Arbitration CAS 2022/A/8960 Pyramids FC v. Cristian Benavente Bristol & Fédération Internationale de Football Association (FIFA), award of 6 September 2023

Panel: Mr Rui Botica Santos (Portugal), President; Mr Michele Bernasconi (Switzerland); Mr Carlos del Campo Colás (Spain)

Football
Termination of contract with just cause
Burden and standard of proof
Standing to be sued
Rebus sic stantibus principle
COVID-19 invoked as force majeure
Default notice time limit contained in Article 14bis RSTP

1. **According to the burden of proof, it is for the party that derives a claim from a certain fact to prove the existence of such fact. This general rule is applied in several jurisdictions and is explicitly contained in Article 8 of the Swiss Civil Code. As to the standard of proof, it is a well-established practice that in the lack of any specific legal or regulatory requirement, in a civil dispute a CAS panel has to apply the usual standard of proof for civil matters, i.e. the one of comfortable satisfaction.**

2. **Standing to be sued or *"légitimation passive"* in French, refers to the party against whom an appellant must direct its claim to be successful. In principle, a party has standing to be sued if it is personally obliged by the claim brought by an appellant. Article 57 (1) of the FIFA Statutes provides that an appeal against a decision of a FIFA body must be lodged with the CAS. However, neither the FIFA Statutes, nor the CAS Code specify against which party the appeal should be lodged, i.e. who has standing to be sued. This *lacuna* should be filled by Swiss law, and more precisely by Article 75 of the Swiss Civil Code. As per this provision, the challenge against an association decision must, in principle, be filed against the association that issued such a decision. This applies to decisions of FIFA as well. While there are circumstances in which FIFA's presence is mandatory (those that contain a vertical element – vertical disputes), there are certainly other circumstances and situations in which FIFA's presence is optional (those that contain a horizontal element – horizontal disputes), i.e. its absence from the arbitral proceedings cannot cause - *per se* - the dismissal of the appeal. However, even if optional, the presence of FIFA among the respondents cannot be rejected by FIFA, in view of the clear rule of Article 75 of the Swiss Civil Code.**

3. **Like *force majeure* cases, the *rebus sic stantibus principle* should also be viewed as an exception to the general rule that requires the performance of contracts while they are in force (*pacta sunt servanda*).**

4. FIFA has not recognised COVID-19 as a *force majeure* situation in any country or territory, nor that any specific employment or transfer agreement has been affected by the concept of *force majeure*. It is therefore for the party that invokes *force majeure* to discharge the burden to prove the existence of the relevant event under the applicable law/regulations, as well as the consequences deriving from it.

5. Article 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) provides for a 15-day time limit when placing a debtor club in default. However, this provision also states that *"[a]lternative provisions in contracts existing at the time of this provision coming into force may be considered"*. Such provision does not clarify whether the parties' autonomy can be exercised to reduce the duration of default notices. In that regard, within the general limits of the freedom to contract, Article 14bis of the RSTP does not prevent parties from agreeing on a shorter notice period, provided that such a shorter notice period is reasonable.

I. PARTIES

1. Pyramids Football Club (the "Appellant", "Pyramids" or the "Club") is an Egyptian professional football club with its registered head office in New Cairo, affiliated to the Egyptian Football Federation (the "EFF"), which is a member association of the Fédération Internationale de Football Association.

2. Mr Cristian Benavente Bristol (the "First Respondent" or the "Player") is a Spanish-Peruvian professional football player, born on 19 May 1994, who is currently playing for the Club Alianza Lima, in Peru ("Alianza Lima").

3. Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliates. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code with headquarters in Zurich, Switzerland.

4. The Appellant and the First Respondent are jointly referred to as the "Contracting Parties".

5. The First Respondent and the Second Respondent are jointly referred to as the "Respondents".

6. The Appellant, the First Respondent and the Second Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the Parties' submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal

discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

(A) Introduction

8. This appeal case (the "Appeal") before the Court of Arbitration for Sport (the "CAS") is related to the challenging of the decision adopted by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 21 April 2021 (case ref. FPSD-4199), with grounds communicated to the Contracting Parties on 17 May 2021, which ordered Pyramids to pay the Player the total amount of EUR 1,500,000 net as compensation due to outstanding salaries and remuneration values (the "Appealed Decision" or the "FIFA DRC Decision").

(B) The Employment Agreement between the Player and the Club

9. On 22 January 2019, the Belgian club Sporting du Pays de Charleroi NV ("Charleroi") and Pyramids signed a transfer agreement by means of which the Player was transferred to the latter against the payment of a transfer fee amounting to EUR 4,350,000 net (the "Transfer Fee"). On this same date, Pyramids and the Player signed an employment contract valid as from the date of signature until 30 June 2022 (the "Employment Contract").

10. Item 4 of the Employment Contract established the following:

*"**Item 4: Obligations of the [Club]**:*

The total amount of the [Employment Contract] is (EUR 5,250,000) (…), the [Club] shall comply to pay this amount as following:

1. *Payment of a monthly salary of (EUR 87,500) (…) to the [Player] at the end of every Gregorian month.*
2. *(…) EUR 225,000 to be paid by cash for the [P]layer in 30-01-2019.*
3. *(…) EUR 450,000 to be paid by cash for the [P]layer in 30-08-2019.*
4. *(…) EUR 450,000 to be paid by cash for the [P]layer in 30-08-2020.*
5. *(…) EUR 450,000 to be paid by cash for the [P]layer in 30-08-2021.*
6. *The Club shall provide the [Player] with six return Business Class air tickets for him and his wife and kids from his country to Egypt per season.*
7. *Housing allowance: the [C]lub provides free housing for the [P]layer.*
8. *Transportation: the [C]lub provides free car for the [P]layer*

(…)".

11. Furthermore, Item 6 of the Employment Contract established the following:

"Item 6: Regular Payment of Salary & Termination of Contract

1. The [Club] may not delay payment of the [Player's] salaries or terminate the [Employment Contract] due to [P]layer's injury during play or training.

2. In case the [Club] fails to pay to the [Player] two monthly salaries as determined in Item 4 of (…) [the Employment] Contract, [the Player] is obliged to send the [Club] notice in writing, expressly warning that he will unilaterally terminate the contract for such non-payment and give it a further term of ten (10) working days to pay in full such monetary amount. If within the next ten (10) working days, the [Club] fails to pay to the [Player] this monetary amount, the [Player] shall have the right to unilaterally terminate (…) [the Employment] Contract with just cause and request compensation".

(C) The loan of the Player to FC Nantes

12. On 4 August 2019, Pyramids and the French club FC Nantes ("FC Nantes"), signed a loan agreement (the "First Loan Agreement") by which the Player was temporary transferred from the former to the latter from 5 August 2019 until 30 June 2020 (the "Term of the First Loan").

13. On 5 August 2019, the Player and Pyramids signed a side agreement titled *"loan agreement"* according to which they stipulated the conditions of the loan period to FC Nantes (the "First Side Agreement"). In accordance with Clause 3.1 of the First Side Agreement, Pyramids undertook to pay the Player the following amounts:

    (a) EUR 500,000 net *"after five business days commencing from the actual date of receiving the amount from [FC Nantes] and this amount shall be paid from [FC Nantes] to [Pyramids FC] on 1 September 2019"*; and

    (b) EUR 500,000 net, payable in five instalments of EUR 100,000 each, due by: *(i)* 15 September 2019; *(ii)* 15 October 2019; *(iii)* 15 November 2019; *(iv)* 15 December 2019; and *(v)* 31 December 2019.

14. In addition, Clause 3.2 of the First Side Agreement reads as follows: *"Hence, by receiving from [Pyramids] these payments in (2019-2020) for the year loan, the [P]layer acknowledges that he received all his dues from [Pyramids] and he has no right to claim [Pyramids] during the loan period, and all player's financial rights, set out in [the First Side A]greement, are the sole rights that he may have accordingly".*

15. On 28 June 2020, Pyramids sent the Player a letter informing *inter alia* that: *(i)* the national championship for the 2019/2020 season would resume in July 2020 after the suspension caused by the COVID-19 pandemic, and the commencement of the 2020/2021 would be announced after the ending of the previous championship; *(ii)* the provisions of the Employment Contract would be effective as from the beginning of the 2020/2021 season; and *(iii)* the Club would

notify the Player once the league of 2019/2020 season had ended in order to *"start negotiations of rescheduling the salaries, set forth in [the Employment Contract], in accordance with the new season period"*.

16. On 29 June 2020, the Player replied to Pyramids' letter, in *quoted verbatim*: *"(…) My understanding is that you do not want me to join the trainings on July 1, 2020 and want me to wait until the calendar of 20/21 season is clarified (hopefully during July). I have no issue with this but I remain at your disposal to return asap to physical training. In the meanwhile, I will maintain personal training and expect from team physical coach a schedule of training seasons. I understand and confirm you that my contract is valid. And in place in the terms signed and agreed. Any change on that contract would be discussed at the appropriate time but I insist that my availability for the club is 100% and I am ready to resume my presence in Egypt ASAP"*.

(D) The loan of the Player to the Royal Antwerp Football Club

17. On 1 October 2020, Pyramids and the Player signed a document titled "Contract of Professional Player's Entitlements" according to which it was agreed that the Player would be loaned to the Belgian club, Royal Antwerp Football Club NV ("RAFC") for the 2020/2021 season (the "Second Side Agreement").

18. On 5 October 2020, Pyramids and RAFC signed a loan agreement (the "Second Loan Agreement") valid as from 1 October 2020 until 30 June 2021 (the "Term of Second Loan"). As per the Second Loan Agreement the Parties agreed, *inter alia*, the following:

<u>Clause 1.5:</u>

"During the Term of Loan, RAFC will be responsible for payment of wages and other expenses to the Player in accordance with the employment agreement agreed between the Player and RAFC. Pyramids FC shall have no other liability to the Player during the Term of Loan. In particular, Pyramids FC shall be released from its obligations under the Employment [Contract] to pay any fee, bonus, benefit or other type of remuneration".

<u>Clause 3</u>:

"1. RAFC shall have the option to complete the permanent transfer of the Player with effects from 1 July 2021 (hereinafter referred to as "Purchase Option") provided that RAFC shall exercise this option in writing to Pyramids FC no later than 30 June 2021.

2. If RAFC does not exercise the Purchase Option in compliance with the conditions defined in this Agreement within the mentioned date, then the Player's registration will revert back to Pyramids FC on 1 July 2021".

19. In accordance with Article 3 of the Second Side Agreement, Pyramids undertook to pay the Player the following amounts:

    (a) EUR 700,000 net, payable in seven instalments of EUR 100,000 each, due by: *(i)* 15 October 2020; *(ii)* 1 November 2020; *(iii)* 1 December 2020; and *(iv)* 1 January 2021; *(v)* 1 February 2021; *(vi)* 1 March 2021; and *(vii)* 1 April 2021; and

(b) EUR 200,000 net by 1 February 2021, *"provided that the obligation of paying the loan fee set forth in the [Second Loan Agreement] is fulfilled by RAFC within the agreed date, which is 30 October 2020. It is agreed between the parties that the club shall not be responsible for any delay made by RAFC. The aforementioned amount will not be due as long as RAFC fails to comply with its obligation"*.

20. In addition, Article 3.3 of the Second Side Agreement reads as follows: *"(…) by receiving from the Club the aforementioned payments, the Player acknowledges that he waives all his dues before the Club he has no right to claim the Club with any claim derived from previous Employment [Contract] regarding the period of the Term of Loan and prior to the Term of Loan. To avoid any doubts, the Player has no rights to claim the Club with the rest salaries set forth in previous Employment [Contract] for seasons 2018/2019 and 2019/2020 in particular the last salary, and his dues derived from the loan agreement dated 05/09/2019 concluded between the Player and the Club"*.

(E) The sub-loan of the Player to Charleroi

21. On 1 February 2021, Pyramids, RAFC and Charleroi signed a sub-loan agreement in accordance with which the Player was sub-loaned from RAFC to Charleroi from 1 February 2021 until 30 June 2021 (the "Sub-Loan Agreement").

22. The Player terminated his contractual relationship with Charleroi on 30 June 2021.

(F) The dispute between the Player and the Club

23. On 1 July 2021, upon the termination of the Sub-Loan Agreement, the Player returned to Cairo (Egypt) and started participating in training sessions. The flight ticket to Cairo was provided by Pyramids.

24. On 7 September 2021, the Player put Pyramids in default and requested the payment of EUR 625,000 net corresponding to his salaries for July and August 2021, as well as the lump sum (EUR 450,000) due on 31 August 2021. The Player granted Pyramids a 10 days deadline to perform the payment.

25. On 8 September 2021, Pyramids replied to the Player's notification and *inter alia* stated that *"the payment dates of season 2021/2022 salaries set forth in the [E]mployment [C]ontract are delayed until the actual commencement date of new season 2021/2022"*. Therefore, Pyramids wrote that it would inform the Player of the start of the season to *"start the negotiations of rescheduling the salaries set forth in the employment contract in accordance with the new season period"*.

26. On 10 September 2021, the Player sent another notice to Pyramids rejecting the Club's interpretation of the facts and proposed a new payment schedule to remedy the situation:

(a) EUR 500,000 net on 1 October 2021; and

(b) EUR 1,000,000 net to be paid in 8 monthly instalments of EUR 125,000 each, the first due by 1 October 2021 and the last due by 1 June 2022.

27. On 14 September 2021, the Player's representative sent a notice to Pyramids acknowledging that the Player had not been authorized to join the pre-season training stage in Alexandria, Egypt, together with the other members of the team. Consequently, the Player requested instructions in relation to his pre-season training. On this same date, Pyramids sent the Player a request for medical and anti-drug tests to be taken on the following day.

28. On 15 September 2021, Pyramids answered to the Player informing that – by decision of the technical staff – the Player should not join the rest of the team for the pre-season but should attend the training session in another location, under penalty of breach of the Employment Contract.

29. On 26 October 2021, the Player notified Pyramids of the termination of the Employment Contract due to overdue payables, as per Item 6 of the Employment Contract and Article 14bis of the FIFA Regulations on the Status and Transfer of Players edition August 2021 (the "RSTP"). The Player pointed out that the following amounts remained outstanding: *(i)* EUR 450,000 net due by 30 August 2021; and *(ii)* the salaries of July, August, and September 2021 (EUR 87,500 per month).

(G) Proceedings before the FIFA Dispute Resolution Chamber

30. On 4 November 2021, the Player filed a claim with the FIFA DRC against the Club requesting the payment of the following amounts:

    (a) EUR 788,333.33 (net) as outstanding remuneration, corresponding the salaries from July 2021 until 26 October 2021, as well as the lump sum of EUR 450,000 due on 30 August 2021; and

    (b) EUR 1,086,666.67 (net) as compensation for breach, corresponding to the residual value of the Employment Contract (EUR 711,666.67) plus three additional salaries (EUR 375,000).

31. Pyramids opposed the allegations of the Player and lodged a counterclaim. Pyramids argued that it is entitled to receive compensation for breach of the Employment Contract amounting to *"one-quarter of [the Player's] monthly salary"* (*i.e.* EUR 21,875), as well as damages for further losses in accordance with the Swiss Law (*i.e.* EUR 966,666.67, corresponding to the non-amortized amount of the Transfer Fee). Furthermore, the Club requested that 5% interest *p.a.* as from 27 October 2021 accrued on the amounts due. Pyramids based its counterclaim on the effects of the COVID-19 outbreak and the doctrine of *clausula rebus sic stantibus*.

32. On 21 April 2022, the FIFA DRC issued the Appealed Decision:

    "(…)

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

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

3. The [Club] *has to pay to the* [Player] *the following amount(s):*

- *EUR 87,500 net as* outstanding *remuneration plus 5% interest p.a. as from 1 August 2021 until the date of effective payment;*

- *EUR 450,000 net as outstanding remuneration plus 5% interest p.a. as from 31 August 2021 until the date of effective payment;*

- *EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 September 2021 until the date of effective payment;*

- *EUR 87,500 net as* outstanding *remuneration plus 5% interest p.a. as from 1 October 2021 until the date of effective payment;*

- *EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 November 2021 until the date of effective payment;*

- *EUR 700,000 net as compensation for breach of contract plus 5% interest p.a. as from 4 November 2021 until the date of effective payment.*

4. Any further claims (…) are rejected.

(…)".

33. On 17 May 2022, the grounds of the Appealed Decision were notified to the Contracting Parties. In essence, the Appealed Decision's grounds can be summarised as follows:

- The Employment Contract was reinstated on 1 July 2021 after the termination of the Sub-Loan Agreement, seeing as the Player flew back to Cairo and reintegrated the team's training sessions.

- The salaries of July, August, September and October 2021 and the lump sum of EUR 450,000 were due as per the Employment Contract. The Sub-Loan Agreement terminated on 30 June 2021 and the Employment Contract was reinstated on 1 July 2021. The remuneration conditions within the Second Side Agreement were only related to the Term of the Second Loan.

- The Club was unable to meet its burden of proof regarding the alleged violation of the *clausula rebus sic stantibus*. Pyramids did not provide any convincing documentation pertaining to the question and the concept of *force majeure* in line with the COVID Guidelines issued by FIFA. Furthermore, the FIFA DRC considered that the alleged financial difficulties were not valid arguments *per se*.

- In light of the above, the Player had just cause to terminate the Employment Contract as per Article 14bis of the RSTP and Item 6 of the Employment Contract and is entitled to receive the outstanding remuneration values plus compensation for the breach of contract

as per Article 17 of the RSTP, all of this mitigated by the amounts received from the contract signed with Alianza Lima.

(H) The new employment relationship of the Player

34. On 31 January 2022, the Player signed a new employment agreement with the Peruvian club Alianza Lima, valid as from 1 February 2022 until 31 December 2022 (the "New Employment Contract").

35. According to the New Employment Contract, the Player was entitled to: *(i)* a monthly salary of USD 3,000 net; and *(ii)* a fixed payment of USD 176,500 net, in 11 monthly instalments, due by the last day of each month starting on 28 February 2022 and ending on 31 December 2022.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 7 June 2022, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed its Statement of Appeal (the "Statement of Appeal") with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Appellant nominated Mr Michele A. R. Bernasconi as arbitrator.

37. On 17 June 2022, the Appellant requested for a 10-day extension for filling the Appeal Brief (the "Appeal Brief"), in accordance with Article R32 of the CAS Code.

38. On 20 June 2022, the CAS Court Office granted the Appellant an extension to file the Appeal Brief until 27 June 2022.

39. On 27 June 2022, the Appellant submitted its Appeal Brief pursuant to Article R51 of the CAS Code.

40. On 29 June 2022, the Second Respondent requested to be excluded from these proceedings due to lack of standing to be sued.

41. On 30 June 2022, the CAS Court Office requested the Appellant to inform, by no later than 4 July 2022, if it wanted to maintain or withdraw the Appeal against the Second Respondent.

42. On 1 July 2022, the First Respondent requested the CAS Court Office for a suspension of his deadline to submit his Answer (the "Player's Answer"), which was not granted.

43. On 4 July 2022, the First Respondent nominated Mr Carlos del Campo Colás as arbitrator.

44. On 6 July 2022, the Second Respondent requested the time limit to file its Answer (the "FIFA's Answer") to be fixed once the advance of costs was paid by the Appellant. Pursuant to Article 55 (3) of the CAS Code the request was granted by the CAS Court Office.

45. On 11 July 2022, the Second Respondent agreed to the nomination of Mr Carlos del Campo Colás as arbitrator and reiterated its lack of standing to be sued.

46. On 12 July 2022, the CAS Court Office informed the Parties that the Appellant was granted a 10-day extension – until and including 14 July 2022 – to inform whether it wanted to maintain its Appeal against the Second Respondent.

47. On 14 July 2022, the Appellant requested a copy of the CAS award with the reference CAS 2014/A/3489-3490, as well as an extension on the deadline to inform whether it wanted to maintain its Appeal against the Second Respondent.

48. On 15 July 2022, the CAS Court Office provided the Appellant with a copy of the requested award and granted an extension of six days – until and including 20 July 2022 – for the Appellant to present its position regarding its appeal against the Second Respondent.

49. On 20 July 2022, the Appellant confirmed its position in maintaining the Appeal against the Second Respondent.

50. On 29 July 2022, the First Respondent requested for a 10-day extension on the time limit to submit his answer.

51. On 2 August 2022, the CAS Court Office, on behalf of the Director General and pursuant to Article R32 (2) of the CAS Code, granted the First Respondent with the requested extension.

52. On 11 August 2022, the Player submitted his Answer.

53. On 22 August 2022, the CAS Court Office informed the Parties that the Appellant had paid its share of the advance of costs. As such, the CAS Court Office also informed that the Second Respondent's timeline to submit its answer would start to run as from that date.

54. On 6 September 2022, the Second Respondent requested a 10-day extension of the deadline to submit its answer.

55. On 7 September 2022, the CAS Court Office informed the Parties that FIFA's request for extension of time was granted, pursuant to Article R32 (2) of the Code.

56. On 21 September 2022, FIFA submitted its Answer.

57. On 22 September 2022, the CAS Court Office informed the Parties that the Panel to decide the Appeal was constituted as follows:

President: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

Arbitrators: Mr Michele A. R. Bernasconi, Attorney-at-Law, Zurich, Switzerland

Mr Carlos Del Campo Colás, Attorney-at-Law, Madrid, Spain.

58. On 22 September 2022, the CAS Court Office invited the Parties to inform whether they prefer a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

59. On 31 October 2022, after consultation with the Parties, the Panel decided to hold a hearing via videoconference. The hearing was scheduled for 5 December 2022.

60. On 8 November 2022, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.

61. On 5 December 2022, a hearing was held by videoconference. The following persons attended the hearing in addition to the Panel and Mr Fabien Cagneux, as CAS Managing Counsel:

    1. For the Appellant

        - Mr Rolf Muller – Legal Counsel
        - Mr Zani Dzaferi – Legal Counsel
        - Mr Mamdouh Eid – Legal Representative (CEO) and witness

    2. For the First Respondent

        - Mr Joaquim Jofre Fernández Abascal – Legal Counsel
        - Mr Cristian Benavente Bristol – Respondent

    3. For the Second Respondent

        - Mr Saverio Paolo Spera – Senior Legal Counsel
        - Ms Cristina Pérez González – Senior Legal Counsel

62. As a preliminary remark, the Parties were requested to confirm not having any objection to the constitution and composition of the Panel, and they so confirmed.

63. The Parties were given the opportunity to present their case and make their submissions and arguments. After the Parties' closing submissions, the hearing was closed, and the Panel reserved its decision to this Award.

64. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

IV. THE PARTIES' SUBMISSIONS

65. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellant's Submissions

66. In its Appeal Brief the Appellant submits the following prayers and requests the CAS:

"1. In acceptance of the present Appeal, the decision of the FIFA Dispute Resolution Chamber of the 21st of April 2022 (Ref. Nr. FPSD-4199) shall be fully / entirely annulled and

1.1 The claim of the First Respondent of the 3rd of November 2021 before the Second Respondent fully rejected.

1.2 The First Respondent obligated and judged to pay to the Appellant EUR 21'875.00 with a default interest of 5 % from the 27th of October 2021.

1.3 The First Respondent obligated und judged to pay to the Appellant EUR 966'666.67 with a default interest of 5 % from the 27th of October 2021.

2. The costs and compensations shall be imposed to the Respondents".

67. The Appellant advanced the following grounds in support of the Appeal:

(i) On 26 October 2021, the Player terminated the Employment Contract without just cause.

(ii) The Player was not entitled to receive any salary during the period 1 July to 26 October 2021, because the Egyptian season 2020/21 was extended and the Payer could not be registered before the end of such season. The Player could only be registered for the season 2021/22 upon the end of the season 2020/21 (*i.e.* in October 2021). The Player returned to the Club on 1 July 2021 by his own initiative. The Player was allowed to join the training sessions because he was part of the team, but he was not registered, and he could not perform any services for the Club.

(iii) If the Egyptian season had ended on 30 June 2021, it would have made perfect sense for the Player to have been immediately registered for the 2021/2022 Egyptian season. But this was not the case. The Egyptian season lasted until the end of September 2021 and until this date the Player was not in a position to provide his services. If the Contracting Parties had known in advance that an Egyptian season would be extended, they would have had the opportunity to specify that the Club's pecuniary obligations to the Player would only restart with the start of the new Egyptian season 2021/2022 (i.e. from October 2021). This circumstance has to be taken into consideration. The remuneration of the Player should not be analysed from the point of view of monthly remunerations but per season.

(iv) The Contracting Parties had signed several agreements to settle their financial obligations. The relevant agreements are the First Side Agreement and the Second Side Agreement.

(v) Nevertheless, the Sub-Loan Agreement covered the Player's remuneration until the end of the Egyptian season 2020/21. The Egyptian season was postponed due to the pandering circumstances of COVID-19 and this fact cannot be attributed to the Club. Therefore, *"(...) it must be assumed that the continued payment of salaries will only be revived when*

the new season actually starts. As is known, this was only after October" and the Club *"was therefore never in default"*.

(vi) The Player did not have any claim against the Club for the season 2019/2020. The Egyptian season 2019/20 lasted until 31 October 2020 (*i.e.* longer that the French season and the Term of the First Loan. Between 1 July 2020 and 31 October 2020, the Player has not claimed any salaries and accepted that such salaries were within his contract with FC Nantes. For the season 2020/21 the Player received nearly EUR 900,000. *"It does not make sense and is inconsequence, that the Player received for two seasons (2019/2020 and 2020/2021) nearly the same additional extra-amount next to the salaries, wages, etc. which he already received by the Loan Clubs, and the Player claiming additional amounts for the respective season in one season (2020/2021) and in the other season (2019/2020) not". "(…) it is clear that the parties did also exclude any additional entitlement of the Player in the season 2020/2021 after they already agreed to an extra-compensation of EUR 900,000 next to the ones of the Loan Clubs"*. The FIFA DRC did not consider these contractual arrangements. The true intention of the Contracting Parties was that the remuneration received by the Player during the loan periods would cover any future credits that the Player would be entitled to receive from the Employer Contract for that same season.

(vii) The Player was not entitled to receive a payment (bonus) of EUR 450,000 on 30 August 2021. The EUR 450,000 payment was a loyalty bonus with the aim to compensate the Player for his loyalty in fulfilling the Employment Contract. This bonus was an incentive payment for the Player to remain with the Club. It was not an unconditional payment. This amount was to be paid at the beginning of each season. This was the will of the Contracting Parties. The Player did not play in the 2021/2022 season and for this reason, was not entitled to receive this bonus.

(viii) The impact of COVID-19 pandemic affected the Club and the principle of *clausula rebus sic stantibus* is applicable. The employment relationship was severely affected by the COVID-19 pandemic and considering these circumstances the Player could not terminate the Employment Contract based on the alleged non-payment of his outstanding salaries.

(ix) In any event, even if the Player had any reason to claim any outstanding salaries, the Player failed to comply with the regulatory requirements imposed. The Player did not correctly put the Club in default because it gave the Club only 10 days to comply with its alleged financial obligations. Article 14bis (1) of the RSTP provides for a period of "at least" 15 days' notice and the Player only granted a period of 10 days. This provision is mandatory, and the Contracting Parties could not agree on a shorter period. Additionally, it should also be taken into consideration that the 2020/2021 season did not end until October 2021 or at the latest at the end of September 2021. Therefore, as of 26 October 2021, two of the Player's salaries were not overdue.

(x) The Player had the duty to mitigate his damages. FIFA DRC has *"(…) solely relied on the statements of Alianza Lima according to which the [Player] allegedly was entitled to approximately USD 19,045.45 per month (i.e USD 3,000 as salary and an average of USD 16,045.45 as fixed payment)"*. The alleged salary of *"(…) USD 3,000 and a signing fee of USD 16,045.45 (as*

monthly average)" cannot be accepted. *"At least the [Player] could have earned USD 64,181.82 per month at Alianza Lima. Together with the monthly average signing fee this makes a total of USD 80,227.27. For five months (February until June 2022), the [Player] could have mitigated his damage about USD 401,136.35. Thus, even if the [Club] would have to pay an additional compensation of three-monthly salaries (…) which is contested, the awarded amount should be at least USD 138,636.35 less (…)"*. The residual value of the Employment Contract has to be mitigated with the correct amounts received by the Player during the remaining period of the Employment Contract.

(xi) The Player breached the Employment Contract and must compensate the Club. The Club is entitled to a compensation equal to one-quarter of the employee's monthly salary of EUR 87,500 (EUR 21,875, plus 5% from 27 October 2021) and the percentage of the non-amortized Transfer Fee (EUR 4,350,000) which was planned to be amortized within 36 months (EUR 120,833.33 per month). Since the Player left the Club eight months before the expiry of the Employment Contract, the amount not amortized, that the Player shall compensate, is EUR 966,666.67, plus 5% interest from 27 October 2021.

(B) The First Respondent's Submissions

68. In the Player's Answer, the First Respondent seeks the following reliefs from the CAS:

"To dismiss the appeal, confirming the decision of DRC and to order payment by the Appellant of all the costs of the arbitration as well as legal costs suffered by the Player".

69. The First Respondent advanced the following grounds:

(i) The Employment Contract was reinstated on 1 July 2021 after the termination of the Sub-Loan Agreement. In fact, the Player returned to Cairo on this date, and it was reintegrated to the Club's team. The Club provided the Player the flight ticket for his return to Cairo;

(ii) The Player's remuneration values were due since the Employment Contract was reinstated (i.e. 1 July 2021). The payment of the lump sum of EUR 450,000 is a signing bonus, a not a loyalty bonus. This type of bonus is a usual practice in the football world, often paid at the beginning of each season;

(iii) The Employment Contract sets forth the remuneration values and payment conditions referring to specific dates and not seasons. The Player's salary package included both the monthly salaries of EUR 87,500 and the lump sum of EUR 450,000. There is also no mention of any "loyalty bonus" or an obligation to return such bonus in case the Player leaves the Club;

(iv) The financial implications of COVID-19 on the Club are not a valid reason to justify the non-fulfilment of the Club's pecuniary obligations. The Club's behaviour during the transfer window reveals that the circumstances associated with the COVID-19 pandemic

did not drastically affect the Club's finances. During the pandemic period the Club made significant investments in signing new players, increasing its debt.

(C) The Second Respondent's Submissions

70. In the FIFA's Answer, the Second Respondent seeks the following reliefs from the CAS:

"(…) FIFA respectfully requests CAS to issue an award on the merits:

(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;

(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 of FIFA's legal costs".

71. The Second Respondent advanced the following grounds in support of its appeal:

(i) The Appellant has not explained why FIFA was called as a party to this arbitration proceedings;

(ii) FIFA has no standing to be sued as (i) this case exclusively related to a horizontal dispute between Pyramids and the Player; (ii) none of the Appellant's requests for relief concerns FIFA; and (iii) there is no scope of discretion for the FIFA DRC with regards to the imposition of the consequences in case of non-compliance provided for Article 25 RSTP;

(iii) The FIFA RSTP is silent about the FIFA's standing to be sued in an appeal against a FIFA decision and Swiss law is only applicable on a subsidiary basis;

(iv) FIFA pointed out, among others, the following CAS jurisprudence:

(a) CAS 2008/A/1518 para. 24 and CAS 2015/A/4335 para. 49 ruling that Article 75 of the Swiss Civil Code (the "SCC") *"(…) does not apply indiscriminately to every decision made by an association. Instead, it must be determined in every case whether the appeal against a certain decision by an association falls under Art. 75 Swiss Civil Code, i.e. whether the prerequisites of Art. 75 Swiss Civil Code are met in a specific individual case. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which ca be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. (…) A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties".*

(b) *CAS 2015/A/4000 para. 75 "According to the well-established CAS jurisprudence (…), FIFA has no standing to be sued where it is only involved in the dispute between two parties (such as a player and a club as in the present case) merely as the adjudicating body having issued the appealed decision and the parties cannot bring an actual claim against FIFA".*

(v) The FIFA Tribunals offer a dispute resolution system where FIFA is not a party but a neural entity that is called to settle a strict horizontal dispute between its indirect members in a matter that does not concerns FIFA's relationship with one of those indirect members;

(vi) The imposition of the fixed sanctions in accordance with Article 24 RSTP is dependent on the outcome of the horizontal dispute and the appealed decision was not (directly) one of disciplinary nature;

(vii) The mechanism set out in Article 24 RSTP applies to all employment-related disputed between a club and a player and disputes between clubs as of 1 June 2018, as well as to disputes related to the solidarity mechanism and training compensation and this mechanism cannot affect the FIFA's lack of standing to be sued in any way as this case remains a purely contractual dispute. Furthermore, the registration of the decided sanction(s) will become applicable only if the due amounts are not paid within the 45-day time period and subject to the creditor requesting the implementation of the consequences after having duly complied with the pertinent formal requirement and provides the debtor with the relevant bank details. The sanction is not imposed automatically and depends on a serious of circumstances which at the moment that the decision is issued are inexistent. Moreover, the debtor has always the possibility to appeal that future FIFA decision which effectively implements the consequences of Article 24 RSTP before CAS;

(viii) On a subsidiary basis, FIFA states that the Appealed Decision is correct, fully justified and should be entirely upheld by the CAS.

V. JURISDICTION

72. Article R47 of the CAS Code states the following:

"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.

(…)".

73. In addition, Articles 56 (1) and 57 (1) of the FIFA Statutes provide as follows:

"Article 56.1 - FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents".

"Article 57.1 - 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".

74. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Articles 56 (1) and 57 (1) of the FIFA Statutes. Furthermore, the jurisdiction of the CAS is confirmed by the Order of Procedure duly signed by all Parties.

75. It follows that CAS has jurisdiction to hear this matter.

76. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case and can decide the dispute *de novo*. The Panel may issue a new decision that replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY

77. Article R49 of the 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

78. Article 57 (1) of the FIFA Statutes reads as follows:

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

79. The grounds of the Appealed Decision were notified to the Appellant on 17 May 2022 and the Statement of Appeal was filed on 7 June 2022, *i.e.* within the 21-day deadline fixed under Article 57 (1) of the FIFA Statutes. The Panel also notes that the admissibility of the Appeal is not contested by the Parties.

80. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

81. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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".

82. In addition, Article 56 (2) of the FIFA Statutes sets forth as follows:

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

83. Relevance is given to Clause 9 of the Transfer Agreement, on which the Parties have agreed the following:

"This Agreement shall be governed by and interpreted in accordance with the laws and regulations of FIFA, in particular FIFA Regulations. (…) in case of an appeal of FIFA decision, such dispute shall be finally settled in accordance with the Rules of the Code of Sports-related Arbitration of the Court of Arbitration for Sport".

84. Considering the above, the Panel is satisfied that the various regulations of FIFA – in particular, the RSTP – constitute the applicable law to the matter in dispute and that, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

85. In accordance with Article 26 (1) RSTP (edition August 2021) and considering that the claim before FIFA was initiated on 4 November 2021, the August 2021 edition of the RSTP is applicable to the matter at hand as to the substance of the dispute.

VIII. MERITS

(A) Introduction

86. Before assessing the legal issues at stake, the Panel deems it useful to clarify the scope of the Appeal – what is this case about?

87. The issue at the centre of the Appeal is whether the FIFA DRC, through the Appealed Decision, correctly concluded that the Player had just cause to terminate the Employment Contract and consequently ordered the Club to pay to the Player the total amount of EUR 1,500,000 (net) as compensation due to outstanding salaries and other remuneration values (see para. 30 above). Depending on whether or not there is just cause for termination of the Employment Contract, the Panel will have to determine the necessary legal consequences resulting therefrom.

88. Before proceeding with the analysis of the main issue, the Panel will briefly consider the rules applicable to the burden of proof and the applicable standard of proof. Thereafter, the Panel will also analyse and decide on the preliminary question regarding FIFA's standing to be sued.

(B) The burden and the Standard of proof

89. Before commencing the analysis of the merits of the case, the Panel notes that according to the burden of proof, it is for the party that derives a claim from a certain fact to prove the existence of such fact. This general rule is applied in several jurisdictions and is explicitly contained in Article 8 of the Swiss Civil Code, that reads as follows: *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

90. As to the standard of proof, it is a well-established practice that in the lack of any specific legal or regulatory requirement, in a civil dispute a CAS Panel has to apply the usual standard of proof for civil matters, i.e. the one of comfortable satisfaction. In the present case, the Panel sees no reason to impose a higher standard of proof than comfortable satisfaction (see CAS 2020/A/7503, para. 95; CAS 2018/A/6075, para. 46), seeing as the case at hand concerns essentially matters of contractual nature.

91. The "comfortable satisfaction" standard of proof may be defined *"(…) as being greater than a mere balance of probability but less than proof beyond a reasonable doubt (CAS 2014/A/3625, with further reference to CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2010/A/2172). In particular, CAS jurisprudence clearly established that to reach this comfortable satisfaction, the Panel should have in mind "the seriousness of the allegation which is made" (CAS 2014/A/3625, with further reference to CAS 2005/A/908, CAS 2009/A/1902)"* (CAS 2016/A/4558, para. 70).

(C) Preliminary Issue – FIFA's standing to be sued

92. In view of FIFA's specific request for relief, the Panel is required to review and assess FIFA's lack of standing to be sued in these arbitration proceedings.

93. Standing to be sued or *"légitimation passive"* in French, refers to the party against whom an appellant must direct its claim to be successful. In principle, a party has standing to be sued if it is personally obliged by the claim brought by an appellant.

94. Basically, FIFA requested and supported its position on the fact that (i) the dispute is of horizontal nature; (ii) it acted as an adjudicatory body; (iii) nothing has been requested against it; and (iv) the disciplinary sanctions awarded are not automatically imposed. On the contrary, the Club justified FIFA's standing to be sued on the arguments that the Appealed Decision was issued by FIFA and it imposed disciplinary sanctions against the Club.

95. Regardless of whether or not FIFA's presence in this proceeding is appropriate or necessary, the Appellant has taken the option of nominating FIFA as respondent, and it is now to the Panel to decide the invoked FIFA's lack of standing to be sued.

96. Article 57 (1) of the FIFA Statutes provides that an appeal against a decision of a FIFA body must be lodged with the CAS. However, neither the FIFA Statutes, nor the CAS Code specify against which party the appeal should be lodged, *i.e.* who has standing to be sued.

97. Keeping in mind that the Appealed Decision is to be qualified as an *association decision*, this lacuna should be filled by Swiss law, and more precisely by Article 75 of the Swiss Civil Code, which reads as follows: *"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof"*. As per this provision, the challenge against an *association decision* must, in principle, be filed against the association that issued such a decision. This applies to decisions of FIFA as well. While there are circumstances in which FIFA's presence is mandatory (those that contain a *vertical element – vertical disputes*), there are certainly other circumstances and situations – such as those in the present case – in which FIFA's presence is optional (those that contain a *horizontal element – horizontal disputes*), *i.e.,* its absence from the arbitral proceedings cannot cause - *per se* - the dismissal of the appeal. However, even if optional, the presence of FIFA among the respondents cannot be rejected by FIFA, in view of the clear rule of Article 75 of the Swiss Civil Code.

98. The qualification of this conflict as a horizontal dispute seems clear to the Panel. The Appeal concerns a contractual dispute of an employment-related nature between a player and a club. Nothing is requested from FIFA and its participation could have been withdrawn without any impact on the outcome of the Appeal.

99. However, FIFA's standing to be sued in this procedure should not be assessed according to its interest in defending the proceedings. Its standing to be sued should be assessed in the light of the applicable law and, of course, of the procedural rights of the Appellant. Regardless of its interest in defending the proceedings, the presence of FIFA in the proceedings, and its joinder as a party therein, cannot and should not, on the basis of Article 75 of the Swiss Civil Code, be considered improper, and it certainly should not be considered that it lacks standing to be sued. It is of course for FIFA to decide the extent of its subsequent participation in the proceedings, but nothing in the law/regulations sustains the argument that it lacks standing to be sued. In fact, whether or not FIFA is called as co-respondent in an appeal procedure does make indeed the position of FIFA slightly different in case the appeal is accepted. In such a case, FIFA is bound by the award not only on the basis of the Statutes of FIFA but also by the *res judicata* effect of the award itself.

100. In light of the above, the Panel is satisfied that FIFA has standing to be sued.

(D) Did the Player have just cause to terminate the Employment Contract?

(D.1) The Employment Contract: its suspension and reinstatement

101. The Employment Contract was signed on 22 January 2019 and was in force until 30 June 2022. Despite the fact that it was in force, the effects of the Employment Contract were suspended by the First Side Agreement (between 5 August 2019 and 30 June 2020) and, subsequently, by the Second Side Agreement (between 1 October 2020 and 30 June 2021). The Parties do not dispute these facts, or that the Player returned to the Club on 1 July 2021.

102. The dispute is essentially about the reinstatement of the effects of the Employment Contract on the expiry of the Second Side Agreement. In the Club's view, the Player's return to Egypt

was on his own initiative and did not automatically trigger any pecuniary obligation under the Employment Contract. This, according to the Club, was because the Employment Contract could not be reinstated, and the Player's federative rights could not be transferred back to the Club until the end of the 2020/2021 Egyptian season, i.e. until October 2021. Only after the end of the 2020/2021 season in Egypt, was it possible for the Player to recommence performance of his contract with the Club.

103. When the Employment Contract and the Second Side Agreement are read together, it is clear that the performance of the Club's pecuniary obligations would recommence on the expiry of the Second Side Agreement. This is because the succession of contracts determines that the suspension of the effects of the Employment Contract would cease on the expiry of the Second Side Agreement, when the performance of the contractual obligations agreed between the parties on it would automatically recommence. There is nothing in the contracts between the Contracting Parties that provides otherwise.

104. It is true that the interpretation of contracts cannot be based solely on their wording and must include consideration of the parties' intentions.[1] However, the matter at issue is unrelated to the interpretation of contractual clauses but concerns the rules governing the succession of contracts. The Club's argument that its pecuniary obligations to the Player would only recommence after the end of the 2020/2021 season, is neither supported by any clause of the contracts signed, nor proved by other evidence adduced by the Club. The Club relies only on the alleged suspension of the Employment Contract, for the duration of the 2020/2021 season of the Egyptian championship, which only ended in October 2021.

105. Moreover, the conduct of the Contracting Parties does not align with the Club's argument. For instance, as soon as the Player ended his relationship with Charleroi, he immediately returned to the Club, where he started to attend training sessions, in accordance with the instructions he received from the Club. The fact that the Club was unable to register the Player for the remainder of the Egyptian 2020/2021 season has no legal relevance. The fact that the Player may, or may not, have been able to participate in the Club's official matches is irrelevant in terms of the Second Side Agreement and the other contracts between the Contracting Parties.

106. In light of the above, the Panel concludes, on the basis of the Second Side Agreement, the Sub-Loan Agreement and the Employment Contract, that the Employment Contract is deemed to be reinstated on 1 July 2021.

(D.2) The Employment Contract: did the Player have just cause to terminate it?

107. In this section, the Panel will consider (i) whether the Player was entitled to the two months' salary claimed (July and August 2021), and to the payment of the lump sum of EUR 450,000 claimed.

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1 Article 18 of the SCO: *"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"*.

108. The Player unilaterally terminated the Employment Contract alleging just cause due to the non-payment of the July and August 2021 salaries, and the non-payment of the agreed lump sum of EUR 450,000 on 31 August 2021.

109. Based on the foregoing determination that the effects of the Employment Contract were reinstated on 1 July 2021, it follows that the Club was subject to an obligation to pay the Player the July and August 2021 salaries, and to pay him the agreed lump sum of EUR 450,000, on 31 August 2021.

110. However, in order to decide whether the amounts claimed by the Player were owed to him, the Panel must consider the following issues raised by the Club:

a. Did the Player waive the employment credits claimed, under the Second Side Agreement?

b. Was the Player entitled to receive the salary payments for July and August 2021, given the fact that his federative rights could not be transferred to the Club, and the Player had received all remuneration due to him for the 2020/2021 season, from Charleroi?

c. Was the Player entitled to receive the lump sum of EUR 450,000, an amount which in the Club's opinion was a loyalty bonus payable at the beginning of each new season, on condition that the Player would remain in the Club's employment? and

d. Did the effects of the COVID-19 pandemic amount to force majeure, which justifies the Club's failure to pay the sums claimed by the Player?

111. The Panel will consider the issues raised by the Club, in the order indicated above.

(a) Did the Player waive his claim to the credits by entering into the Second Side Agreement?

112. The Club invokes the waiver of the claims by the Player, on the basis of Article 3.3 of the Second Side Agreement, which reads as follows: *"(…), by receiving from the Club the aforementioned payments, the Player acknowledges that he waives all his dues before the Club and he has no right to claim the Club with any claim derived from Previous Employment Agreement regarding the period of the Term of Loan and prior to the Term of Loan. To avoid any doubts, the Player has no rights to claim the Club with the rest salaries set forth in the Previous Employment Agreement, for seasons 2018/2019 and 2019/2020 in particular the last salary (…)".*

113. Considering the wording of the said clause, the Panel's view is that the Player only waived his right to any claim regarding the Term of First Loan and the Term of Second Loan. Any subsequent claims of the Player after the end of the Term of Second Loan do not fall within the waiver clause in the Second Side Agreement. The Player's claim is related to salaries that became due after the end of the Term of Second Loan, which are within the waiver period.

114. The Panel notes the Club's argument that the situations in the First Loan Agreement and in the Second Loan Agreement were identical and, consequently, that if the Player makes no claim

against the Club in relation to the First Loan Agreement, he should not be entitled to make any claims against the Club on the basis of the Second Loan Agreement.

115. However, the Panel fails to see why the fact that the Player made no claims based on the First Loan Agreement (2019/2020 season) should, *per se*, prevent the Player from making the current claim. In any case, it is the Panel's understanding that the circumstances that gave rise to the Player's claim differ from those that existed at the end of the 2019/2020 season.

(b) Was the Player entitled to receive the July and August 2021 salary payments?

116. As previously determined, the effects of the Employment Contract resumed on 1 July 2021 and, as such, the Club assumed its financial obligations from that date onwards. The succession of contracts did not affect the proper and expected recommencement of the Club's obligations to the Player, under the Employment Contract. The Player resumed his duties at the Club on 1 July 2021 and recommenced participation in its sporting activities. The Player bears no responsibility regarding the differences between the 2020/2021 sporting calendars in Belgium and Egypt, and he cannot be penalized on such basis. Likewise, the fact that the Player could not participate in the Club's official competitions at the end of the 2020/2021 season cannot be attributed to him. These limitations are a consequence of the start and end dates of the Egyptian 2020/2021 season, and cannot affect the Player's contractual rights. The Panel therefore agrees with the position of the FIFA DRC that the Player was entitled to the two salary payments he claimed (July and August 2021).

(c) Was the Player entitled to receive the amount of EUR 450,000 due on August 31, 2021?

117. The Player claimed the payment of the sum of EUR 450,000 agreed in Item 4 of the Employment Contract (see para. 10 above). The Club contests the obligation to pay this lump sum, claiming that it is a *"loyalty bonus"*, which is conditional on the Player's presence during the following season. In the Club's opinion, the payment of this sum, which is paid at the beginning of each season, was intended to encourage the Player to remain with the Club.

118. If the lump sum of EUR 450,000 was in fact agreed as a *loyalty bonus*, the Parties should have specified this in the Employment Contract, particularly because *loyalty bonuses* are normally paid at the end of each season, and not in advance. In the Panel's views, based on the evidence available and the wording of the Employment Contract, this payment, like the others established in Item 4 of the Employment Contract, is part of the payment of a signing bonus, and is unconditional.

119. The Club has failed to discharge its burden of proof and its argument cannot succeed. The Employment Contract does not include any reference to a *loyalty bonus,* or to a reimbursement obligation, if the Player leaves the Club.

120. For the above reasons, the Panel is satisfied that the Club was under an obligation to pay the Player the agreed amount of EUR 450,000 on 31 August 2021.

(d) Was there a force majeure situation and should the principle of the rebus sic stantibus clause apply?

121. The Club essentially claims that the principle *clausula rebus sic stantibus* should apply *in casu* due to the existence of a *force majeure* situation caused by the COVID-19 pandemic. Like *force majeure* cases, the *rebus sic stantibus principle* should also be viewed as an exception to the general rule that requires the performance of contracts while they are in force (*pacta sunt servanda*).

122. The Club invokes the existence of the COVID-19 pandemic as an unforeseeable and unavoidable event that affected its ability to fulfil its financial obligations under the Employment Contract.

123. It is important to recall, when addressing this matter, that the Employment Contract was signed on 22 January 2019 and that the COVID-19 pandemic commenced in approximately December 2019. It should also be noted that the Employment Contract does not contain any *force majeure* clause and that the application of the *force majeure* principle to employment relations is far from moot, which is why FIFA has merely issued guidelines and recommendations regarding this issue.

124. FIFA has not recognized COVID-19 as a *force majeure* situation in any country or territory, nor that any specific employment or transfer agreement has been affected by the concept of *force majeure*. It is therefore for the party that invokes *force majeure* to discharge the burden to prove the existence of the relevant event under the applicable law/regulations, as well as the consequences deriving from it.

125. The FIFA guidelines regarding COVID-19 Football Regulatory Issues, specifically the document published in April 2020, are also of guidance. The section concerning *"[a]greements that cannot be performed as the parties originally anticipated"* provides for the amicable resolution of such disputes, always with a view to reaching an agreement between the parties.

126. There is no doubt that the COVID-19 pandemic caused much disturbance in the world, and affected football at various levels, as it led to a need for financial, regulatory, scheduling, and other adjustments. However, the Contracting Parties did not discuss any adjustments of the Player's remuneration under the Employment Contract. The Club did not fail to pay the amounts claimed by the Player for reasons associated with the COVID-19 pandemic, but for the reasons summarized in Section IV (A) of the Award.

127. The Club claims that the pandemic had serious financial implications for the Club, which made the payment of the Player's remuneration impossible. However, the Club has never invoked the COVID-19 pandemic, and its consequences, as a reason for the non-payment of the Player's claims. Moreover, the Club has not discharged its burden of proof in this regard. The Appellant merely argues that the pandemic had a significant impact on the Club's finances but has not submitted any evidence to that effect. In addition, it shall be noted that under Swiss law, financial difficulties of a debtor are never considered to be valid reasons to delay or not make a payment which is due.

128. The argument that the Egyptian Season was delayed due to COVID-19 and that when the Contracting Parties signed the Sub-Loan Agreement, they believed that both seasons would end at the same time, likewise cannot be accepted. The COVID-19 pandemic was already a reality when the Second Side Agreement was signed, and the Club could have anticipated any issues regarding the Player's salaries/credits until the end of the Egyptian season 2020/2021.

129. Considering the above, the Panel concludes that the requirements for the invocation of the *clausula rebus sic stantibus* in Swiss law have not been met. Moreover, the Panel does not agree with the Appellant that there is a *force majeure* situation, so that there is accordingly no basis for the application of the *clausula rebus sic stantibus*.

(D.3) Was the Club placed in default correctly?

130. The Club was placed in default by the Player, by his letter dated 7 September 2021. In the default letter sent to the Club, the Player claimed payment of the outstanding salaries for July (EUR 87,500) and August (EUR 87,500) 2021, plus the agreed lump sum of EUR 450,000 due on 31 August 2021. The Player's default letter gave the Club 10 days in which to pay the amounts claimed.

131. The Contracting Parties agreed to a 10-day notice period, as per Item 6 para. 2 of the Employment Contract (see para. 11 above) but, as pointed out by the Club, Article 14bis of the RSTP provides for a 15-day time limit when placing the debtor club in default. However, this provision also states that *"[a]lternative provisions in contracts existing at the time of this provision coming into force may be considered"*.

132. Article 14bis of the RSTP does not clarify whether the parties' autonomy can be exercised to reduce the duration of default notices. In the Panel's view, within the general limits of the freedom to contract, Article 14bis of the RSTP does not prevent parties from agreeing on a shorter notice period, provided that such a shorter notice period is reasonable.

133. The Panel considers the period of 10 days agreed upon by the Contracting Parties to be reasonable and acceptable.

134. Moreover, the Player ultimately extended the initial 10-day default notice period in his subsequent communication dated 10 September 2021, in which he proposed a new payment schedule to the Club to resolve the situation (see para. 24 above).

135. In any event, the Club failed to fulfil its obligation within the 15-day period it claimed that should have applied. The termination notice was only sent by the Player on 26 October 2021 (i.e. 49 days after the default notice sent on 7 September 2021). Accordingly, the Club's argument that the Player failed to comply with the procedure in Article 14bis of the RSTP is without merit.

136. In view of the above findings, the Panel holds that the Player has correctly placed the Club in default and that the Club's failure to comply with the pecuniary obligations at issue is just cause for the termination of the Employment Contract under Article 14bis of FIFA's RSTP.

(D.4) Were the compensation amounts correctly calculated by FIFA DRC?

137. Having reached this stage, and the Player's right to terminate the Employment Contract with just cause having been established, it follows that the Club shall pay the Player the sums payable regarding his salary from July to October 2021 (4 months x EUR 87,500 net), and the sum of EUR 450,000 due on 31 August 2021, together with default interest at the legal rate of 5% p.a., as determined in the Appealed Decision (see para. 30 above).

138. The Club must also pay the Player compensation for breach of the Employment Contract (the "Compensation for the Breach of Contract"). The general rule is that a party in breach of contract must pay damages for the loss and the damage caused by its breach of contract.

139. The Panel concurs with the FIFA DRC regarding the calculation of damages, which in the absence of a specific provision, must be done in accordance with Article 17 (1) of the RSTP, which provides that the calculation of the compensation must take into consideration the Player's credits under the Employment Contract from its commencement date until its termination date, i.e. from November 2021 to June 2022 (8 monthly salaries of EUR 87,500 = EUR 700,000). The *quantum* of damages equals the difference between the actual financial situation of the aggrieved party (the Player) and the position that he would have been in, in the absence of the breach of contract. This so-called "positive interest" also includes *lucrum cessans*, i.e. the profits lost in consequence of the breach.

140. The Panel must take the provisions of Article 17 (1) lit. ii) of the RSTP into consideration, i.e. the *"value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early"* (the "Mitigated Compensation Amount").

141. The FIFA DRC has calculated the compensation due correctly, by deducting the Player's remuneration under his employment contract with Alianza. This contract commenced in February 2022 and the amount considered for mitigation was USD 95,227.25, i.e. 5 monthly salaries of approximately USD 19,045.45 (see section (x) para. 49 above). The Mitigated Compensation Amount corresponded approximately to EUR 85,472.03 after conversion as at the date of the Appealed Decision (21 April 2022).

142. However, in its appeal, the Club challenges the Mitigated Compensation Amount determined by the FIFA DRC, arguing that the Player has failed to declare his real earnings from Alianza. The Club, therefore, claims that the Panel should calculate the Mitigated Compensation Amount on the basis of the Player's real sporting value. In the Club's opinion, the Player did not earn the average monthly salary declared, but, given the monthly salary and the proportional monthly signing fee declared, earned a monthly salary of not less than USD 80,277.27. This amount and the 5 months of salaries earned by the Player from February to June 2022, result in a Mitigated Compensation Amount of USD 401,136.35 rather than EUR 85,472.03.

143. The Panel understands the argument submitted by the Club, and also queries whether the Player only received the remuneration in the contract presented with Alianza produced. At the hearing, the Player's discomfort when answering the question regarding the income received from

Alianza, was obvious. The Player merely referred to the receipts to the contract he had submitted. However, the burden to prove that the amounts received exceed those declared in the contract with Alianza, lies with the Club. And the Club has not adduced any such evidence. Given its doubts regarding the veracity of the figures presented, the Club should have requested the production of other evidence to prove the income it alleges. The income alleged by the Club cannot be regarded as proved, and the Panel, like the FIFA DRC, can only take into consideration the amounts in the contract with Alianza, in these arbitration proceedings.

144. Finally, the Panel is also required to decide regarding the Additional Compensation due if the termination with just cause derives from overdue payables provided in Article 17 (1) lit. ii) of the RSTP. According to the said article, and as stated by the FIFA DRC, the Additional Compensation is equivalent to three months' salary payments, i.e. EUR 262,500 (three times the monthly salary of EUR 87,500).

145. Having made the necessary additions and subtractions, the Panel concludes, upholding the decision of the FIFA DRC, that the Player is entitled to EUR 700,000, less the Mitigated Compensation Amount of EUR 85,472.03, plus Additional Compensation of EUR 85,472.03, i.e. a total amount of EUR 785,472.03.

146. Considering the above, the Panel is of the opinion that the FIFA DRC rightfully awarded and correctly calculated the compensation amounts payable by the Club to the Player for the Club's breach of the Employment Contract.

(E) Conclusions

147. The Club breached the Employment Contract by not paying the Player's monthly salaries related to July and August 2021 and the amount of EUR 450,000 due on 31 August 2021.

148. The Player had just cause to unilaterally terminated the Employment Contract on 26 October 2021.

149. The Player is entitled to receive the following amounts:

1. EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 August 2021 until the date of effective payment;

2. EUR 450,000 net as outstanding remuneration plus 5% interest p.a. as from 31 August 2021 until the date of effective payment;

3. EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 September 2021 until the date of effective payment;

4. EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 October 2021 until the date of effective payment;

5. EUR 87,500 net as outstanding remuneration plus 5% interest p.a. as from 1 November 2021 until the date of effective payment;

6. EUR 700,000 net as compensation for breach of contract plus 5% interest p.a. as from 4 November 2021 until the date of effective payment.

150. The above conclusions, finally, make it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Pyramids Football Club on 7 June 2022 against the decision issued by the FIFA Dispute Resolution Chamber passed on 21 April 2022 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber passed on 21 April 2022 is confirmed.

3. (…).

4. (…).

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