Arbitration CAS 2022/A/9219 Jubilo Co. LTD v Fédération Internationale de Football Association (FIFA), award of 14 June 2023 (operative part of 22 December 2022)

Panel: Mr Patrick Stewart (United Kingdom), President; Mr Marco Balmelli (Switzerland); Mr Daniel Cravo Souza (Brazil)

Football
Termination of a contract of employment between a player and a club
De novo review of the merits of the case
Burden and standard of proof
Validity of a contract
Interpretation of an automatic termination clause
Termination without just cause
Rebuttal of the presumption of inducement to breach the contract by the player's new club

1. **According to Article R57 (1) of the CAS Code, CAS panels have *"full power to review the facts and the law"*. By reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of CAS panels to make an independent determination as to the merits.**

2. **Each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the CAS panel that the facts it pleads are established. The parties to CAS arbitration proceedings are entitled to enter into a separate agreement on the evidential procedures to be followed, provided that these do not depart from mandatory procedural requirements of the CAS Code. Where no applicable standard of proof is specified in the applicable regulations, the CAS Panel has the discretion to determine the appropriate standard, although it should at least consider consistent CAS jurisprudence in similar fields when exercising this discretion. The "comfortable satisfaction" standard is generally applied when considering cases involving the FIFA Regulations on the Status and Transfer of Players (RSTP). That standard is considered to be *"higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt""*.**

3. **The starting position for any signed contract is the legal principle of *pacta sunt servanda* (i.e. agreements must be kept). Furthermore, (i) a signature on a written contract binds the signatory to the terms of that contract, and (ii) the fact that a party to a written contract does not understand its terms does not preclude enforcement of that contract. These general principles of contract law will not apply if the party contesting the validity of the contract establishes to the comfortable satisfaction of the CAS panel that the signature was obtained by mistake or as a consequence of misrepresentation, fraud,**

duress or undue influence or if the contract is vitiated by illegality (articles 23 *et seq.* of the Swiss Code of Obligations).

4. **A termination clause that operates to bring a contract of employment to an end automatically without either party requested to serve notice in case of occurrence of certain specific event e.g. if the player fails a medical check-up or is not able to play football for any reason, cannot be interpreted as creating a condition precedent. Accordingly, the relevant contract of employment came into existence as a valid and binding agreement immediately upon the parties executing it.**

5. **A football player is deemed to have terminated an employment contract without just cause at the point at which he enters into a new employment contract with a new football club with a term which overlaps with the term of the pre-existing employment contract.**

6. **Pursuant to Article 17(4) of the FIFA RSTP, if a player terminates a contract without just cause during the protected period, then any club which subsequently signs that player shall be presumed to have induced the breach and shall be sanctioned accordingly, unless that club is able to rebut the presumption by providing evidence to the contrary. The period to be considered in assessing adequate due diligence to rebut the presumption of inducement is before the signing of the contract between the player and his new club. In this respect, placing complete reliance on the player's personal declaration amounts to "wilful ignorance". Likewise, an online research and a review of the Transfer Matching System do not constitute adequate due diligence either, because they depend on the previous club either announcing its signing of the player prior to having registered the player (which a club might not always wish to do), or on the registration of the player at the start of the national registration window whereas a longer time limit for the player's registration might be available to the previous club. Conversely, a direct discussion with the player regarding his contractual status and making contact with the player's previous club are more in line with an adequate level of due diligence. In any event, the determination of the necessary steps for a sufficient due diligence to rebut the presumption of inducement always depends on the specific circumstances of the case and the requirements for a sufficient due diligence must always be assessed on a case-by-case basis.**

I. PARTIES

1. Jubilo Co., LTD. is a company with its address at 2500 Shingai, lwata-shi, Shizuoka, 438-0025 Japan (the "Appellant" or "Jubilo") which runs a professional football club, Jubilo Iwata, which participates in the J. League and is a member of the Japanese Football Association, which in turn is a member of the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

3. Collectively, Jubilo and FIFA will be referred to as the Parties.

II. FACTUAL BACKGROUND

A. Background Facts

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

5. On 14 November 2020, Ratchaburi Mitrphol FC ("Ratchaburi"), a professional football club in Thailand, and Fabian Andres Gonzales Lasso (the "Player"), a professional football player from Colombia, signed an employment contract with a term from 1 January 2021 to 31 December 2021 (the "First Contract").

6. The First Contract contained, *inter alia*, the following terms:

   a) Pursuant to Clause 2.1, Ratchaburi agreed to pay the Player, *inter alia*, a monthly salary of USD 18,350 for the duration of the First Contract.

   b) Clause 2.4 stated as follows (the "Automatic Termination Clause"):

      "The contract will be automaticely (sic) cancel without any compensation if the player failed for the medical check up or is unable to play for any reason at the 01 january (sic) 2021".

   c) Clause 11 stated as follows:

      "[…] *In the event that the participation has been terminated by the Club or the player prior to the expiry of the contract for any cause other than those provided in Clause 6 and 7 above, the party who cancel the contract will be entitled to pay a compensation equivalent to 3 (three) months salary maximum as full and final settlement of the playing contract (salary)".*

7. On 19 December 2020, the Player arrived in Thailand following the issuance of a provisional work permit and commenced a period of quarantine in a hotel, to run until 3 January 2021, pursuant to local COVID-19 regulations which were in place at the time.

8. On 23 December 2020, the Player received an offer from Jubilo to enter into an employment contract with a term from 2 February 2021 to 1 January 2022.

9. On 28 December 2020, the Player signed a pre-contract agreement with Jubilo and, on 29 December 2020, Jubilo counter-signed that pre-contract agreement (the "Pre-Contract"). Under the Pre-Contract, the Player agreed to be a registered player with Jubilo from 1 February 2021 to 1 January 2022 and Jubilo agreed to pay the Player a total salary of USD 450,000.

10. On 5 January 2021:

    a) Ratchaburi sent a letter to Jubilo in which it informed Jubilo that it had entered into an employment contract with the Player and that it would bring a claim before FIFA if Jubilo did not withdraw its offer.

    b) The Player sent a letter to Ratchaburi in which he stated that he was not bound by the First Contract, as the negotiations had not yet been concluded and, therefore, no valid and binding contract had been signed.

11. On 17 January 2021, Jubilo announced its signing of the Player on its website.

12. Following conclusion of the Pre-Contract, COVID-19 travel restrictions delayed the Player from moving to Japan.

13. On 28 and 29 April 2021, following the lifting of COVID-19 travel restrictions, Jubilo completed its registration of the Player which involved *inter alia* signing an employment contract with the Player, uploading all necessary documents to TMS and confirming with the Japanese FA that it had received an international transfer certificate.

B. Proceedings before FIFA's judicial bodies

14. On 13 April 2022, Ratchaburi filed a claim with the Dispute Resolution Chamber of FIFA (the "FIFA DRC") which, *inter alia*, included the following elements:

    a) Ratchaburi claimed that the Player terminated the First Contract without just cause, contrary to Article 14 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"). Ratchaburi requested the Player be required to pay it compensation equal to the value of the First Contract (i.e. USD 220,200).

    b) Ratchaburi also claimed that Jubilo had induced the Player to terminate the First Contract without just cause, contrary to Article 17(4) of the FIFA RSTP, and requested that Jubilo: (i) be held jointly and severally liable with the Player to pay it compensation of USD 220,200; (ii) also be liable to pay it additional compensation of USD 220,200; and (iii) also be liable to pay it additional compensation of USD 160,000 to compensate it for reputational damage and the cost of having to replace the Player.

c) Ratchaburi requested interest of 5% *per annum* on all amounts claimed as from 13 April 2022 until paid.

d) Ratchaburi requested the imposition of sporting sanctions on Jubilo.

15. On 4 August 2022, the FIFA DRC determined the claim by Ratchaburi as follows (the "Appealed Decision"):

"1. The claim of the Claimant, Ratchaburi, is partially accepted.

2. Respondent 1, Fabian Andres Gonzales Lasso, has to pay to the Claimant USD 55,050 as compensation for breach of contract without just cause plus interest of 5% p.a. as from 13 April 2022 until the date of effective payment.

3. Respondent 2, Jubilo Iwata, is jointly and severally liable for the payment of the aforementioned amount.

4. Any further claims of the Claimant are rejected.

5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form within 30 days of notification of this decision.

6. Respondent 1 and Respondent 2 shall provide evidence of payment of the due amount in accordance with point 3. to FIFA via the e-mail address psdfifa@fifa.org duly translated into one of the official FIFA languages (English, French, or Spanish).

7. A restriction of four months on his eligibility to play in official matches is imposed on Respondent 1, Fabian Andres Gonzales Lasso. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

8. Respondent 2, Jubilo Iwata, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision".

16. On 29 September 2022, the FIFA DRC issued the grounds of the Appealed Decision to Ratchaburi, the Player and Jubilo.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 19 October 2022, pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"):

    a) Jubilo filed a Statement of Appeal at the Court of Arbitration for Sport (the "CAS") appealing the Appealed Decision. Jubilo requested that the matter be determined by a three-member panel and nominated Dr. Marco Balmelli as an arbitrator.

    b) Jubilo requested that the matter be expedited in accordance with Article R52 of the Code and that this Appeal be decided by 31 December 2022.

18. On 20 October 2022, the CAS Court Office: (i) acknowledged receipt of the Statement of Appeal; (ii) invited the Respondent to confirm whether it agreed to the Appellant's request for an expedited procedure; (iii) invited the Parties to consider the appointment of a Sole Arbitrator to determine the case in light of the relatively low financial value of the dispute; and (iv) invited the Respondent to nominate an arbitrator from the list of CAS arbitrators if the Parties did not agree to the appointment of a Sole Arbitrator.

19. On 26 October 2022:

    a) The Respondent confirmed its agreement to the Appellant's request for an expedited procedure.

    b) The Respondent requested that the matter be referred to a three-member panel as the case solely involves a challenge against disciplinary measures impose by the FIFA DRC.

    c) The CAS Court Office: (i) confirmed that the matter is a non-paying procedure pursuant to Article R65.2 of the Code (as the Appellant had only appealed the disciplinary element of the Appealed Decision); (ii) invited the Parties to agree a joint procedural calendar by 31 October 2022, failing which the calendar would be established by the Division President or her Deputy; (iii) invited the Respondent to nominate an arbitrator by 2 November 2022; and (iv) suspended the time limit for the Appellant to file its Appeal Brief until further notice from the CAS Court Office.

20. On 28 October 2022:

    a) The Respondent nominated Mr. Daniel Cravo Souza, Attorney-at-law in Porto Alegre, Brazil as an arbitrator.

    b) The Respondent advised the CAS Court Office that the following procedural calendar had been agreed by the Parties:

        - Appeal Brief to be filed by 4 November 2022.

- Answer to be filed by 30 November 2022.

- Hearing by video-conference on 15, 16, 20 or 21 December 2022.

- Notification of the operative part of the Award by no later than 31 December 2022.

c) FIFA asked the Appellant to confirm that the above procedural calendar had indeed been agreed.

21. On 31 October 2022, the Appellant confirmed the procedural calendar subject to an amendment – i.e. that the hearing be held on 20 or 21 December 2022 adopting a hybrid format, whereby: (i) the Panel President, the Appellant's Swiss legal counsel and FIFA attend the hearing in person at the CAS Court Office in Lausanne, Switzerland; and (ii) the Parties' appointed arbitrators, the Appellant's Japanese counsel and any witnesses attend the hearing via video-conference.

22. On 1 November 2022, the Respondent confirmed its agreement with the Appellant's proposal to adopt a hybrid format for the hearing.

23. On 4 November 2022:

a) Following an agreed-upon extension of time and in accordance with Article R51 of the Code, Jubilo filed its Appeal Brief.

b) The CAS Court Office requested FIFA to file its Answer by 30 November 2022.

24. On 11 November 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President: Mr Patrick Stewart, Solicitor in Manchester, United Kingdom

Arbitrators: Dr. Marco Balmelli, Attorney-at-law in Basel, Switzerland

Mr. Daniel Cravo Souza, Attorney-at-law in Porto Alegre, Brazil

25. On 11 November 2022, the CAS Court Office confirmed that a hearing would be held at the CAS Court Office in Lausanne, Switzerland, on 20 December 2022.

26. On 30 November 2022, in accordance with Article R55 of the Code, the Respondent submitted its Answer.

27. On 19 December 2022, both the Appellant and the Respondent signed and returned the Order of Procedure.

28. On 20 December 2022, a hearing was held at the CAS Court Office in Lausanne, Switzerland. In addition to the Panel and Mr. Fabien Cagneux, Managing Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr. Kei Ikuta – Attorney-at-Law, Ikuto Sogo Legal Office. Attended by video-conference.
- Mr. Marc Cavaliero – Attorney-at-Law, Cavaliero & Associates SA. Attended in person.
- Mr. Jaime Cambreleng Contreras - Attorney-at-Law, Cavaliero & Associates SA. Attended in person.
- Mr. Michihiro Oishi – Representative of Jubilo (Manager, Football Division for the Jubilo). Attended by video-conference.
- Mr. […] – Witness (Member of the […] Department of Jubilo). Attended by video-conference.
- Mr. Fabian Andres Gonzales Lasso – Witness (the Player). Attended by video-conference.
- Ms. Yoshiko Takeyama – Japanese / English interpreter, Simal International, Inc. Attended by video-conference.
- Mr. Daniel Monteverde – Spanish / English interpreter, Simal International, Inc. Attended by video-conference.

For the Respondent:

- Mr. Miguel Liétard Fernández-Palacios - Director of Litigation, FIFA Litigation Department. Attended in person.
- Mr. Alexander Jacobs – Senior Legal Counsel, FIFA Litigation Department. Attended in person.

29. At the opening of the hearing, the Parties confirmed they had no objections to the constitution of the Arbitral Tribunal nor to the procedure adopted by the Panel so far.

30. The Parties were given full opportunity to submit their arguments in opening and closing statements and to answer the questions posed by the Panel. Before the hearing was concluded, the Parties confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

31. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in this section IV of the Award.

A. Submissions of the Appellant / Jubilo

32. In its Appeal Brief, the Appellant filed the following prayers for relief:

> *"(a) The annulment of the decision of Respondent (FIFA) Dispute Resolution Chamber regarding the sporting sanction pronounced against Appellant, namely the ban from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods (point 8 of the Appealed Decision).*
>
> *(b) The payment by Respondent of all the costs of this arbitration proceedings including CAS administration costs, the fees and expenses of arbitrators and the legal fees and expenses of Appellant".*

33. The key arguments of the Appellant can be summarised as follows:

a) There was never a valid contract of employment between Ratchaburi and the Player, meaning that: (i) no unilateral termination without cause could have occurred; and (ii) accordingly, there could not have been any inducement to do so.

b) In the alternative, if the First Contract is considered to constitute a valid and binding contract between Ratchaburi and the Player, the Automatic Termination Clause contains conditions precedent which were not satisfied by the stipulated deadline of 1 January 2021, meaning that: (i) the First Contract never came into force; (ii) no unilateral termination without cause could have occurred; and (iii) accordingly, no inducement to do so could have occurred.

c) In the alternative, if Ratchaburi and the Player were parties to a valid contract of employment for calendar year 2021, Jubilo could not have induced the Player to terminate that contract without just cause because: (i) Jubilo was not aware of that contract; and/or (ii) the Player had already decided to breach that contract before Jubilo made an offer to the Player. Accordingly, there was no causal link between Jubilo's offer and the Player's breach.

34. Each of the above arguments shall now be summarised in more detail.

a. There was never a valid contract of employment

35. Jubilo argued that, contrary to the findings of the FIFA DRC, the First Contract was not a valid and binding agreement. In support of its position, Jubilo made, *inter alia*, the following submissions:

a) The Player was not happy with the financial terms of the First Contract. However, he signed it because he was told this was necessary to obtain a visa to enter Thailand at a time when enhanced restrictions were in place due to COVID-19. He was told this both by his agent for that transaction (Mr. Jorge Garcia) and an official of Ratchaburi (Mr. Fluke) during an online meeting on 14 November 2020 for which he and his agent were together.

b) The Player's position is corroborated by the existence of a draft employment contract between Ratchaburi and the Player which contained more favourable financial terms for the Player (the "Subsequent Draft Contract"). The Subsequent Draft Contract was sent by Manuel Seisdedos, (CEO at 360 Sport Management and Talent Director at FIA Sport Management) to Robert Procureur on 17 December 2020.

c) The First Contract and the Subsequent Draft Contract are different in the following respects:

i. The term of the First Contract is 1 January 2021 to 31 December 2021, whereas the term of the Subsequent Draft Contract is 1 January 2021 to 31 March 2022.

ii. The Subsequent Draft Contract includes a signing-on fee of USD 30,000, whereas the First Contract contains no signing-on fee. Crucially, as is clear from paragraph 51 of the Appealed Decision, the FIFA DRC failed to notice this difference during the first instance process.

d) This serves as proof that, as at 17 December 2020, the Player and Ratchaburi were still negotiating the *essentialia negotii* of a potential employment relationship and that, accordingly, there was no valid and binding agreement between the parties. This is re-enforced by the fact that Ratchaburi did not rely on the First Contract to request the International Transfer Certificate and proceed with the Player's registration when Thailand's registration window opened on 23 December 2020.

e) Nor can it be argued that the Subsequent Draft Contract constitutes a valid and binding agreement between Ratchaburi and the Player as: (i) the Player remained unhappy with its financial terms (he was seeking a higher signing-on fee of USD 50,000); and (ii) neither party signed it.

36. Jubilo reasoned that, given the evident absence of a valid and binding contract between Ratchaburi and the Player, there was no contract to be terminated.

b. In the alternative, the Automatic Termination Clause contains conditions precedent which were not satisfied

37. The Appellant recalled that the Automatic Termination Clause states as follows:

"The contract will be automaticely (sic) *cancel without any compensation if the player failed for the medical check up or is unable to play for any reason at the 01 january* (sic) *2021".*

38. The Appellant made, *inter alia*, the following submissions with respect to the Automatic Termination Clause:

a) Contrary to arguments put forward by Ratchaburi to the FIFA DRC, it is clear that this clause may be relied upon by either party, not just Ratchaburi.

b) Neither of the conditions set out at in the clause were satisfied. The Player: (i) did not participate in a medical examination by 1 January 2021, let alone fail it, as Ratchaburi did not organise one; and (ii) was not able to play by 1 January 2021 as Ratchaburi had made no attempt to register the Player by that date.

c) As the conditions precedent were not satisfied, the First contract never came into force. Accordingly, there was no contract to be terminated.

c.I In the alternative, Jubilo had no knowledge of the First Contract

39. Pursuant to Article 17(4), if a player terminates a contract without just cause during the protected period (being the initial two or three years of the contract, depending on the age of the player), then any club which subsequently signs that player shall be presumed to have induced the breach and shall be sanctioned accordingly, unless that club is able to rebut the presumption by providing evidence to the contrary.

40. Jubilo made, *inter alia*, the following submissions:

a) Jubilo could not possibly have induced the Player to unilaterally terminate the First Contract without just cause as it had no knowledge of the First Contract.

b) Jubilo genuinely believed that it was in a bidding race with Ratchaburi to sign the Player when he became a free agent on 1 January 2021.

c) As evidenced by its e-mail of 11 December 2020, Jubilo had *"other players in* (sic) *its radar"*. Accordingly, had Jubilo been aware of the First Contract, it would have pursued another option rather than risk doing something which might result in a registration ban.

d) Jubilo conducted online research and also checked FIFA's Transfer Matching System ("TMS") to confirm that the Player would be a free agent as of 1 January 2021. There

was no information which suggested that the Player may have already signed a contract with any other club as Ratchaburi did not: (i) announce the First Contract at any point; or (ii) seek to register the Player with the Thai football authorities when the Thai registration window opened on 23 December 2020.

e) When Jubilo became aware that the Player was in Thailand, it again sought to clarify that the Player was definitely a free agent as from 1 January 2021 by obtaining a personal declaration from the Player. Only once Jubilo had received this did it conclude the Pre-Contract.

41. Jubilo provided, *inter alia*, the following evidence in support of its position:

a) A witness statement from Mr. […] (a member of Jubilo's […] Department) which contained the following relevant information:

i. On 11 December 2020, Mr. […] sent an e-mail to the first team manager, listing three potential targets for a new forward, including the Player who the club had previously expressed an interest in signing. The first team manager identified the Player as his first choice based on video footage.

ii. On 19 December 2020, Jubilo appointed Mr. Fernando Umeoka ("Fernando") as its agent to broker a deal with the Player via Mr. Hans Sanchez ("Sanchez"), who Fernando understood to be the Player's agent.

iii. On 23 December 2020, Jubilo learned that the Player would become a free agent on 1 January 2021 when his contract with Atletico Nacional expired. Fernando sent Sanchez an offer letter on behalf of Jubilo.

iv. On 25 December 2020, Jubilo learned that the Player was in Thailand to negotiate a contract with a Thai club and that he had just commenced a 14-day period of COVID-19 quarantine. Jubilo instructed Fernando to obtain a personal declaration from the Player to confirm that he would be a free agent as of 1 January 2020.

v. On 27 December 2020, Jubilo received the Player's personal declaration via Fernando and were satisfied that the Player would be a free agent as of 1 January 2021. Jubilo also checked SoccerAssocation.com and FIFA's Transfer Matching System ("TMS") to confirm again that the Player's club for 2020 was indeed Atletico Nacional. Jubilo then sent the Pre-Contract to Fernando to review before sending to the Player.

vi. On 28 December 2020, Fernando sent the Pre-Contract to Sanchez which the Player signed and returned later that day. On the same day, Mr. […] sent an internal e-mail to club colleagues to update them on the status of the transaction (the "Internal E-mail"). He advised colleagues that the Thai club

were upset because Jubilo had disrupted its deal with the Player but that they had learned that the Player had not yet signed for the Thai club. Mr. […] advised that the *"worst-case situation is that the Thai club initiates lawsuit, but because the* [personal declaration from the Player] *has been received, the club cannot be sued, only the player himself can be sued. We also heard that the player's agent and the Thai club's agent have settled the matter with money"*.

vii. On 29 December 2020, Jubilo counter-signed the Pre-Contract and returned a copy to the Player via Fernando.

viii. On 17 January 2021, Jubilo announced its signing of the Player on its website.

ix. On 28 and 29 April 2021, Jubilo completed its registration of the Player. The delay between conclusion of the Pre-Contract and completion of the Player's registration was due to COVID-19 travel restrictions which prevented the Player from entering Japan.

b) A witness statement from the Player which included the following information of relevance:

i. When the Player arrived in Thailand on 21 December 2020, he fell out with both Ratchaburi and Mr. Garcia (his agent for the transaction) as the Subsequent Draft Contract did not contain the financial terms he was expecting. His statement continues as follows: *"This is not what I had asked and I never signed this agreement. For me there was no valid agreement with Ratchaburi as the negotiations broke down without an agreement on the remuneration. This was confirmed to me by a lawyer. I also had my passport taken away by Ratchaburi at the hotel where I was staying (a hotel employee came to my room and took my passport, saying that he needed it to register for check-in. I then asked for my passport back, but they did not return it). My trust in Ratchaburi was completely lost"*.

ii. The Player was then contacted by Sanchez with an offer from Jubilo. His statement continues as follows: *"My negotiation with Ratchaburi broke down and were in a dead end as there was no agreement on the remuneration. I decided to accept the offer from Jubilo Iwata because I wanted to play in Asia. Therefore, within December 2020, I confirmed that I would be a free player and signed a pre-contract, and sent them to Jubilo Iwata"*.

iii. The Player did not inform Sanchez of the First Contract as he *"understood that it was only for visa purposes evidence and not final and binding"*/ The Player also opted not to inform Jubilo as he *"did not consider it relevant* […] *there was no agreement as negotiations stopped before"*.

c) A witness statement from Fernando which included the following information of relevance:

i. Fernando recalls first contacting Sanchez about *"the Fabian matter"* on 19 December 2020.

ii. Before proceeding to transact with the Player on behalf of Jubilo, Fernando contacted the Player's current club, Atletico Nacional, who confirmed that the Player's contract expired at the end of December 2020.

iii. On 23 December 2020, Fernando sent Jubilo's offer letter to Sanchez. That same day, Sanchez told him that the Player was flying to Thailand to negotiate a deal with a Thai club, but that no contract had yet been signed. Fernando was concerned that the Player's ability to travel to Japan would be impacted by undergoing a period of COVID-19 quarantine in Thailand.

iv. On 25 December 2020, Fernando updated Mr. […] who insisted that, before proceeding any further, Fernando must obtain a personal declaration from the Player that he would be a free agent as of 1 January 2021. Fernando drafted the declaration and sent it to Sanchez that day.

v. On 26 December 2020, Sanchez sent Fernando the personal declaration as signed by the Player and Fernando sent it to Mr. […] on the following day.

vi. On 28, 29 and 30 December 2020, the Pre-Contract was concluded by the Player and Jubilo.

d) A witness statement from Sanchez which included the following information of relevance:

i. After Sanchez advised the Player of Jubilo's interest in him, the Player: (1) confirmed that his contract with Atletico Nacional would expire at the end of December 2020; and (2) advised Sanchez that he was going to Thailand to negotiate and sign a contract with a new club. The Player did not mention that he had already signed the First Contract.

ii. At no stage did Sanchez speak to Jorge Garcia, the agent who introduced the Player to Ratchaburi.

iii. On 23 December 2020, Sanchez received Jubilo's offer letter from Fernando and told Fernando that the Player had travelled to Thailand to negotiate a contract with a Thai club but that no contract had been signed.

iv. On 25 December 2020, Sanchez confirmed to Fernando that the Player wished to join Jubilo. At Fernando's request, Sanchez obtained a personal declaration from the Player that he would be a free agent. When Jubilo and the Player signed the Pre-Contract, Sanchez was not aware of the First Contract and did not inform Fernando of the existence of such a contract.

e) Copies of: (i) the Player's personal declaration; and (ii) the Pre-Contract. Jubilo did not provide these documents to the FIFA DRC during the first instance proceedings.

42. Mr. […] attended the hearing and provided oral evidence which included, *inter alia*, the following information of relevance:

a) Jubilo did not receive the letter from Ratchaburi of 4 January 2021 which had been e-mailed to Jubilo on 5 January 2021. Mr. […] confirmed that the e-mail addresses used by Ratchaburi for that e-mail (being the e-mail addresses of three employees of Jubilo) were valid and was unable to explain why Jubilo did not receive the e-mail.

b) As Ratchaburi did not rely on the First Contract to register the Player with the Thai football authorities during the December/January registration window (which opened on 23 December 2020), TMS continued to show the Player's prior club as being Atletico National. Furthermore, when Jubilo registered the Player on 28 April 2021, the international transfer certificate was issued by the Colombian Football Association to the Japanese Football Association without delay. Therefore, at no stage prior to registering the Player was Jubilo aware of the existence of the First Contract.

c) Jubilo only became aware of the First Contract when it was asked to respond to Ratchaburi's claim to FIFA of 12 April 2021.

d) Jubilo did not submit the Player's personal declaration and the Pre-Contract to the FIFA DRC during the first instance proceedings, as Jubilo did not consider Ratchaburi's claim to be a serious issue and therefore did not invest significant time in responding to it.

e) Mr. […] did not consider it surprising that the Player would have travelled from Colombia to Thailand during a pandemic without having firstly signed an employment contract. It is relatively common for a foreign player to visit Jubilo before signing a contract, in order to assess whether he will be able to adapt to a new city and culture.

f) Mr. […] did not consider contacting Ratchaburi at any stage. He believed Jubilo was competing with Ratchaburi for the Player and Jubilo had made a "take it or leave it" offer to the Player. Mr. […] had no interest in speaking with any other club to understand what they might be offering the Player. Regarding the Player's status as a free agent, Jubilo considered it had acted with sufficient diligence by obtaining a personal declaration from the Player, checking TMS and conducting online research.

g) Mr. […] considered the Pre-Contract to be legally binding on both Jubilo and the Player. Accordingly, even if Jubilo had received Ratchaburi's e-mail of 5 January 2022, then this would have been too late.

h) With respect to the Internal E-mail, Mr. […] provided the following further context:

i. The president of Jubilo at the time was not experienced in football transfers. Therefore, Mr. […] wanted to ensure that the president understood the intricacies of the transaction.

ii. When Mr. […] referred to Ratchaburi being *"angry"* with Jubilo, he was referring to the Player changing his mind about signing with Ratchaburi because Jubilo had made him a better offer. He was not referring to the Player being in breach of the First Contract.

iii. When Mr. […] referred to Ratchaburi commencing a law suit, he meant that Ratchaburi may seek to recover its wasted costs arising from its unsuccessful pursuit of the Player. He was not referring to a claim against the Player for breach of the First Contract.

iv. When Mr. […] referred to *"the player's agent and the Thai club's agent"* having settled the matter with money, he did not know the identity of these agents. He was simply repeating information provided to him by Fernando.

43. The Player also attended the hearing and provided oral evidence which included, *inter alia*, the following information of relevance:

a) The Player is no longer contracted to Jubilo and he is currently serving the four-month suspension imposed by the FIFA DRC in the first instance proceedings. He decided to accept the sporting sanctions imposed by the FIFA DRC because he could not afford to appeal to CAS.

b) The Player confirmed his understanding that the First Contract was signed purely for the purpose of commencing the visa process. He was told this orally by Mr. Garcia and Ratchaburi and does not have written evidence. He did not understand the content of the First Contract as he only speaks Spanish. The Player confirmed, however, that he understood the figures concerning the remuneration and that he realised that they were lower than the ones allegedly agreed with Ratchaburi.

c) After receiving the Subsequent Draft Contract, which still contained less favourable financial terms than he was expecting, although higher than the ones inserted in the First Contract, he lost trust in Ratchaburi and Mr. Garcia. It was only after this that he was contacted by Sanchez about Jubilo's interest. Accordingly, there was no link between his fall-out with Ratchaburi and the offer from Jubilo.

d) When still in Thailand, he consulted a lawyer about his situation, who advised him that, if Ratchaburi did attempt to enforce the First Contract, he could rely on the conditionality of it to terminate after 1 January 2021.

44. Jubilo requested Fernando and Sanchez to attend the hearing in order to provide oral witness evidence. According to its Appeal Brief, among other aspects: (i) Fernando was to provide

clarification on the fact that he *"was informed that no contract had been signed between the Player and Ratchaburi when he was acting as Appellant's agent to hire the Player"*; ad (ii) Sanchez was to testify that he *"was not aware of the existence of any contract between the Player and Ratchaburi when Appellant and the Player signed the pre-contract on 30 December 2020"*. Unfortunately, neither responded to Jubilo's request.

c.II In the alternative, there was no causal link between Jubilo's offer and the Player's breach

45. Jubilo submitted as follows:

a) The Player's decision not to join Ratchaburi (and therefore unilaterally terminate the First Contract without just cause) was made on 22 December 2020, after receiving the Subsequent Draft Contract from Ratchaburi. The financial terms in the Subsequent Draft Contract did not align to his understanding of what had been agreed and, accordingly, he lost trust in Ratchaburi and decided to leave Thailand.

b) Jubilo's offer was communicated to the Player by Sanchez on 23 December 2020. Accordingly, the Player's decision with respect to Ratchaburi was not influenced by Jubilo's offer.

c) This position is supported by the Player's witness statement in which he states as follows (emphasis added):

"I left Colombia on 17 December 2020 and arrived in Thailand via Frankfurt on 21 December 2020.

[…]

When I arrived in Thailand, I had a conflict with Ratchaburi and Mr Garcia. The reason for this was that before I left for Thailand, Mr Garcia mentioned that I would be offered a higher amount of remuneration than the amount stated in the agreement above, and I left for Thailand as I thought that I would have no objection to that amount of remuneration. If I remember well, I requested a remuneration of USD 300,000 and a sign-on fee of USD 50,000. But when I arrived in Thailand, the negotiations did not go in the direction I had hoped. Ratchaburi offered me a lesser remuneration. There was a second agreement that circulated in the month of December. This agreement provided for the same monthly remuneration as the agreement above and a sign-on of USD 30,000. This is not what I had asked and I never signed this agreement. For me there was no valid agreement with Ratchaburi as the negotiations broke down without an agreement on the remuneration. This was confirmed to me by a lawyer. I also had my passport taken away by Ratchaburi at the hotel where I was staying (a hotel employee came to my room and took my passport, saying that he needed it to register for check-in. I then asked for my passport back, but they did not return it). My trust in Ratchaburi was completely lost.

I was then contacted by Mr Hans Sanchez, who incidentally told me that the Japanese club Jubilo Iwata wanted to hire me. I had known Hans since around 2019, but he never brought me an offer from football clubs and this was the first time I received a club offer from Hans. My negotiation with Ratchaburi broke down and were in a dead end as there was no agreement on the remuneration. I decided to accept the offer from Jubilo Iwata because I wanted to play in Asia. Therefore, within December 2020, I confirmed that I would be a free player and signed a pre-contract, and sent them to Jubilo Iwata".

B. Submissions of FIFA / the Respondent

46. In its Answer to the Appeal Brief, the Respondent filed the following prayers for relief:

"(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the Appealed Decision;

(c) Order the Appellant to bear all costs incurred with the present procedure".

47. The key arguments of FIFA can be summarised as follows:

a) By limiting the scope of its appeal to sporting sanctions, the Appellant also limited the Panel's scope of review with the effect that the Panel may not review the horizontal dispute between the Player and Ratchaburi. This issue is referred to in this Award as the "Preliminary Issue".

b) In the alternative, if the horizontal dispute is within the Panel's scope of review, then: (i) the First Contract was a valid and binding agreement; and (ii) the Player unilaterally terminated that agreement without just cause.

c) Jubilo has failed to produce sufficient evidence to rebut the presumption that it induced the Player's breach.

48. Each of the above arguments shall now be summarised in more detail.

a. The Preliminary Issue

49. FIFA argued that, by limiting the scope of its appeal to the sporting sanctions, the Appellant also limited the Panel's scope of review. FIFA made, *inter alia*, the following submissions in support of its position:

a) Contrary to the Appellant's assertion in its Appeal Brief, the Panel does not have the full power to review the case *de novo* pursuant to Article R57 of the Code. Article 190(2)(c) of the Swiss Private International Law Act allows an arbitral award to be challenged *"if the arbitral tribunal decided claims which were not submitted to it or failed to decide claims submitted to it".*

b) The Appellant's prayers for relief requested the following (emphasis added):

"(1) The annulment of the decision of Respondent (FIFA) Dispute Resolution Chamber regarding the sporting sanction pronounced against Appellant, namely the ban from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods (point 8 of the Appealed Decision)

(2) The payment by Respondent of all the costs of this arbitration proceedings including CAS administration costs, the fees and expenses of arbitrators and the legal fees and expenses of Appellant".

c) Accordingly, the Panel's scope of review is strictly limited to those sporting sanctions.

d) Furthermore, the Appealed Decision must be considered final and binding, and not subject to review, to the extent it determined that the Player terminated the First Contract unilaterally without just cause as: (i) the Appellant did not include Ratchaburi as an additional respondent to this Appeal; and (ii) the Player himself is not challenging the Appealed Decision.

e) This position is supported by CAS jurisprudence. For example:

i. In CAS 2014/A/3754, the Panel commented as follows:

"[…] *without prejudice to the provision of Article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of ne ultra petita. In consideration of the above, the Panel's scope of review in the matter relates to the issue whether the imposition of sporting sanctions to the Club is warranted and proportionate or not in regard to the violations committed by the Club".*

ii. In CAS 2011/A/2654, the Panel commented as follows:

"The Panel noted that it was ultimately the choice of the Appellant against whom it appealed, but by not including the Burkina Faso FF as a party, the Panel has determined that its scope of review is limited to a review of the Appealed Decision alone. In the event that, on the merits, it is determined to overturn the Appealed Decision, then this Panel would be unable to go further […]*".*

iii. In CAS 2013/A/3228, the Panel commented as follows:

"The Panel, thus, finds that as to the first item of the object of appeal, whatever might be the contents of its decision, it will affect the rights of the Third Party (Observer) as a party that has not been named as second Respondent by the Appellant, but was a party in the previous instances' proceedings.

> […]
>
> *The Appellant before CAS did not want to name the Third Party (Observer) as Second Respondent. Thus, the Appellant withdrew any scope of review for the present Panel".*

f) Absent the Player and Ratchaburi (i.e. the only possible counterparty to the horizontal dispute), it is not admissible to challenge or revisit those elements of the horizontal dispute that concern the termination by the Player without just cause.

50. FIFA also made, *inter alia*, the following observations:

a) The Appellant's approach in this Appeal has been dictated by the terms of a settlement agreement entered into by the Appellant, the Player and Ratchaburi (following notification of grounds of the Appealed Decision). In that agreement, the Parties resolved the horizontal dispute and the Appellant and the Player reserved their positions with respect to challenging FIFA on the imposition of sporting sanctions.

b) By entering into a settlement agreement, the Appellant has precluded the Panel from reviewing: (i) the Appealed Decision in so far as it addresses the horizontal dispute; and (ii) the Appellant's joint and several liability to pay financial compensation to Ratchaburi.

b. In the alternative, the First Contract was valid and binding and the Player unilaterally terminated it without just cause

51. FIFA's Answer did not address this alternative position. However, at the hearing it made, *inter alia*, the following submissions:

a) Jubilo acknowledges the valid and binding nature of the First Contract in its own evidence. Firstly, Mr. […] states in his witness statement that *"Jubilato was not aware that Gonzalez had already executed an agreement with Ratchaburi"*. Secondly, the Player confirms that he received legal advice to the effect that he could rely on the Automatic Termination Clause to be relieved of his obligations under the First Contract. This legal advice acknowledges that the First Contract must have existed in the first place.

b) While FIFA acknowledges the existence of the Subsequent Draft Contract, this does not prove that the First Contract was not intended to be valid and binding. The most likely explanation for its existence was the need to account for an extended football season.

c) By not appealing the Appealed Decision or the imposition of sporting sanctions, the Player has acknowledged not only the unlawful breach of contract but also that sporting sanctions are justified.

c. Jubilo has failed to rebut the presumption that it induced the breach

52. FIFA made, *inter alia*, the following submissions on inducement:

a) Pursuant to Article 17(4) of the FIFA RSTP, if a player terminates a contract without just cause during the protected period (being the initial two or three years of the contract, depending on the age of the player), then any club which subsequently signs that player shall be presumed to have induced the breach and shall be sanctioned accordingly, unless that club is able to rebut the presumption by providing evidence to the contrary.

b) With regard to the meaning of "inducement":

"[…] *As per consistent CAS jurisprudence an inducement is "an influence that causes and encourages a conduct" (see CAS 2007/A/1358). In other words, the Appellant must overturn such presumption by e.g. proving that the Player had left Club Ratchaburi on his own free will, without being induced or influenced by it (for example if it can demonstrate that the Player's decision to leave Ratchaburi had anyway been made before even being proposed an offer by the Appellant)".*

c) The sequence of events is demonstrative of inducement by the Appellant. Specifically:

"[…] *we recall the specific timeline of events in this matter, which in and by themselves suffice to demonstrate the obvious inducement by the Appellant:*

(1) 14 November 2020, the Club Ratchaburi and the Player signed the First Contract (valid as from 1 January 2021 with a yearly remuneration of USD 220,200);

(2) 19 December 2020, the Player arrived in Thailand and entered mandatory quarantine at a hotel;

(3) 23 December 2020, the Player received a more lucrative offer from the Appellant (valid as from 2 February 2021 with a yearly renumeration of USD 450,000 net);

(4) 28 December 2020, the Player signed a "pre-contract" with the Appellant;

(5) 4 January 2021 (submitted on 5 January 2021), the Club Ratchaburi submitted a letter to the Appellant informing that there was already a contract with the Player and requesting the Appellant to withdraw its offer;

(6) 5 January 2021, the Player informed the Club Ratchaburi that he was not bound by the First Contract (in absence of the negotiations having been concluded and a valid binding contract having been signed);

(7) 2 February 2021, the starting date of the Second Contract signed on 28 April 2021;

(8) 28 April 2021, the Player signed a Second Contract with the Appellant (valid as from 2 February 2021 and with a yearly renumeration of USD 450,000 net).

The foregoing overview leads to several simple, logical, and straightforward conclusions:

(1) There were no issues between the Player and the Club Ratchaburi in the period before and after the signing of the First Contract on 14 November 2020 and prior to the receipt of the Appellant's lucrative offer on 23 December 2020;

(2) The Player voluntarily travelled to Thailand nearly one month after agreeing to the First Contract (and prior to the Appellant's lucrative offer) with the purpose of joining Club Ratchaburi (before the 1 January 2021 deadline as per the First Contract).

(3) The Player went through the obvious discomfort of having to quarantine inside a hotel room in Thailand from 19 December 2020 until 3 January 2021, so as to be able to join his new club Ratchaburi.

(4) It was only on 5 January 2021 (nearly 2 months after signing the First Contract and upon signing the more lucrative pre-contract with the Appellant on 28 December 2020) that the Player decides that negotiations had not been concluded and that no valid and binding contract had been signed, despite having travelled to Thailand and going through a 14-day quarantine.

(5) There is an obvious and inevitable causal link between the Appellant's lucrative offer dated 23 December 2020 and the Player's termination of the First Contract by signature of the "Pre-contract" on 28 December 2020 and the Second Contract dated 21 April 2021 (retroactively valid as from 2 February 2021)".

d) The only credible explanation for the change of heart on the part of the Player was Jubilo's better financial offer, following which the Player sought to argue that the First Contract was not valid. Had Jubilo not intervened, then the Player would have honoured the First Contract. This is a text book example of inducement, of which there are several examples in CAS jurisprudence, including CAS 2020/A/6796 in which the Panel stated as follows:

"The panel finds that, based on the evidence submitted during these proceeding, it feels comfortable to conclude that the Player would not, at least at this point, have breached the Employment Contract if Kaizer Chiefs had not actively presented him with the Offer, which indisputably offered the Player a better salary than the salary he was paid at that time by Fosa Juniors".

e) The Appellant's assertion that it was unaware of the First Contract is simply not true. The Appellant acknowledged that it was made aware that the Player was in Thailand to negotiate an employment contract and that an agreement was therefore imminent (indeed the First Contract had actually already been concluded). This should have triggered the Appellant to perform proper due diligence, rather than relying on information from agents, including making direct contact with Ratchaburi.

f) In CAS 2020/A/6796, it was held by the Panel that the club's reliance on incorrect information from a player was tantamount to a failure to act with due diligence.

g) Based on the Appellant's own evidence, there were multiple red flags between 23 December 2020 (when it issued the offer) and 28 December (when it issued the Pre-Contract). This is evident from Mr. […]'s e-mail to colleagues of 28 December 2020 in which he noted the following:

- *"negotiations* […] *have become somewhat complicated* […]*"*
- *"he* [the Player] *entered into Thailand to sign a contract with a Thai club* […]*"*
- *"The Thai club seems to be angry* […]*"*
- *"However, we heard that the Thai club and the player have not signed a contract, and the player and his agent have decided not to play in Thailand* […]*"*
- *"we will proceed without backing down"*
- *"The worst-case situation is that the Thai club initiates lawsuit, but because the evidence has been received, the club cannot be sued, only the player himself can be sued".*

53. FIFA also challenged specific elements of the Appellant's submissions. For example:

a) While the Appellant may have *"genuinely believed that a bidding race was in place"*, this does not constitute it having exercised the degree of due diligence that the red flags warranted.

b) By excluding the Player and Ratchaburi as parties to this Appeal, the Appellant is attempting to put forward its own version of the facts without challenge.

c) The personal declaration obtained by the Appellant from the Player was *"useful to its cause of adding the Player to its team, while wilfully ignoring the indications that were detrimental to that cause"*. As per Mr. […]'s e-mail of 28 December 2020, this declaration was sought because the Appellant believed it meant that *"the club cannot be sued, only the player himself can be sued"*. The mere fact that the Appellant requested formal confirmation from the Player indicates that it was aware of the contractual situation with Ratchaburi. It was not sufficient for the Appellant to rely on written assurance from the Player that he was a free agent from 1 January 2020, as the Player was financially motivated to support the Appellant. Critically, the Appellant never contacted Ratchaburi, not even after its letter of 4 January 2021.

d) The Appellant's line of argumentation with respect to player registration issues is flawed. Firstly, it is contradictory. On the one hand, the Appellant argued that Ratchaburi should have registered the Player with the Football Association of Thailand on 14 November 2020 (the date of the First Contract), while, on the other

hand, it acknowledged that the registration period in Thailand only opened on 23 December 2020. Accordingly, the earliest date on which Ratchaburi could have registered the Player was 23 December 2020 – i.e. the same date on which the Appellant made an offer to the Player. *"In other words, a registration would not have prevented the Appellant's approach of the Player and the consequent inducement"*.

e) The Appellant argued that the Appealed Decision referred to certain events that took place in January 2021 (i.e. after the Player and the Appellant signed the Pre-contract) and that, pursuant to CAS 2015/A/3953 & 3954, only the Appellant's awareness at the time it signed the Pre-Contract is relevant when considering inducement. The Appellant did not provide any detail of these events, but FIFA assumes it is referring to Ratchaburi's letter of 4 January 2021, in which Ratchaburi requested the Appellant to withdraw its offer to the Player. FIFA assumes that the Appellant is attempting to demonstrate that, when it signed the Pre-Contract, it was unaware of the First Contract and cannot therefore be considered to have induced the Player to breach that contract. However, as stated in the Appealed Decision, the important element when assessing whether inducement has occurred is that *"*[…] *were it not for the Offer made to Fabian Andres Gonzales Lasso by Jubilo Iwata on 23 December 2020, the former would likely not have terminated the First Contract"*.

54. FIFA concluded that the Appellant's attempts to establish the true nature of the relationship between the Player and Ratchaburi showed wilful ignorance on its part, whereas proper due diligence would have established the following reality:

"[…] *(1) the Player and Club Ratchaburi were committed to their contractual arrangements made in November 2020; (2) on such basis, the Player travelled to Thailand in December 2020 and endured quarantine in order to be ready for the start of the First Contract in January 2021, (3) while aware of the Player's situation with Club Ratchaburi, Jubilo made a lucrative offer to the Player; (4) following the lucrative offer, the Player signed a pre-contract with Jubilo; (5) aware of the lucrative offer, Club Ratchaburi formally requested for Jubilo to withdraw such offer in light of its contract with the Player; (6) following the lucrative offer and signing of the pre-contract, the Player informed Club Ratchaburi that negotiations had not concluded and that no valid and binding contract had been signed; (7) the Player returned to Colombia until his visa had been granted to join Jubilo in Japan after which he signed a Second Contract on 21 April 2021 (retroactively valid as from 2 February 2021)"*.

V. JURISDICTION

55. Article R47 of the Code provides as follows:

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

56. Article 56(1) of the FIFA Statues (2021 Edition) provides as follows:

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

57. Article 49 of the FIFA Disciplinary Code (the "FDC") states as follows:

"Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes".

58. The Parties did not dispute the jurisdiction of CAS and confirmed it by signing the Order of Procedure.

59. Accordingly, CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

60. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against [….]*".*

61. Article 57 (1) of the FIFA Statues (2021 Edition) provides 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".

62. The FIFA DRC rendered the Appealed Decision on 4 August 2022 and notified its grounds to the Parties on 29 September 2022. The Appealed Decision is not subject to any appeal within FIFA

63. The last day of the 21-day period by which Jubilo was required to have filed the Statement of Appeal was therefore 20 October 2022.

64. As the appeal was duly submitted on 19 October 2022 and fulfilled all of the requirements set out in Article R48 of the Code, the Appellant's appeal to CAS is admissible.

VII. APPLICABLE LAW

65. Article R58 of the Code provides as follows:

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

66. Article 56 (2) of the FIFA Statutes (2021 Edition) provides 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".

67. The Panel is satisfied that, primarily, the various regulations of FIFA are applicable to this Appeal (including the FIFA RSTP), and that Swiss law shall apply subsidiarily to fill in any gaps or lacuna when appropriate.

VIII. PRELIMINARY ISSUE

68. At the commencement of the hearing, the Panel observed that Jubilo did not have the opportunity to respond to FIFA's submissions with respect to the Preliminary Issue and invited Jubilo to do so by way of oral submissions.

69. Jubilo made, *inter alia*, the following oral submissions at the hearing:

a) It has been accepted by CAS panels that independent co-respondents during first instance proceedings may adopt different positions when appealing the outcome of those first instance proceedings. In this instance, the Player and Jubilo are adopting different positions with respect to the Appealed Decision's determination of the horizontal dispute. Jubilo cited CAS 2017/A/4977 in support of its position, in which the panel commented as follows:

"70. According to the jurisprudence of the Swiss Federal Tribunal, defendants lodging separate appeals against a first instance decision remain independent from each other:

"[...] The independence of joint defendants will continue before the appeal body: a joint defendant may independently appeal the decision affecting him regardless of another's renouncing his right to appeal the same decision; similarly, he will not have to worry about the appeals of the other joint defendants being maintained if he intends to withdraw his own ([Person 7], op. cit., p. 281 ff). Among other consequences, this means that the res judicata effect of the judgment concerning joint defendants must be examined separately for each joint defendant in connection with the opponent of the joint defendants because there are as many res judicata effects as couples of claimant/defendant ([Person 7], op. cit., p. 317 ff.)"

[…]

> *71. As such, although both the Player and Smouha* [i.e. the appellant club in CAS 2017/A/4977] *challenged the Appealed Decision by lodging an appeal before CAS, the appeals shall be dealt with separately. The Panel is therefore to render a decision on the basis of Smouha's requests for relief, regardless of the outcome of the arbitration in CAS 2017/A/5019 Abdul Aziz Yusif* [the Player] *v. Ismaily SC* [a co-respondent in CAS 2017/A/4977] *and the fact that this may potentially lead to contradictory decisions*. […]*".*

b) Only Ratchaburi has the standing to be sued with respect to the horizontal dispute, but Jubilo has already entered into a settlement agreement with Ratchaburi so has no need to name it as a respondent. Accordingly, Jubilo's request for relief addresses the vertical dispute and sporting sanctions only in respect of which FIFA is the only party with standing to be sued. However, this does not preclude the Panel from assessing whether the First Contract was breached (i.e. the horizontal dispute) for the sole purpose of determining whether FIFA was correct to impose sporting sanctions. Jubilo cited CAS 2021/A/7851 and 7905 in support of its position. In that case the panel commented as follows:

> *"*[…] *the Panel observes that the Appealed Decision has a hybrid character. On the one hand, the FIFA DRC acted in its adjudicatory capacity, insofar as it decided the contractual dispute between Club Nasr* [the player's former club] *and the Appellants* [the player and the new club]*, i.e. by deciding that the Player terminated the Contract without just cause, and that therefore the Player (with Tondela jointly liable) had to pay EUR 160,000 to Club Nasr, which is a so-called horizontal dispute. As such, the standing to be sued rests with Club Nasr as the entity that avails itself of the binding effect of the decision with regard to the payment by the Player and Tondela of EUR 160,000. As Club Nasr is not a party to the present appeal arbitration proceedings before CAS, the Appellants' payment obligation to Club Nasr has become final and binding and cannot be reversed.*
>
> *On the other hand, the FIFA DRC also assumed a disciplinary role by imposing sporting sanctions on the Player and Tondela, which is a so-called vertical dispute. The Appellants' request to cancel the sporting sanctions imposed on them is directed against the disciplinary function of the FIFA DRC and therefore the only entity with standing to be sued in this respect is FIFA. FIFA decided to impose sporting sanctions on the Appellants based on the finding that the Player breached the Contract within the "protected period". As such, the Panel finds that the issue whether the Player breached the Contract, and if so, whether this breach occurred within the "protected period" can be subject of this Panel's scrutiny, but only with respect to the question whether the sporting sanctions are imposed in accordance with the applicable regulations. Any other solution would mean that the Appellants would have been required to direct their appeals, the scope of which is limited to the disciplinary sanctions, also against Club Nasr, which has no standing to be sued regarding the imposed sporting sanctions.*
>
> *Consequently, the finding of breach of contract within the "protected period" in the Appealed Decision related to the vertical dispute (the disciplinary issue) is not res judicata".*

70. Accordingly, it is Jubilo's position that the Panel is entitled to consider the merits of the horizontal dispute.

71. The Panel also invited FIFA to make oral submissions at the hearing in response to Jubilo. In addition to re-iterating arguments already made in its Answer, FIFA submitted, *inter alia*, that CAS 2021/A/7851 and 7905 (which was cited by Jubilo as a precedent in support of its position) is distinguishable from the current case as the player in question was a party to those proceedings.

72. After a short deliberation, the Panel advised the Parties as follows:

a) It was reserving its position on the Preliminary Issue in order to consider the Parties' respective submissions in more detail (including the precedent decisions referred to by the Parties).

b) In the meantime, the Parties' would be permitted to make oral submissions at the hearing with respect to the horizontal dispute to ensure that neither Party's position was prejudiced should the Panel reject FIFA's position on the Preliminary Issue.

73. The Panel makes the following observations with respect to the Preliminary Issue:

a) This Appeal must be dismissed if it accepts FIFA's position on the Preliminary Issue. Equally this Appeal must be dismissed if it agrees with the findings of the FIFA DRC with respect to the horizontal dispute and Jubilo's inducement of the same (the "Horizontal Issue"). In other words, if the Panel finds in favour of FIFA on one of foregoing issues, the other issue becomes moot.

b) The Panel could choose to determine the issues sequentially – i.e. the Preliminary Issue and then, only if still applicable, the Horizontal Issue. However, the Panel is not obliged to do so. In this particular case, given that both Parties have had the opportunity to make written submissions and oral pleadings on the Horizontal Issue (whereas Jubilo only had the opportunity to make oral submissions on the Preliminary Issue), the Panel opted to consider the Horizontal Issue prior to the Preliminary Issue.

c) The Panel agrees with the FIFA DRC's position on the Horizontal Issue – see: (i) paragraph 94 of this Award in which the Panel determines that the Player unilaterally terminated the First Contract without just cause; and (ii) paragraph 99 of this Award in which the Panel considers that Jubilo failed to rebut the presumption created by Article 17(4) that Jubilo induced the Player to do so.

d) Accordingly, the Preliminary Issue has become a moot point and the Panel did not consider it further or make any determination on it.

IX. MERITS

74. According to Article R57 (1) of the Code, the Panel has *"full power to review the facts and the law"*. As repeatedly stated in CAS jurisprudence, by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined

merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to the merits (see CAS 2007/A/1394).

75. In light of the facts and the circumstances of the case, as well as considering the Parties' submissions in support of their claims, the Panel observes that the main issues to be resolved are the following:

a) What is the applicable burden and standard of proof?

b) Which FIFA regulations are applicable to this case?

c) Was the First Contract a valid and binding agreement between the Player and Ratchaburi?

d) If so, did the Automatic Termination Clause operate as a condition precedent, meaning that the First Contract effectively never existed if the conditions were not satisfied?

e) If the First Contract did exist, did the Player's prior actions with respect to Jubilo amount to unilateral termination by the Player of the First Contract?

f) If the First Contract was unilaterally terminated by the Player, did Jubilo produce sufficient evidence to rebut the presumption created by Article 17(4) of the FIFA RSTP that it induced the Player to do so?

A. The applicable burden and standard of proof

76. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. […] *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based.* […] *The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, the Club must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the Club. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (see also CAS 2005/A/968 and CAS 2004/A/730).

77. In CAS 2003/A/506, it was held:

"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue… Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".

78. This position is further supported by the provisions of Article 12(3) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber which states:

"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".

79. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Panel that the facts it pleads are established.

80. As to the question of what the standard of proof is, the Panel makes the following observations:

a) Neither the Swiss Private International Law Act nor the Code prescribe a "standard of proof" applicable to CAS proceedings.

b) According to legal authorities, the parties to CAS arbitration proceedings are entitled to enter into a separate agreement on the evidential procedures to be followed, provided that these do not depart from mandatory procedural requirements of the Code (see RIGOZZI/QUINN, Evidentiary Issues Before CAS, in: BERNASCONI M. (ed.), International Sports Law and Jurisprudence of the CAS - 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw 2014). In this case, the Parties have not agreed, or otherwise expressed a view as to, the standard of proof to be applied.

c) Consistent CAS jurisprudence has upheld the right of a sports-governing body to set its own standard of proof (see, for example, CAS 2011/A/2426 and CAS 2011/A/2625). The regulations applicable to this case (i.e. the FIFA RSTP) are silent on this.

d) Where no applicable standard of proof is specified in the applicable regulations, CAS jurisprudence confirms that the Panel has the discretion to determine the appropriate standard, although as indicated in CAS 2010/A/2172, the Panel should at least consider consistent CAS jurisprudence in similar fields when exercising this discretion. The Panel notes that previous CAS panels have generally applied the "comfortable satisfaction" standard when considering cases involving the FIFA RSTP. See, for example, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605. As

explained by the panel in CAS 2011/A/2426, that standard is considered to be *"higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt"*".

e) The following FIFA regulations adopt the standard of comfortable satisfaction: (i) Article 35 of the FIFA Disciplinary Code (for the standard of proof to be applied in FIFA disciplinary proceedings); (ii) Article 48 of the FIFA Code of Ethics (for the standard of proof to be applied by FIFA's Ethics Committee); and (iii) Article 68(1) of the FIFA Anti-Doping Regulations (for the standard of proof to establish an anti-doping rule violation).

81. In light of the above observations, the Panel considers it most appropriate to apply the standard of "comfortable satisfaction".

B. The applicable FIFA regulations

82. The FIFA RSTP are applicable to this dispute and, in particular, Article 17(4) which states as follows:

"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods […]*".*

83. The Panel notes FIFA's Commentary on the RSTP (the "FIFA Commentary) and, specifically, the following with respect to the Article 17(4) of the FIFA RSTP:

"Inducement to a breach of contract is regarded as accessory to the actual breach. This fundamental principle leads to two main conclusions. Firstly, where there is no claim for breach of contract against a professional player, there cannot be a claim for inducement to such a breach against any club. […] *Secondly, and as explicitly stated in the Regulations, the relevant sporting sanction may only be imposed on the new club that induced a breach of contract if the player concerned terminates their contract without just cause during the protected period.* […].

The relevant wording contains a regulatory presumption which leads to the reversal of the burden of proof. Unless proven otherwise, it is presumed that any club that signs a professional player who has terminated their contract without just cause has induced that professional player to commit a breach of contract. In other words, it is not down to the former club to prove the inducement took place; rather, it falls to the new club to provide evidence that, despite having signed the professional player, it did not induce the latter to breach of contract. […].

[…]

The potential to [rebut the regulatory presumption] *has also been confirmed by CAS* [CAS 2015/A/3953 & 3954]. *In that case, the Panel considered the timeline in the run-up to the conclusion of the employment contract between the player and his new club and concluded that, under the circumstances, the new club could not have known about the agreement between the player and his previous club at the time at which they signed their own employment contract with the player. What happened after the new club and the player signed their employment contract was considered irrelevant in assessing whether any inducement took place".*

C. Was the First Contract a valid and binding agreement?

84. The Panel notes the following:

a) It is undisputed that the First Contract was executed by both the Player and Ratchaburi.

b) The First Contract contains "entire agreement" provisions at clauses 14.1 and 14.2 which state as follows:

"14.1 This Agreement together with the Appendix and all attached documents is understood by both parties to be the only complete and valid Agreement and replaces any other agreements and negotiations, whether verbal or written and previously entered upon, regarding this Agreement.

14.2 This Agreement can only be amended by a written document signed by both parties".

85. The starting position for any signed contract is the legal principle of *pacta sunt servanda* (i.e. agreements must be kept). Furthermore, pursuant to consistent CAS jurisprudence and general principles of contract law: (i) a signature on a written contract binds the signatory to the terms of that contract; and (ii) the fact that a party to a written contract does not understand its terms does not preclude enforcement of that contract. These general principles will of course not apply if the signature was obtained by mistake or as a consequence of misrepresentation, fraud, duress or undue influence or if the contract is vitiated by illegality (see articles 23 *et seq*. of the Swiss Code of Obligations). The burden of proof for establishing that the First Contract is subject to one of these exceptions sits with Jubilo.

86. Jubilo alleges that the Player and Ratchaburi never intended for the First Contract to be binding and that the Player executed on the basis of representations made by Ratchaburi (and the Player's own agent) that: (i) it would be used for the sole the purpose of obtaining a visa; and (ii) it would subsequently be replaced by a different contract reflective of the financial terms he was seeking. Jubilo pointed to the existence of the Subsequent Draft Contract and witness evidence from the Player in support of its position.

87. There is no documentary evidence to support Jubilo's position (such as an exchange of e-mails between the Player's agent and Ratchaburi as to the alleged true nature of the First Contract). Further, in the absence of any supporting witness evidence from Ratchaburi, it is reasonable for the Panel to assume that Ratchaburi would dispute Jubilo's version of events

(as, otherwise, Ratchaburi would not have lodged its claim with the FIFA DRC, resulting in the Appealed Decision).

88. Accordingly, the Panel considers that:

a) Jubilo has not provided sufficient evidence to establish to the comfortable satisfaction of the Panel that the First Contract is subject to one of the exceptions set out in articles 23 *et seq.* of the Swiss Code of Obligations; and

b) The First Contract is to be treated as valid and binding.

D. What was the effect of the Automatic Termination Clause?

89. Jubilo argues that the Automatic Termination Clause operates as a condition precedent and that, as the relevant conditions were not satisfied by the deadline of 1 January 2021, the First Contract did not come into force. Accordingly, it is not technically possible for the Player to have unilaterally terminated the First Contract.

90. To recap the Automatic Termination Clause states as follows:

"The contract will be automaticely (sic) cancel without any compensation if the player failed for the medical check up or is unable to play for any reason at the 01 january (sic) 2021".

91. The Panel is of the firm view that the Automatic Termination Clause cannot be reasonably interpreted as creating a condition precedent. Rather, it operates to bring the First Contract to an end automatically (i.e. without either Ratchaburi or the Player requiring to serve notice), if either: (i) the Player fails a medical check-up; or (ii) the Player is not able to play football for Ratchaburi for any reason. Accordingly, the Panel considers that the First Contract came into existence as a valid and binding agreement immediately upon Ratchaburi and the Player executing it on 14 November 2020.

92. The Panel notes that, in the Appealed Decision, the FIFA DRC considered the Automatic Termination Clause to be invalid, meaning that it would not have operated to bring the First Contract to an end automatically had the Player not already terminated it without just cause. The Panel observes that the validity or otherwise of the Automatic Termination Clause is a moot point if the Player had already terminated the First Contract without just cause prior to 1 January 2021.

E. Did the Player terminate the First Contract without just cause prior to 1 January 2021?

93. The Panel makes the following observations:

a) Pursuant to consistent CAS jurisprudence, a football player is deemed to have terminated an employment contract without just cause at the point at which he enters

into a new employment contract with a new football club with a term which overlaps with the term of the pre-existing employment contract.

b) It is undisputed that the Player and Jubilo entered into the Pre-Contract before 1 January 2021 as the Player executed the Pre-Contract on 28 December 2020 and Jubilo counter-executed it on 29 December 2020.

c) When giving evidence, Mr. […] confirmed that Jubilo regarded the Pre-Contract as legally binding and enforceable.

94. Accordingly, the Panel considers that the Player unilaterally terminated the First Contract without just cause on 29 December 2020.

F. Did Jubilo produce sufficient evidence to rebut the presumption of inducement?

95. As stated in the FIFA Commentary *"*[u]*nless proven otherwise, it is presumed that any club that signs a professional player who has terminated their contract without just cause has induced that professional player to commit a breach of contract. In other words* […] *it falls to the new club to provide evidence that, despite having signed the professional player, it did not induce the latter to breach of contract".*

96. As the new club, Jubilo is presumed to have induced the Player to breach the First Contract unless it can prove otherwise to the comfortable satisfaction of the Panel. Consistent with CAS 2015/A/3953 & 3954, the Panel only considers the time period up to 29 December 2020 to be of relevance for determining this issue.

97. Jubilo makes the following arguments:

a) It did not know of the existence of the First Contract prior to 29 December 2020 and cannot therefore have induced the Player to breach it.

b) In the alternative, the Player's relationship with Ratchaburi was irreparably damaged before Jubilo made an offer to the Player, meaning that there was no causal link between Jubilo's actions and the Player's breach.

98. With respect to Jubilo's knowledge or otherwise as to the existence of the First Contract, the Panel makes the following observations:

a) At the point at which Jubilo became aware that the Player was in Thailand to negotiate with a Thai club and was undergoing a 14-day period of quarantine, Jubilo was effectively put on notice as to the potential existence of a contractual relationship between the Player and Ratchaburi. According to Mr. […], Jubilo first became aware of this on 25 December 2020.

b) While Jubilo took steps to confirm that the Player and Ratchaburi had not entered into a contract, the Panel considers that such steps were insufficient when considering

the specific circumstances of the case. Obtaining a personal declaration from the Player was a sensible first step but, as it transpired, the personal declaration was false.

c) Given that Jubilo placed complete reliance on the Player to establish his status with Ratchaburi (rather than also seeking to confirm the position with Ratchaburi), the Panel would have expected Jubilo to have exercised greater diligence in this regard. However, Jubilo relied on Fernando, both to draft and obtain the personal declaration from the Player, without seeming to consider that both Fernando and the Player were financially motivated for the Jubilo transfer to proceed. Furthermore, Jubilo appeared content to rely on Fernando, despite being aware that Fernando was in turn reliant on Sanchez to conduct communications with the Player. Jubilo believed Sanchez to be the Player's agent, yet pursuant to Jubilo's own evidence, it was apparent that: (i) Sanchez only instigated contact with the Player after the Player departed Colombia for Thailand; and (ii) Sanchez was aware that another agent (Jorge Garcia) acted for the Player in negotiations with Ratchaburi. Surprisingly, Jubilo did not secure any proof that Sanchez was actually mandated to act for the Player or insist on Sanchez being referenced in, or a party to, the Pre-Contract or the subsequent employment contract between the Player and Jubilo, notwithstanding that Article 6(2) of the FIFA Regulations on Working with Intermediaries requires that *"Clubs or players shall ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary"*.

d) Jubilo referred to the following due diligence it undertook as to the Player's contractual status as of 1 January 2021: (i) online research; (ii) a review of TMS; and (iii) discussions between Fernando and Atletico Nacional. The Panel does not consider these steps to constitute adequate due diligence as they depended on Ratchaburi either announcing its signing of the Player prior to having registered the Player (which a club might not always wish to do) or Ratchaburi registering the Player at the start of the Thai registration window (which opened on 23 December 2020) whereas Ratchaburi had until 6 January 2021 to register the Player.

e) At the hearing, Mr. […] was asked why he did not contact Ratchaburi to ascertain whether they had already entered into a contract with the Player. Mr. […] explained that Jubilo believed itself to be in a race with Ratchaburi to sign the Player and that it considered the personal declaration from the Player to be sufficient. The Panel would have sympathy with Jubilo's explanation had Jubilo been completely unaware that the Player was in Thailand undertaking a 14-day period of quarantine with a view to joining another club. However, Jubilo was aware of those facts. Instead of this prompting Jubilo to adopt an enhanced level of due diligence (such as making contact with Ratchaburi or, at the very least, have a direct discussion with the Player as referenced above) it consciously chose to place complete reliance on the Player's personal declaration, notwithstanding that it was drafted and secured by Fernando. The Panel concurs with FIFA's description of Jubilo's conduct as amounting to "wilful ignorance".

f) In the Internal E-mail, Mr. […] warned that Ratchaburi was upset because Jubilo had disrupted its deal with the Player but that the *"worst-case situation is that the Thai club initiates lawsuit, but because the [personal declaration from the Player] has been received, the club cannot be sued, only the player himself can be sued. We also heard that the player's agent and the Thai club's agent have settled the matter with money"*. During the hearing, Mr. […] explained as follows:

i. When he referred to Ratchaburi being *"angry"* with Jubilo, he meant as a consequence of the Player changing his mind about signing for Ratchaburi because Jubilo had made him a better offer (not as a consequence of the Player being in breach of the First Contract).

ii. When he referred to Ratchaburi suing somebody, he meant that Ratchaburi might seek to recover its wasted costs arising from its unsuccessful pursuit of the Player (not that Ratchaburi might seek damages for the Player's breach of the First Contract).

g) While the Panel is not disputing the explanation given by Mr. […] as to what was meant by certain sections of the Internal E-mail, it is clear that Mr. […] was at least aware that Jubilo were engaged in a course of action which could result in legal action by Ratchaburi.

99. On this basis, the Panel does not consider that Jubilo has rebutted the presumption created by Article 17(4) that, as the new club, Jubilo induced the Player to terminate the First Contract without just cause.

100. Notwithstanding the foregoing, the Panel emphasises that the determination of the necessary steps for a sufficient due diligence to rebut the presumption of inducement stated in Article 17(4) of the FIFA RSTP always depends on the specific circumstances of the case and the requirements for a sufficient due diligence must always be assessed on a case-by-case basis. Therefore, a direct discussion with the Player as referenced above may not in every case be sufficient or necessary to ensure an adequate level of due diligence.

101. Turning now to Jubilo's alternative argument, Jubilo claims that the Player's relationship with Ratchaburi was irreparably damaged before Jubilo made an offer to the Player, meaning that there was no causal link between Jubilo's actions and the Player's breach. In support of this position, Jubilo highlights the following elements of the timeline:

a) The Player's decision not to join Ratchaburi (and therefore unilaterally terminate the First Contract without just cause) was made on 22 December 2020, after receiving the Subsequent Draft Contract from Ratchaburi.

b) Jubilo's offer was communicated to the Player by Sanchez on 23 December 2020.

102. However, the Panel notes that: (i) according to his witness statement, Fernando initially contacted Sanchez about Jubilo's interest in the Player on 19 December 2020; and (ii) WhatsApp exchanges between Fernando and Sanchez suggest that Sanchez spoke with the Player on the same day. Accordingly, the Panel is not comfortably satisfied as to the absence of a causal link between Jubilo's interest in the Player and the Player's decision to disengage with Ratchaburi.

G. Conclusions

103. The Panel concludes as follows:

a) The First Contract constituted a valid and binding agreement between the Player and Ratchaburi and was in place from 14 November 2020.

b) By entering into the Pre-Contract with Jubilo on 29 December 2020, the Player unilaterally terminated the First Contract without just cause on that date.

c) Pursuant to Article 17(4) of the FIFA RSTP, Jubilo is presumed to have induced the Player's breach of contract and Jubilo provided insufficient evidence to rebut that presumption.

d) Accordingly, Jubilo's appeal against the Appealed Decision is dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 19 October 2022 by Jubilo Co. LTD against the decision issued on 4 August 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 4 August 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed.

3. (…).

4. (…).

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