manuel Fernandes Camacho, the expert testimony of Mr Jean Marguerat and Mr Bernd Schuster (on behalf of all the First Respondents). All Parties were given the opportunity to put their questions to the expert and the witnesses. At the end of the hearing, the Parties and their counsel expressly declared that they did not have any objections with respect to the procedure adopted by the Panel and that their right to be heard had been fully respected. A reservation was made in that regard by the Appellant in respect of the Panel's rejection of its objection to the expert report produced by the First Respondents and of its dismissal of the Appellant's request to produce *"its own legal expert report"*.

V. PARTIES' SUBMISSIONS

63. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding the Parties' positions, the Panel has carefully considered all the submissions made and evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

A. Appellant's Submissions

64. The submissions of the Appellant, in essence, may be summarized as follows:

65. Firstly, the Appellant sustains that the Single Judge of the FIFA PSC did not have jurisdiction to adjudicate the dispute in question.

- The Appellant argues that FIFA should have declined its jurisdiction based on the agreement of the parties to the Employment Contract to refer their disputes *"to relevant competent body of CFA pursuant to CFA's Regulations"* (Article 10 of the Employment Contract). The Appellant sustains that according to Article 22c) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") it is not required that the Employment Contract contain a clause excluding FIFA's jurisdiction. Although Article 22b) of the FIFA RSTP was amended in 2015 by establishing the need for an arbitration clause in favour of a national arbitral tribunal to be included in the relevant employment contract in order to exclude FIFA's jurisdiction, such amendment does not concern the provisions of Article 22c) of the FIFA RSTP applicable to the matter-at-hand. Therefore, and with reference to the principle *ubi lex voluit dixit*, *ubi noluit tacuit*, the Appellant sustains that there was no need to include explicitly the respective arbitration clause into the Employment Contract in order to exclude FIFA's jurisdiction.

- In addition, the Appellant insists that the Single Judge of the FIFA PSC should have declared himself incompetent to hear the dispute-at-hand, for the following reasons:

  - the CFA Arbitration Committee (the "CFAAC") appears to be the only *"relevant competent body of CFA"* for hearing the disputes of the parties to the Employment Contract, according to the CFAAC's rules. Therefore, there exists an *"independent arbitral tribunal guaranteeing fair proceedings at* [the] *national level"* in the sense of Article 22c) of the FIFA RSTP, agreed on by the parties;

  - the CFAAC guarantees fair proceeding, because, *inter alia*, the parties have the right to challenge the arbitrators appointed by the Chairman of the CFAAC. Therefore, the independence and impartiality of the arbitral tribunal is guaranteed;

  - the mutual intent of the parties to the Employment Contract was to submit any claim arising therefrom first to the CFAAC. Therefore and *"in view of the principle of*

effectiveness", the Coach *"must have lodged his claim with the CFAAC before he could have seized FIFA"*.

66. Should the Panel decide that the Single Judge of the FIFA PSC was competent to rule on the dispute-at-hand, the Appellant affirms that no compensation is due to the First Respondent according to Article 7.3 of the Employment Contract. The Appellant insists on the validity of the said contractual clause for the following reasons:

- The First Respondent was represented by highly skilled persons throughout the pre-contractual negotiations, thus having, *"if not more, at least an equal bargaining power than the Club"*. The First Respondent's legal representative amended certain provisions of the Employment Contract during the pre-contractual negotiations; however, the provisions of Article 7.3 thereof remained unchallenged. Therefore, the Appellant sustains that the Coach has acknowledged the existence and effect of Article 7.3 of the Employment Contract and has willingly agreed thereto. Accordingly, the Appellant sustains that the Coach's allegations in these proceedings in respect of the invalidity of the said clause are against the principle of *venire contra factum proprium* and, therefore, must be disregarded.

- For the same reasons, the Appellant insists that any references to such principles as *contra stipulatorem* or the protection of the weaker party are not applicable in the context of the present dispute.

- The Appellant sustains that, although the Single Judge of the FIFA PSC in the Appealed Decision has concluded that Article 7.3 of the Employment Contract should be disregarded, being *"not reciprocal and not balanced"*, long-established CAS jurisprudence confirms that a termination clause does not always need to be either reciprocal or balanced. The Appellant indicates that, given the Coach's full and free agreement to the said clause, it is valid and should apply at the matter-at-hand.

67. Alternatively, the Appellant considers that, in the event that the Panel decides that compensation is due to the First Respondent by the Club, *quod non*, such compensation must be reduced in view of the provisions of Article 44(1) of the Swiss Code of Obligations (the "SCO"). The Appellant highlights that the First Respondent has clearly consented to the act, in the form of freely and expressly agreeing to the termination clause contained in Article 6 of the Employment Contract, which allegedly caused him the damage in the sense of Article 44(1) of the SCO.

68. Similarly, the Appellant insists on a considerable reduction of the compensation to be paid by the Club to the First Respondent, should the Panel order the payment of such compensation, based on the following:

- Compensation should at least be reduced by half in view of Article 7.1 of the Employment Contract, which provides for the Club's potential right to claim for compensation of EUR […] (and not EUR […]) in case of a breach of the Employment Contract by the First Respondent; and

- By failing to look for other employment after the termination of the Employment Contract, the First Respondent breached his duty to mitigate the damages.

69. Finally, the Appellant states that FIFA's deciding bodies are not competent to rule on tax-related disputes. Furthermore, the Appellant sustains that *"even if the Contract provides that the amounts are net, there is no obligation of the Club to provide the Coach with any tax certificates"*.

70. Based on its above-mentioned allegations, the Appellant made the following requests for relief:

"(a) set aside the Decision;

(b) in so doing, hold that the Single Judge did not have jurisdiction to entertain the claim of the Coach against the Club;

in the alternative:

(c) should the Panel deem that the Single Judge did have jurisdiction to entertain the claim of the Coach against the Club, hold that the Coach is not entitled to receive any compensation for breach of contract from the Club;

in the further alternative:

(d) set aside point III/5 of the Decision should any amount of compensation be paid by the Club to the Coach;

in all events:

(e) order the Second Respondent to reimburse the Appellant the procedural costs in the amount of CHF 25,000.

(f) order both Respondents to:

(i) reimburse the Appellant its legal costs and other expenses pertaining to this appeal; and

(ii) bear any and all costs pertaining to the arbitration".

B. First Respondent's Submissions

71. The submissions of the First Respondent, in essence, may be summarized as follows:

72. The First Respondent denies the Appellant's allegations with regards to FIFA's lack of jurisdiction to hear the dispute-at-hand.

73. The First Respondent indicates that the FIFA PSC was competent to hear the dispute-at-hand based on the provisions of Articles 22c) and 23.1 of the FIFA RSTP. In particular:

- the FIFA PSC is competent to hear *"employment-related disputes between a club […] and a coach of an international dimension"*, which is the case in the matter-at-hand;

- in order to discard FIFA's competence and contrary to the Appellant's allegations, the parties to the Employment Contract should have opted in writing for such exclusion *"in favour of the national arbitration tribunal"* based on the provisions of Footnote 102 of the FIFA RSTP Commentary, establishing in respect of Article 22c) of the FIFA RSTP that *"with regard to the terms "international dimension and national arbitration tribunal" reference is made to 22b) above"* (i.e. *"the stipulations and explanations included in article 22 b) of the FIFA RSTP shall also apply to article 22 c) of the FIFA RSTP"*). The First Respondent further highlights that, in accordance with recent CAS jurisprudence, *"purely literal interpretation is prohibited"* and, therefore, the parties to the Employment Contract should have explicitly excluded FIFA's jurisdiction in the relevant arbitration clause, which they did not in the case-at-hand;

- the parties to the Employment Contract failed to choose *"the precise and exact body of the Chinese Football Association"* for the resolution of their disputes in accordance with the relevant provisions of the FIFA RSTP, and the Appellant's allegations that such competent body is CFAAC are not justified. Furthermore, Articles 51 and 52 of the CFA Statutes recognize FIFA's jurisdiction for disputes of international nature, while reserving the CFA's competence for domestic disputes. Article 2 of the CFA Working Rules of the Arbitration Commission provides for the CFAAC's competence to hear domestic disputes;

- in any event, the CFAAC cannot be considered as *"an independent arbitration tribunal guaranteeing fair proceedings […] at national level"*, as it does not comply with the requirements of independence and impartiality established by FIFA Circular Nº 1010.

74. Concerning the merits of the case, the First Respondent insists that: (i) the Employment Contract has been automatically extended until 31 December 2020 and terminated by the Club without just cause, which is no longer contested by the Appellant in these proceedings; and (ii) the Club must pay the Coach compensation for such termination of the Employment Contract in accordance with the Appealed Decision.

75. The First Respondent sustains that the compensation owed by the Club to the Coach must be paid in the amount of the residual value of the Employment Contract and not in accordance with the provisions of the termination clause incorporated therein (i.e. Article 7 of the Employment Contract) as alleged by the Appellant. In that regard, the First Respondent indicates that Article 7 of the Employment Contract is invalid, and must be considered null and void based on the following:

- During the pre-contractual negotiations, there was an unequal bargaining position between the Club as employer and the Coach as employee. In particular:

- the negotiations were carried out in a very urgent way and with small room for amendments by the coaching staff; and

- the Employment Agreement was sent and drafted entirely by the Appellant.

- Article 7 of the Employment Contract is *"not reciprocal and not balanced"* and *"is clearly at odds with one of the cornerstones of the RSTP, i.e., contractual stability"*, as has been confirmed by the Single Judge of the FIFA PSC in the Appealed Decision.

- The Club has confirmed itself in its letters sent *"to the Coach on February 1st and February 3rd, 2019"* that *"Clause 7 of the Employment Agreement is not a valid clause due to its inconsistency with the "principle of proportionality and the principle of reciprocity on rights and obligations"*. The First Respondent highlights that *"the continuous changes in his* [the Appellant's] *actions and legal strategy are contrary to the principles of good faith, venire contra factum proprium and the doctrine of "appearance efficace"*.

- The provisions of Article 7 of the Employment Contract, which entitle the Club to terminate the employment before the expiry of the contract's term, contradict those of Article 2 of the Employment Contract, which provide for *"a clear term, subject to conditions"*. Therefore, Article 7 of the Employment Contract *"is clearly in the interest"* of the Club.

76. In addition, the First Respondent emphasises that the provisions of Article 7 of the Employment Contract cannot be considered valid under Swiss law and supports this allegation by the legal opinion submitted by Mr Jean Marguerat, acting as legal advisor on Swiss law. In particular, the First Respondent refers to the following conclusions contained in the said legal opinion:

- *"[…] the meaning of Clause 7 is unclear"* and, therefore, *"based on the principle of the interpretation contra stipulatorem, in the event of lack of clarity, the contract is to be interpreted to the detriment of the drafter of the contract"* (i.e. the Club).

- Articles 7.1 and 7.3 *"of the Contract* [the Employment Contract] *contravene mandatory Swiss employment law and are therefore null and void under Swiss law"*. Mr Marguerat in his legal opinion indicates that *"neither of these clauses* [Article 7 of the Employment Contract] *is in line with mandatory Swiss law and these clauses must thus be considered to have illegal content" "in application of Art. 20 al. 2 CO* [the SCO] *as well as Art. 361 al. 1 CO and Art. 362 al. 2 CO"*.

77. In view of the above and with reference to the above-mentioned legal opinion, the First Respondent insists that, pursuant to the provisions of Article 337c.1 of the SCO, he *"is entitled to damages in the amount he [/she] would have earned had the employment relationship ended upon expiry of its agreed term"*.

78. In reply to the Appellant's allegations that the First Respondent's compensation, if any, should be reduced in line with the provisions of Article 44.1 of the SCO, i.e., based on his *"consent or harmful conduct"*, the First Respondent refers to the decision of the Swiss Federal Tribunal which held that the said article *"cannot be applied to Art. 337 al. 1 CO* [the SCO] *in order to reduce*

the compensation". Furthermore, the First Respondent emphasises that the Single Judge of the FIFA PSC *"has not established any harmful conduct"* of the Coach.

79. In addition, the First Respondent indicates that the Club's termination of the Employment Contract without just cause following the achievement by the coaching staff of outstanding sporting results has provoked *"an extremely negative impact on the Coach's image and reputation"*. As a consequence, the Coach was unable to find new employment following the said termination and, therefore, it was impossible for him to mitigate the damages.

80. Finally, the First Respondent sustains that the payment of taxes or providing proof of such payment is the Club's contractual obligation and, therefore, based on the principle of *pacta sunt servanda*, the Club must comply with the obligation to pay all taxes applicable to the amount of compensation owed to the Coach.

81. In view of the above, the First Respondent made the following requests for relief:

"A. The Appeal filed by DALIAN, is fully dismissed, confirming the FIFA PSC Decision.

B. In any case, ordering DALIAN to pay the costs and other expenses of this arbitration.

C. In any case, ordering DALIAN to pay the legal fees and other expenses incurred by the Coach in an amount to be determined at the discretion of this Hon. Panel and not less than CHF 30,000.00".

C. Second Respondent's Submissions

82. The submissions of the Second Respondent, in essence, may be summarized as follows:

83. In its Answer to the Appeal Brief, FIFA addresses exclusively the Appellant's jurisdictional challenge, the merits of the case being an employment-related dispute *"of a purely horizontal nature"*, in which FIFA *"does not have standing"*.

84. Accordingly, FIFA confirms that the Single Judge of the FIFA PSC had competence to hear the dispute-at-hand and denies the Appellant's allegations to the contrary.

85. FIFA argues that the Single Judge of the FIFA PSC was competent to hear the dispute based on the provisions of Article 22c) of the FIFA RSTP and due to the failure of the parties to the Employment Contract to opt for a national arbitration tribunal guaranteeing fair proceedings. FIFA denies the Appellant's statement that the CFAAC, allegedly chosen by the parties, meets the requirements of independence and impartiality stipulated by FIFA Circular No 1010. In addition, FIFA indicates that even if the CFAAC complied with FIFA's requirements under FIFA Circular No 1010 and if the parties to the Employment Contract seized it first, based on the parties' agreement (i.e. Article 10 of the Employment Contract), the decision of FIFA would have prevailed, should any of them be dissatisfied with the CFAAC's decision and subsequently refer the same dispute to FIFA.

86. Finally, FIFA points out that the Appellant's request for the reimbursement by FIFA of its procedural costs is unacceptable. In that regard, FIFA refers to the long-established CAS jurisprudence that confirms that *"it is not for this court to reallocate the Procedural Costs in the absence of truly exceptional circumstances"*. Given that the Appellant has failed to justify its request, FIFA considers that *"there are no valid grounds for the Appellant's request on this point"*.

87. In view of the above, FIFA made the following requests for relief:

"(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".

VI. JURISDICTION

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

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

89. Article 58 (1) of the FIFA Statutes states:

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

90. In consideration of the provisions mentioned above and of the fact that (a) the jurisdiction of the CAS is not contested by the Parties, and (b) the Parties have expressly recognized the jurisdiction of the CAS by signing the Order of Procedure, the Panel is satisfied that the CAS has jurisdiction to decide the present matter.

VII. ADMISSIBILITY

91. Article R49 of the CAS Code provides as follows:

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

92. Article 58 (1) of the FIFA Statutes establishes:

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

93. The grounds of the Appealed Decision were notified to the Parties on 3 April 2020. The Club filed its Statement of Appeal with the CAS on 22 April 2020, hence within the 21-day term established by the applicable regulations. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

94. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the Parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

95. Furthermore, Article 57 (2) of the FIFA Statutes provides:

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

96. Article 10 of the Employment Contract reads as follows in the relevant part:

"This Contract is subject to the regulations of CFA and FIFA […]*".*

97. The Panel observes that the Appealed Decision was rendered by the Single Judge of the FIFA PSC based on the FIFA regulations and, in particular, the FIFA RSTP (June 2018 edition).

98. Furthermore, regarding the potential applicability of the CFA regulations, the Panel firstly observes that in the Employment Contract the Parties referred, indistinctly and without hierarchy, to both the CFA and the FIFA regulations, without giving preference to any of these regulations over the other. Therefore, in the Panel's view, both parties unconditionally accepted the applicability of the FIFA regulations to their employment relationship. Furthermore, even if, *quod non*, a conflict between the parties' choice of law and the *"applicable regulations"* resulting from the application of Article R58 of the CAS Code existed in this matter, the applicable regulations (i.e., the FIFA regulations) would take precedence over the law chosen by the parties, as they are mandatorily applicable in accordance with the aforementioned Article R58 of the CAS Code.

99. This notwithstanding, should there be any relevant issue in this matter that is not governed by the applicable FIFA regulations, the Panel may apply the CFA regulations when specifically relied upon.

100. Therefore, taking into account the developments mentioned above, the Panel finds that the various regulations of FIFA are to be applied primarily and, subsidiarily, Swiss law is to be

applied, in accordance with Article 57.2 of the FIFA Statutes, should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

A. Preliminary Issues

101. Before turning to the main issues in dispute, as a preliminary note, the Panel will address the Club's request for production of a legal opinion after the closure of the written submission phase. In that respect, Article R56 of the CAS Code provides:

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

102. In line with the above, consistent CAS jurisprudence provides for a strict interpretation of the scope of *"exceptional circumstances"*. In that spirit, CAS 2017/A/5369 provides:

"Article R56 of the CAS Code introduces a fundamental rule, intended to serve the purpose of concentration and rapidity in CAS proceedings: the parties are not be authorized inter alia to specify further evidence after the submission of the appeal brief and of the answer. The rule corresponds to the obligation imposed on the parties to CAS arbitration to specify all the evidence on which they intend to rely to prove their respective case in the appeal brief (for the appellant) and in the answer (for the respondent). Article R56 allows however a deviation from the rule: further evidence, after the submission of the appeal brief and of the answer, can be specified if the parties agree or the President of the Panel gives an authorization "on the basis of exceptional circumstances". The possibility to give an authorization, absent the parties' agreement, represents an exception to the general prohibition, and as such is of strict interpretation. In addition, it leaves no room for an ordinary disregard based on a simple claim that otherwise the parties' right to be heard would be infringed. The application of Article R56 has been endorsed by the Swiss Federal Tribunal: a party's right to be heard is not violated if a CAS panel denies the filing of new evidence not submitted in timely manner".

103. Although the CAS Code does not define the *"exceptional circumstances"* in the sense of Article R56 of the CAS Code, based on sustained CAS jurisprudence, such exceptional circumstances would exist, in particular, in the event that the new (untimely) evidence contains a fact which *"is a real novum"* (CAS 2017/A/4946).

104. This is in line with the principles governing the relevant provisions of Swiss law, i.e.:

"The new evidence has to prove either the new facts on which the application for [revision] is based or facts which, although known [or alleged] in earlier proceedings, remained unproven to the detriment of the petitioner. Where the petitioner seeks to prove facts already alleged in previous proceedings with new evidence, it must show that it was impossible for him to provide such evidence in the earlier proceedings. New evidence is relevant when it can be assumed that the court would have made a different decision if such evidence had been on the record" (RIGOZZI A., "Challenging Awards of the Court of Arbitration for Sport", 2010 – ref. to ATF 134 III 286, Swiss Int'l Arb L Rep (2008)).

105. On 10 September 2020, after the closure of the written submission phase, the Appellant objected to the legal opinion of Mr Jean Marguerat produced by the First Respondent *"being treated as a legal expert report and to Mr [Jean] Marguerat being heard as a legal expert witness"* and alternatively requested *"the opportunity to present its own legal expert report in order to be able to address certain conclusions made in the Legal Opinion* [of Mr Jean Marguerat]*"*.

106. On 25 September 2020, the Appellant reiterated its requests and mentioned certain circumstances that it considered as *"exceptional"* and which could allegedly justify the presentation by the Appellant of *"its own legal expert report"*. Mainly, the Appellant indicated that, given that the First Respondent produced a legal opinion as part of his Answer, the Appellant *"could not anticipate that the Coaches would submit their legal position/submission on Swiss law by way of an 'expert report'"* and could not foresee that the First Respondent would present his arguments based on Swiss law which at the stage in question was not established as the law applicable to the dispute-at-hand. Furthermore, the Appellant referred to the alleged lack of impartiality and independence of Mr Jean Marguerat given his *"previous or current relationship"* with the First Respondent or his counsel.

107. The Panel considers that the Appellant's reasoning based on which it could not anticipate the submission by the First Respondent of a *"legal expert report"* does not constitute an exceptional circumstance which would justify its request for production of its *"own"* legal opinion for rebuttal after the closure of written submissions. Similarly, the Panel finds that nothing prevented the Appellant from filing an expert report along with its Appeal Brief. Furthermore, the Panel considers that, based on the Appellant's statement that *"any expert report filed in response to the Legal Opinion would be purely responsive"*, such additional submission would not contain any new facts essential for the resolution of the dispute-at-hand.

108. Consequently, on 6 October 2020, the Panel rejected the Appellant's related objections and requests for the submission of an expert report, while providing the Appellant with the opportunity to rebut the conclusions contained in the legal expert report of Mr Jean Marguerat during the hearing.

109. In addition to the above, the Appellant challenged Mr Jean Marguerat's independence. During the hearing, Mr Jean Marguerat stated that, while he had not been retained to appear as counsel by any of the Respondents in the present dispute, he had, previously in the context of a different dispute, been retained by the First Respondents' counsel, where he had appeared as an expert against remuneration. The Panel took note of the statement, but did not see anything why Mr Marguerat's previous professional relationship with the First Respondent would prevent him from appearing in the present dispute, or the Panel from hearing his expert testimony. The Panel consequently decided to hear Mr Marguerat's expert testimony.

110. The above notwithstanding, as will be seen below, the Panel notes that it did not consider the Expert Opinion to be of any assistance in the resolution of the matter at hand and certainly not a determinative factor in the outcome of this case.

B. Main Issues

111. Turning now to the main issues of the case, in consideration of the facts in dispute and taking into account the content of the Appealed Decision, the main issues to be resolved by the Panel are as follows:

1) Was the Single Judge of the FIFA PSC competent to hear the Coach's claim?

2) What are the legal consequences deriving from the termination of the Employment Contract by the Club?

3) Is the Club entitled to the reimbursement by FIFA of procedural costs relating to the proceeding before the Single Judge of the FIFA PSC?

112. The Panel will address these issues in turn below.

1. Was the Single Judge of the FIFA PSC competent to hear the Coach's claim?

113. Article 23.1 of the FIFA RSTP provides:

"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".

114. Article 23.4 of the FIFA RSTP provides further as follows:

"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".

115. Article 22.c) of the FIFA RSTP provides for the competence of FIFA to adjudicate *"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".*

116. In that respect, Article 5.1 of the Swiss Private International Law Act (the "PILA") states:

"In matters involving an economic interest, parties may agree on the court that will have to decide any potential or existing dispute arising out of a specific legal relationship. The agreement may be entered into writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. Unless otherwise agreed, a choice of forum is exclusive".

117. Article 178.2 of the PILA provides: *"As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law".*

118. More generally, Article 18.1 of the SCO provides:

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

119. Consequently, the parties' intent must be respected insofar it is valid. In the matter-at-hand, the parties to the Employment Contract have expressed it in the following terms:

"Any dispute arising out of this Contract shall be submitted to relevant competent body of CFA pursuant to CFA's Regulations. In the event that any parties dissatisfied [sic] *with decision of CFA, then each party shall have the right to submit the dispute to relevant competent body of FIFA pursuant to the FIFA's Regulations. If there is any conflict between CFA and FIFA, the FIFA's decision shall prevail"* (Article 10 of the Employment Contract).

120. The Panel notes the Appellant's objections to the jurisdiction of the FIFA PSC to decide the present dispute at "first instance" and its insistence on the parties' explicit agreement to refer their disputes first to the *"relevant competent body of CFA".*

121. In that respect, the Panel is of the opinion that the jurisdiction clause contained in Article 10 of the Employment Contract appears to be unclear. In particular, the clause does not specify whether the *"competent body of CFA"* is necessarily an arbitral institution in accordance with the relevant provisions of the FIFA RSTP and Swiss law.

122. However, the Panel observes that the clause further specifies *"the* ***decision*** *issued by such CFA competent body"* (emphasis added), which appears to exclude any alternative dispute resolution mode other than arbitration (e.g. mediation, negotiations, expertise), not resulting in issuing a "decision".

123. Accordingly, the Panel finds that the CFAAC is the only *"competent body of CFA"* which could issue a "decision" in this case and to which the parties could have intended to refer their disputes. This conclusion has been confirmed by the Appellant in its written submissions and during the hearing.

124. Thus, the Panel has to establish whether the CFAAC could be competent to resolve the dispute-at-hand. In that regard, the Panel notes:

- That were the CFAAC not to be considered as a traditional arbitration institute that issues decisions, such decisions are mentioned to be final and binding as per its regulations (CFAAC's Working Rules, Article 4: *"The Arbitration Commission arbitrates the disputes under* ***the single and final arbitration*** *ruling system"* (emphasis added)). Consequently, the second part of Article 10 of the Employment Contract, mentioning that despite the fact that the CFAAC's decision is binding, FIFA can overturn it or, in the event that it is inconsistent with FIFA's decision, the latter would prevail, is purely and simply inoperable;

- If the CFAAC is a traditional arbitration institute and if it is assumed that such arbitral institute complies with the requirements of FIFA Circular N° 1010, upon which the Panel does not make any findings, then the second part of Article 10 of the Employment

Contract would lead FIFA to rule on a final arbitral award and, above that, CAS to arbitrate a dispute which has already been arbitrated.

- Finally, even if the Panel were to find that the second part of Article 10 of the Employment Contract was operable, the arbitration clause does not even specify that the decision from the CFAAC must be appealed to FIFA (but rather states that the dispute simply can be referred), and that regardless the FIFA decision would prevail in case of discrepancy between the two hypothetical decisions, again showing the futility and the waste of resources that would entail submitting the dispute to the CFAAC and only subsequently to FIFA.

125. Taking this into consideration, the Panel concludes that the drafted jurisdictional clause is unclear, inoperant and contains an inherent contradiction in its terms which cannot reflect the genuine intent of the parties to effectively settle their dispute. Therefore, the said clause is not applicable in the present case. Consequently, the Panel finds that FIFA had jurisdiction to rule on the case in accordance with the provisions of Article 22c) of the FIFA RSTP.

126. Notwithstanding the above, the Panel also notes that CAS jurisprudence has consistently held that *"the burden of proof with respect to the existence of such a [independent arbitration tribunal] lies with the party contesting the competence of FIFA"* (CAS 2014/A/3843, para 53; see also CAS 2018/A/5659, para 55 and CAS 2013/A/3172).

127. The Panel further finds that the Appellant has failed to discharge its burden of proof to prove that FIFA did not have jurisdiction.

2. What are the legal consequences deriving from the termination of the Employment Contract by the Club?

i. Did the Club terminate the Employment Contract with or without just cause?

128. Although *"the provisions on contractual stability in the RSTP contain general legal principles"* (CAS 2007/A/1322) related to employment disputes, Articles 13 et seq. of the FIFA RSTP, which deal with the termination of contracts and compensation, do not apply directly to coaches.

129. Accordingly, in order to establish just cause, the Panel refers to the relevant provisions of Swiss law and, in particular, to Article 337(2) of the SCO, which provides that *"good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice"*.

130. Based on long-established CAS jurisprudence, only a *"material breach"* of a contract can be considered as *"just cause"* for termination without consequences of any kind (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100; CAS 2013/A/3091, 3092 & 3093). Such material breach occurs, in particular:

"When the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it" (CAS 2013/A/3091-3093; CAS 2012/A/2698).

131. Furthermore, CAS indicates in its consistent jurisprudence that, in the absence of definition of *"just cause"* in the FIFA regulations, reference should be made to Swiss law (e.g. CAS 2006/A/1062; CAS 2008/A/1447; CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698), and in particular, to Article 337(2) of the SCO mentioned above.

132. Consequently, as this is admitted in most legal systems, a fixed-term employment contract can be unilaterally terminated prior to the expiry of its term if there is a *"valid reason",* meaning that a party cannot in good faith be expected to continue the employment relationship (assuming that procedural requirements, in the form of timely warning, have been observed).

133. In the matter-at-hand, Article 2 of the Employment Contract states:

"The term of this Contract shall be one (1) season, beginning on March 20th, 2018 and will terminate on December 31st, 2018, subject to the provisions below for termination. The parties agree that the term of this Contract shall be ***automatically extended*** *as follows:*

[…]

(2) In the event that the Team ends the 2018 season in the top 12 teams of the CSL, the term of this Contract ***shall be extended for two (2) additional seasons****, that is, the term of this contract shall be* ***from March 20h, 2018 to December 31st, 2020****"* (emphasis added).

134. The Panel observes the relevant evidence submitted by the Coach, i.e. the League Tables as at 11 November 2018, confirming, in particular, that the Club ended the 2018 season at the eleventh position. Therefore, the Panel concludes that the necessary condition for the automatic extension of the Employment Contract *"for two (2) additional seasons"* was triggered and the Coach could lawfully expect that the *"term of this contract shall be from March 20th, 2018 to December 31st, 2020".*

135. The Panel further notes that the Club terminated the extended Employment Contract by its termination notice dated 26 December 2018, without mentioning any reason for such termination.

136. Given that the Employment Contract was automatically extended until 31 December 2020 and that there was neither mutual agreement for its termination, nor any material breach committed by the Coach, the Panel is of the opinion that the Club terminated the Employment Contract on 26 December 2018 with effect on 31 December 2018, without just cause.

137. Finally, the Panel observes that, contrary to the proceedings before the FIFA PSC where the Appellant disputed its termination of the Employment Contract without just cause, during these proceedings before the CAS, neither the Appellant nor the First Respondent have contested either the automatic extension of the Employment Contract until 31 December 2020 or its termination by the Club without just cause.

138. In view of the above, the Panel concludes that the Club terminated the Employment Contract, the validity of which ran until 31 December 2020, without just cause. The Panel is, therefore, in line on this point with the Appealed Decision.

ii. Is the Coach entitled to compensation for the termination of the Employment Contract by the Club without just cause, and, if yes, what is the basis for its calculation?

139. Article 337b paragraph 1 of the SCO provides as follows:

"Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship".

140. Articles 337c paragraphs 1 and 2 of the SCO supplement the provisions mentioned above as follows:

"1. Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.

2. Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work".

141. The Panel observes that the contracting parties have included provisions and compensation rules in the Employment Contract in case of unilateral termination of the contract without just cause.

142. Article 7 of the Employment Contract states as follows:

"7.1. In the event the Coach unilaterally terminates the Contract without legal grounds, the Coach will indemnify the Club with a net sum of Euro […] and the Club has the right to stop making any payment to the Coach immediately.

[…]

7.3. In the event the Club unilaterally terminates the Contract without legal grounds, the Club will pay a severance corresponding to the outstanding NET fixed cash remuneration of the Coach from the moment of its dismissal until the end of the season".

143. The Panel notes that the financial consequences of a termination of the contract without just cause are ruled differently.

144. The Panel further recalls that the First Respondent states that he should be compensated with the residual balance of the value of the Employment Contract and observes the Coach's allegations that the provisions of Article 7 of the Employment Contract are not valid, given their lack of reciprocity and balance. The latter was also concluded by Mr Jean Marguerat in his Expert Opinion in these proceedings.

145. In the Appealed Decision, the Single Judge of the FIFA PSC has similarly decided *"not to apply the relevant clause for the calculation of compensation"*, *"as it is not reciprocal and not balanced"*.

146. By reviewing a (possible) disparity of Articles 7.1 and 7.3 of the Employment Contract, the Panel refers to long-established CAS jurisprudence and, in particular, to CAS 2016/A/4826, in which the panel in that case concluded as follows:

> *"105. (…) FIFA RSTP neither establish a principle of reciprocity nor a prohibition of disparity, but instead simply refer to the autonomy of the parties.*
>
> *106. Furthermore, it might well be that the disparity with respect to the liquidated damage clause is compensated by other more favourable provisions in the Employment Contract to the benefit of the Player (e.g. a particularly high remuneration). Thus, any substantive review undertaken by this Panel cannot be limited to comparing the liquidated damage clauses only, but instead must look at the overall contract in order to determine whether there is disparity. It has not been submitted and on the face of the evidence before the Panel it does not appear that there is such (overall) disparity.*
>
> *107. Furthermore, there is no evidence on file that the autonomy of the parties to which article 17(1) FIFA RSTP refers was somehow impaired in the case at hand, be it because one of the parties had superior bargaining power or that one of the parties exercised undue influence or pressure on the other party. Absent any such indications, there is no reason to discard clause 10.7 of the Employment Contract. which is the result of the parties' freedom to contract".*

147. In CAS 2013/A/3411, the panel established:

> *"Article 17.1 RSTP sets the principles and the method of calculation of the compensation due by one party because of a breach or unilateral and premature termination of a contract. According to Article 17.1 RSTP, primary role is played by the parties' autonomy. In fact, the criteria set in that rule apply "unless otherwise provided for in the contract".*
>
> *A clause qualifies as a contractual penalty or "liquidated damages" clause ("clause pénale" or "Konventionalstrafe") under Swiss law if it contains all the necessary elements required for such purpose: (i) the parties bound thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the conditions triggering the obligation to pay it are set, (iv) its measure is identifiable In other words, a provision which sets an amount of "damages" to be paid "if" the contract is breached, appears to perform a function (the determination of the amount that a party has to pay to the other as damages in the event of breach of contract)*

perfectly consistent with Swiss law. Furthermore, Swiss law does not require "penalty clauses" to be "reciprocal" in order to be valid".

148. In that regard, the Panel here recalls the provisions of Article 163 of the SCO, which states:

"1. The parties are free to determine the amount of the contractual penalty.

2. The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor's control.

3. At its discretion, the court may reduce penalties that it considers excessive".

149. The Panel notes that the Club, on the one hand, and the Coach, on the other hand, were both represented by qualified lawyers throughout the pre-contractual negotiations. Based on the basic legal principle of *pacta sunt servanda*, and given that Article 7 of the Employment Contract provides for the clear type of measurable and identifiable penalty –including the conditions triggering the payment of such penalty– the Panel is of the opinion that the provisions in question reflect the true and clear intent of the contracting parties.

150. Furthermore, the (pure) existence of different amounts of compensation being applicable depending on which party breaches the contract does not *per se* imply the nullity of the compensation clause (see CAS 2016/A/4606).

151. In consideration of the above, the Panel finds that, contrary to the First Respondents' allegations and to the opinion of Mr Jean Marguerat mentioned above, the compensation clause contained in Article 7 of the Employment Contract represents the true intent of the contracting parties and is valid, and, therefore, shall be applied to the calculation of the compensation due by the Club to the Coach for the termination of the Employment Contract without just cause.

iii. Calculation of the compensation due by the Club to the Coach

152. As established by the Panel above, the Employment Contract was automatically extended *"for two (2) additional seasons"* with its term being, accordingly *"from March 20th, 2018 to December 31st, 2020"*.

153. Article 7.3 of the Employment Contract provides for compensation to be paid to the Coach by the Club in the event of the latter's termination of the Employment Contract without just cause, equal to *"a severance corresponding to the outstanding NET fixed cash remuneration of the Coach from the moment of its dismissal* ***until the end of the season****"* (emphasis added).

154. The Appellant finished at the eleventh position of the CSL in the 2018 sporting season. The last match of this season took place on 11 November 2018. Therefore, the 2018 sporting season ended on that day, i.e., on 11 November 2018. These facts are not contested by any of the Parties.

155. In view of the above, the Panel is of the opinion that compensation owed by the Club to the Coach as per Article 7.3 of the Employment Contract and equal to his *"outstanding NET fixed cash remuneration […]* ***until the end of the season****"* (emphasis added) could only mean until the end of the 2019 season, given that the 2018 sporting season had already ended on 11 November 2018.

156. The term *"season"* appearing in the Employment Contract can only refer to the football season. The Employment Contract leaves no doubt that it had been signed between the parties with the intention to last for multiple *"season"*. Under the circumstances, the expression of the contractual autonomy of the parties was such that they agreed to sign a contract for more than one season, but also agreed that, in case of termination, the maximum compensation due corresponded to the season's salary, if termination had occurred the first day of the season, and the minimum that of one day.

157. Therefore, taking into account that extended validity of the Employment Contract until 31 December 2020 and Coach's total fixed remuneration *"(i)n the 2019 season, the NET sum of Euro […]"* (Article 5.1 of the Employment Contract), the Panel finds that the Coach is entitled to compensation in the amount of the annual income of the 2019 season, i.e. EUR […].

158. Furthermore, the Panel takes into account that the Appellant did not explicitly contest either the fact or the calculation of the awarded remuneration in the Appealed Decision in the amount of EUR […], corresponding to the Coach's outstanding bonus due to him in accordance with Article 5.3. of the Employment Contract. Furthermore, it is undisputed by the Parties that the Club reached the eleventh position of the CSL table. Therefore, the Panel finds that this remuneration in the amount of EUR […] is due to be paid to the Coach in addition to the amount of EUR […], being on this point in line with the Appealed Decision.

159. In addition, the Panel observes that none of the Parties have challenged the application of the interest rate or the starting date thereof ruled on in the Appealed Decision, and, therefore, decides that the Club shall pay an interest at the rate of 5% p.a. on the established amount of compensation (i.e. EUR […]) and an interest rate of 5% p.a. on the established outstanding remuneration (i.e. EUR […]) as ordered and defined by the Single Judge of the FIFA PSC.

160. For the avoidance of doubt, the Panel observes that, by comparing the "indemnity clause" of the Coach stipulated by Article 7.1 of the Employment Contract, the Coach would have to pay the same amount of compensation (*"Euro […]"*) to the Club, in case he had unilaterally terminated the Employment Contract without just cause on the same day.

161. In due consideration of the developments mentioned above, the Panel concludes that the Club is obliged to pay to the Coach an amount of EUR […] as outstanding remuneration and an amount of EUR […] as compensation for the termination of the Employment Contract without just cause. In that respect, the Appealed Decision must be corrected.

iv. Potential reduction of the compensation

162. Based on sustained CAS jurisprudence, deriving from Article 337c (2) of the SCO:

> *"the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn. Such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek for other employment, showing diligence and seriousness. This principle is aimed at limiting the damages deriving from breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party. The wording of art. 337c (2) SCO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so"* (CAS 2015/A/4346).

163. The Panel observes that the Employment Contract was terminated on 26 December 2018, with the termination being effective as of 31 December 2018. Since the date of termination until the end of the 2019 season, the Coach remained unemployed.

164. The Club sustains that the Coach failed to comply with his duty to mitigate the damages in accordance with long-standing CAS jurisprudence and Article 337c (2) of the SCO, as he did not become employed with another club after the termination of the Employment Contract.

165. However, the Panel observes that the Club has failed to provide any evidence in support of such allegations. Based on the general principle of burden of proof, which lies on a party raising the argument (Article 8 of the Swiss Civil Code), it was for the Club to substantiate its claim in this respect. The Club has not demonstrated that the Coach deliberately refused to enter into an employment relationship or negotiations with other clubs after the termination of the Employment Contract.

166. Furthermore, the Panel notes the Coach's allegations that due to *"an extremely negative impact on the Coach's image and reputation"* caused by the unilateral termination of the Employment Contract by the Club, he could not find a new employer. The same was confirmed during the hearing by Mr Fernandes Camacho, an agent from the agency Gestifute, who testified that he was looking for another employer for the Coach, but that he could not find any employment for the Coach with another club.

167. In the absence of any evidence that the Coach deliberately failed to find new employment after the termination of the Employment Contract, the Panel holds that there is no proof that the Coach has acted in bad faith or intentionally failed to mitigate the damages. Therefore, the Panel is of the opinion that no remuneration appears to exist which the Coach earned after the termination of the Employment Contract and by which he could mitigate the compensation owed to him by the Club.

168. The Panel further rejects the Club's allegations that the compensation due to the Coach, if any, must be reduced in accordance with Article 44(1) of the SCO (*"where the injured party consented to the action which causes the loss or damage or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely"*).

169. The Panel notes the Club's argument in this regard that the Coach willingly consented to the provisions of Article 7 of the Employment Contract, which he now contests, although he knew that such action could cause him *"loss or damage"*.

170. Given that it has been established that Article 7 of the Employment Contract is valid and shall be applied to the calculation of the Coach's compensation, the Panel finds that the Club's further allegations in that respect, are irrelevant and decides to disregard them.

v. Should the Coach be provided with a tax certificate proving the payment by the Club of taxes applicable to the compensation?

171. In the Appealed Decision, the Single Judge of the FIFA PSC ruled, in particular, that the Club *"is ordered to provide the Claimant/Counter-Respondent* [the Coach] *with the relevant certificate attesting the payment of taxes to the competent tax authorities in the amount under point 3. and 4. above* [amount of compensation and outstanding remuneration]*"*.

172. In its Appeal Brief, the Club has challenged the Appealed Decision on the point mentioned above, stating that: (i) FIFA is not competent to rule on tax matters in general; and (ii) based on the absence of the relevant provisions in the Employment Contract, the Club is not obliged to provide the Coach with any tax certificates.

173. The Panel observes that, based on FIFA jurisprudence, *"FIFA's deciding bodies are in principle not competent to deal with tax related disputes, as they fall outside the scope of the Regulations* [the FIFA RSTP] *and Procedural Rules* [the FIFA Procedural Rules]*"*, unless *"the claim […] in relation to the taxes appears to be contractually grounded"* (Decision of the Single Judge of the Players' Status Committee of 28 January 2020).

174. The Panel notes that the relevant articles of the Employment Contract provide as follows:

> *"7.3. In the event the Club unilaterally terminates the Contract without legal grounds, the Club will pay a severance corresponding to the outstanding* ***NET*** *fixed cash remuneration of the Coach from the moment of its dismissal until the end of the season"* (emphasis added).
>
> and
>
> *"5.6. The cash remuneration and the bonuses payable by the Club to the Coach as per this Contract are NET of China's taxes. Furthermore, any Chinese withholding taxes imposed by Chinese Government/law will be born and paid out by the Club.*
>
> *[…]*

> *5.8. […] "NET" with respect to any payment hereunder means that such payment, shall (i) be made free and clear of and without deduction or withholding for or on account of any and all present or future Chinese income taxes and/or social contributions and (ii) the recipient of such payment shall not incur any Additional Chinese Tax in respect of such payment. If the payor shall be required by law to deduct or withhold any such taxes and/or social contributions or if there is Additional Chinese Tax, the sum payable shall be increases as may be necessary so that after making all such required deductions or withholdings, and after assuming payment by the payee of such Additional Chinese Tax, the payee receives an amount equal to the sum it would have received had no such deductions or withholdings been made or Additional Chinese Tax been payable.*
>
> *"Additional Chinese Tax" with respect to any payment hereunder means the amount of any Chinese income taxes and social contributions (other than those imposed by deduction or withholding) properly paid or payable by the payee in connection with the receipt of such payment".*

175. In that respect, the Panel finds that the Coach's request for the confirmation of the payment of taxes by the Club concerns his contractual relationship with the latter and, accordingly, his claim *"appears to be contractually grounded"*.

176. Consequently, the Panel concludes that the Single Judge of the FIFA PSC was competent to consider and rule on the Coach's request for relief in relation to the tax matter.

177. In respect of the merits of such request and taking into account the Club's allegations that the Employment Contract does not create an obligation on the Club to provide the Coach with the related tax certificates, the Panel observes that indeed the Employment Contract does not contain any provision in that regard.

178. The Panel notes the Coach's arguments in that regard, stating that *"(s)uch proof of payment will be essential for the Coach in order to demonstrate that the amount of compensation was already taxable in origin and thus allowing the Coach to recourse to double taxation treaties in order to adjust the corresponding taxes to be paid in their countries of origin"*.

179. Subsequently, the Panel finds that the Coach's request is sufficiently justified, in particular in view of the Club's contractual obligation to pay any amounts under the Employment Contract net (i.e., *"free and clear of and without deduction or withholding for or on account of any and all present or future Chinese income taxes and/or social contributions"*), and decides to confirm the decision of the Single Judge of the FIFA PSC on this point and to reject the Club's related request for relief.

3. Is the Club entitled to the reimbursement by FIFA of procedural costs relating to the proceedings before the Single Judge of the FIFA PSC?

180. The Panel observes that, among its requests for relief, the Club seeks reimbursement from FIFA of the amount of procedural costs (i.e., CHF 25,000) borne by it in relation to the proceedings before the Single Judge of the FIFA PSC, *"if the Panel finds that FIFA was wrong in adjudicating the Claim* [at the first instance] *or, alternatively, in awarding any amount of compensation to the Coach"*.

181. In that respect, the Panel points out that both the competence of the Single Judge of the FIFA PSC to rule on the matter-at-hand and the Coach's right to compensation have been confirmed in the present proceedings and in accordance with the above.

182. Accordingly, the Panel finds that the Club's request for the reimbursement of the procedural costs borne by it in the proceedings before the Single Judge of the FIFA PSC is irrelevant and shall be disregarded.

183. For the sake of completeness, the Panel wishes to emphasize that, even if the competence of the Single Judge of the FIFA PSC was not confirmed during these proceedings or if the Panel had found that the FIFA PSC erred in awarding compensation to the Coach from the Club, *quod non*, based on long-established CAS jurisprudence, *"it is not for the CAS to reallocate the costs of the proceedings before previous instances"* (CAS 2013/A/3054; CAS 2016/A/4387; CAS 2017/A/4994).

C. Conclusion

184. In conclusion, on the basis of the rules applicable to the merits and for all the reasons set out above, the Panel holds that the appeal lodged by the Club shall be partially upheld in the *quantum debeatur*; thus, the Appealed Decision warrants a correction in respect of Point 4 thereof, and any other prayers or requests for relief shall be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Dalian Professional Football Club on 22 April 2020 against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 14 February 2020 is partially upheld.

2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 14 February 2020 is confirmed with the exception of point 4 of the operative part of the decision, which is modified as follows:

   4. The Respondent/Counter-Claimant, has to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of the present decision, compensation for breach of contract in the amount of EUR […] net, plus 5% interest p.a. as from 1 January 2019 until the date of effective payment.

3. (…).

4. (…).

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