

Decision of the Players' Status Chamber

passed on 23 May 2023

regarding an employment-related dispute concerning
the coach FABRIZIO PICCARETA

BY:

Oleg ZADUBROVSKIY (Russia)

CLAIMANT:

Fabrizio Piccareta, Italy

Represented by Mr. Christian Puggioni

RESPONDENT:

HIFK Soccer, Finland

Represented by Mr. Hannu Kalkas

I. Facts of the case

1. On 11 April 2022, the Finnish club HIFK Soccer (hereinafter: *the Club* or *the Respondent*) sent the Italian coach Fabrizio Piccareta (hereinafter: *the Coach* or *the Claimant*) an unsigned copy of a document named “*work contract offer*” (hereinafter: **the offer**) and a document named “HIFK Fotboll - strategy summary and player list”.
2. The offer contained the following information, *inter alia*:
 - Duration of the contract: from 14 April 2022 until 5 November 2023.
 - Salary: on the 1st year the Coach would be entitled to a monthly gross salary of EUR 4,250 and on the 2nd year the Coach would be entitled to a monthly gross salary of EUR 6,000.
 - Interpretation of the contract and disputes: “[...] *This contract is governed by the laws of Finland. Any disputes that the parties can't settle through negotiation will be resolved through binding arbitration in the Finnish Sports Arbitration Board*”.
3. On 12 April 2022, the Coach terminated the contract with his former club.
4. On 13 April 2022, a meeting of the Club’ board directors was conducted. The outcome of this meeting is disputed by the parties as follows:

Claimant	Respondent
Following the Board meeting, the Assistant communicated the Coach that he had been chosen as new Head Coach.	“HIFK board meeting decided “that Fabrizio Piccareta can be chosen as the new coach of the team, but only if all the information provided is correct and the contract is exactly as presented to the board. Before making final decisions and signing the contract, it has to be certain that all the conditions in the binding contract to be signed are exactly what was presented to the board”.

5. On an unspecified date, according to the Claimant on 13 April 2022, via the application *WhatsApp*, Mrs. Annika Kulha, Assistant to the Sports Director of the Club (hereinafter: *the Assistant*) and the Coach exchanged the following messages:

Coach:

“And I want to be HIFK head coach. I just want to make sure that we are both happy and I hope the board will agree an adjustment 10 your firsi! offer. As you learned from your conversa1ion with Vesa...”

Assistant:

" Good evening Fabrizio!

First of all, I apologize that we've been informing you via Whatsapp, but due to the late night it might be better to call rather in the morning. I'll try to summarise things in the message:

-The club board have confirmed sport department's proposal to name you as HIFK's new head coach, congratulations!

- I will send you the contract first to check that all the details are correct and then electronical signature request so that we'll be able to move forward this issue.

- For the contract I would need your current home address.

-We would hope that you could fly m Helsinki as soon as possible. From which city should I book your flights?

- Before that/after the contract is signed I will connect you with our coaching staff and if necessary our head of board/CEO. The goal is to tell the news first for the captains and then for the whole team already tomorrow.

If/when you have any questions, please let me know. You can also give me a call, because the Champions league will keep me awake regardless.

Once again, we're looking forward for this co-operation, so thank you and welcome to HIFK!"

6. On 13 April 2022, the Assistant and the Agent of the Coach, Mr. Vesa (hereinafter: *the Coach's agent*) exchanged the following (it is to be noted that the transcript below was translated by the Claimant):

"13.04.22. 12.49. Assistant: hi Vesa. If possible, can you still make a short call tonight? I can also send you a message as to how best it suits you

13.04.22. 12.50. Coach's agent: send me a message please

13.04.22 23.05. Assistant: We presented the trainer candidates to the board meeting and approved by the sports department, Fabrizio Piccareta, with the following conditions, which had been approved in the last offer discussion. I will send the final version of the contract to you and Fab by email. The purpose is to sign the contract tomorrow morning (quickly) in order to get the coach as quickly as possible, according to Finland and the team, preferably by tomorrow evening. This information is now in the circle, but it is not public yet. You can contact Fabrizio, of course me and/or Mika will also be chatting about it in the morning.

13.04.22. 23.07. Coach's agent: alright. thank you for the message. I informed Fab and ask to keep quiet about it until you have agreed on the publication. Thanks for the update so far

13.04.22. 23.11. Assistant: thank you Vesa. The purpose is to make a separate agreement between the club and you in addition to your commission, as it cannot be directly included in a coach's contract. I'll send it to you as soon as we get the names on paper and the most urgent

arrangements are taken care of in relation to Fabrizio's contract. Isn't it hard to get a good project on the ground?

13.04.22. 23.11. Coach's agent: Fab just found out about it. He is satisfied and keeps the matter a secret until HIFK publishes the matter

13.04.22. 23.12. Assistant: Great!

13.04.22. 23.19. Coach's agent: Fab said he is ready to fly tomorrow if the contract is as agreed. You can reserve a flight from Genoa. If from Genoa is not available the other option is from Milan.

13.04.22. 23,20. Assistant: I also sent him a message. I'm sure it will be taken care of.

14.04.22. 00,31. Assistant sent the copy of the contract to be reviewed

14.02.22. 07,58 Coach's agent: And thanks for this latest version. However, there are two points in it that are different from what we had agreed on in the first version.

1. For the second year's salary, the end date of the contract is shown in green. It says 31.10.23 and it should be 30.11.23

2. the second year's bonuses had already been approved by Mika's counterproposal:

TOP FOUR TEAM: 6.000

EURO SPOT: 14.000

FINNISH CUP WIN: 14.000

WIN THE LEAGUE: 14.000

14.04.22. 08,16 Coach's agent: And yet a third note, which could be recorded as we agreed. So we agreed on two round-trip flights/year. Now the contract says "during the contract season" and that can be interpreted as two back-and-forth flights for the entire contract period.

14.04.22. 08,26 Assistant: True. We'll be back soon with the corrected one.

14.04.22. 09,25 [the Assistant] sent the amended copy of the contract.

14.04.22. 09,25 Assistant: Well, now the errors have been fixed from the contract. I separated the two flights for both seasons, so it's much clearer. One more thing has to be done anyway, as I recall, there was talk about that, if the team drops out of the series in the 2022 season, both parties have the right to cancel the contract.

14.04.22. 09,34. Coach's agent: Nice, still little issues in the final day of the second year. There are 30 days in November. But the backlog is not a problem because everyone understands it. I don't think there was an agreement about the possibility of both parties concluding the agreement. It was in your counter-proposal and we didn't respond to it, and it wasn't discussed after that. I still need to discuss it with Fab.

14.04.22. 09,35. Assistant: *Alright. I'm fixing the calendar days. It's good to be in contact with Mika too, he can use it quickly. So it came strongly from the government's side, but I will definitely get it agreed.*

14.04.22. 09,36 Coach's agent: *OK. What's your latest entry about the possible closing of the contract? So I can probably fit it in somehow.*

14.04.22. 09,41 Assistant: *If the club relegated from Veikkausliiga for the season 2023, the club has an option to terminate the contract. Termination of the contract must be informed to the other party by 05/11/2022.*

14.04.22. 09,42 Assistant: *The cancel option is not in use, only with the club, and only in the case does the club fall.*

14.04.22. 09,42 Assistant: *here I mistakenly said that the option for both.*

14.04.22. 09,47 Coach's agent: *Fab calls Mika and I get back to it quickly, but everything is ok.*

14.04.22. 09,47 Assistant *Nice, let's do it. If/when I get the contract signed, I'll add you as a copy so we can stay on the map where we're going.*

14.04.22. 09,52 Coach's agent: *Alright. That entry suits Fab. Can you send me the latest version when it's ready, so I'll read it once more, thank you.*

14.04.22. 09,52 [the Assistant] *sent the final version of the contract*

14.04.22. 10,01 Coach's agent: *Fab can approve that latest version and is ready to sign it.*

14.04.22. 10,01 Assistant: *That's great, I'll send you a mail soon. Thanks Vesa*

14.04.22. 10,02 Coach's agent: *Thanks"*

7. On 14 April 2022 at 9h02 local time, the Assistant sent an e-mail to the Coach with an unsigned copy of a work contract (hereinafter: **the contract**) in which she requested the signature of the Coach. The e-mail indicated the following: *"after you sign PICCARETA Fabrizio Head Coach Contract HIFK 2022, the agreement will be sent to Jarno sajmivuori. Then, all parties will receive a final PDF copy by email"*. On the same date, the Coach signed the contract and sent it back to the Club.
8. The contract was allegedly valid as from 15 April 2022 until 30 November 2023.
9. In accordance with clause 3 of the contract, the Coach was allegedly entitled to the following amounts:

"1st year

The Club pays the coach a salary for performing his duties. The salary is 4,800 euros/month gross during the time period of 15/ 4/2022-30/11/2022.

The club will provide housing with the club renting an apartment close to the city centre of Helsinki for the coach (taxable benefit), as well as work phone, phone subscription and laptop for the contract period. The club will provide HSL-card for public transportation during the work contract.

The club will provide two return flights (HEL-GEN-HEL) during the season 2022 If the team manages to succeed positionally in the league of 2022, the bonus policy is as follows:

Top 6 team; 4,800 €

Euro spot; 8,500 €

Finnish cup win; 8,500 €

Veikkausleague win: 11,000 €

2nd year

The Club pays the coach a salary for performing his duties. The salary is 6,000 €/month + the same apartment (taxable benefit) during the time period of 6/11/2022 to 30/11/2023.

The club will provide HSL-card for public transportation during the work contract.

The club will provide two return flights (HEL-GEN-HEL) during the season 2023.

If the team manages to succeed positionally in the league of 2023, the bonus policy is as follows:

Top 4 team; 6,000 €

Euro spot; 14,000 €

Finnish cup win; 14,000 €

Veikkausliiga win: 14,000 €

If the club gets relegated from Veikkausliiga for the season 2023 the club has an option to terminate the contract. Termination of the contract must be informed to the other party by 5/11/2022.

General terms

The club agrees to provide continuing education opportunities as approved by the Sporting Director.

The Club compensates the coach for travel costs if they have been agreed in writing beforehand and are in compliance with the Finnish tax authorities' regulation.

Salary and compensations are paid monthly on the last working day of the month, to a Finnish bank account provided by the coach. Travel invoices and receipts need to be returned by the 20th of each month to be processed in that month's salaries.

No bonus holiday pay is paid; everything is included in the base salary".

10. In accordance with clause 7 of the contract:

"7. INTERPRETATION OF THIS CONTRACT AND DISPUTES

Should any disputes arise regarding the interpretation of this contract, or any disagreement between the parties arise, the parties agree to negotiate immediately. The coach is entitled to use a legal representative in this negotiation.

This contract is governed by the laws of Finland.

Any disputes that the parties can't settle through negotiation will be resolved through binding arbitration in the Finnish Sports Arbitration Board.

The parties of this contract refrain from publicly discussing any disputes possibly arising from this contract in reference to the confidentiality requirement and avoid any behaviour which might weaken theco-operation of the Club, the team and the players, and the staff and the players".

11. On 14 April 2022, a WhatsApp message from the Sports Director of the Club was sent to the Coach as follows: *"great to get work with you together"*.
12. On 14 April 2022, a meeting was conducted between the Claimant, Mr. Mika Lönnström (Sports Director of the Club), the Assistant, Mr. Olli Orvasto (Team Manager), Mr. Pedro Henriques (Assistant coach), Mr. Miguel Bragarna (Fitness coach), and Mr. Roberto Rivelino (Goalkeeping coach). The outcome of said meeting is disputed by the parties:

Claimant	Respondent
During the meeting everyone explained their duties and responsibilities. Furthermore, the assistant coach requested instructions from the Coach in how to conduct the upcoming training session. Further the Coach has been informed by the Assistant that she would be waiting for the Coach at the Helsinki airport on the 15th of April 2022 to escort the Coach to the stadium.	This meeting was a part of the negotiations and was conducted in order to facilitate the Claimant in case he should be chosen to be the next coach. As the Claimant himself tells in the end of the meeting, the contract was still not signed by the Club.

13. On 14 April 2022, the Coach received an appointment reservation from the *"International registrations Hesinki service location"*.
14. On 14 April 2022 at 9:55, the Assistant sent to the CEO of the Club the following e-mail:

*"Morning,
attached is Piccareta's employment contract. These conditions are therefore accepted. The difference to the contract sent in the evening is the correction of one date, the "clarification" of the flights, the 2nd year bonuses and the clause about dropping. (the club's option to terminate) So we're just waiting for your confirmation, after that for the signature. The coach has accepted all contract terms and is ready to fly to Finland on Friday morning.
Thank you for the help, let's keep in touch!"*
15. On 14 April 2022 at 9:55, the CEO of the Club replied to the Assistant the following e-mail:

"Hi, how did the bonuses for the second year change? I don't have the one presented to the board yesterday as a reference, I'm in a meeting without a computer".

16. On 14 April 2022, via the application *WhatsApp*, the Assistant and the Coach's agent exchanged the following messages (it is to be noted that the transcript below was translated by the Claimant):

"14.04.22. 20.28 Coach's agent: Hi, Fab is worried because he hasn't received his flight ticket yet. I said probably in treatment.

14.04.22. 23.05 Coach's agent: Fabrizio obviously doesn't fly tomorrow. Why isn't he in touch? We wonder why.

14.04.22. 23.08 Assistant: hi Vesa. We are just sending you and Fab a message".

17. On 15 April 2022, via the application *WhatsApp* the Assistant sent the Coach the following message (quoted verbatim):

"Hi Fabrizio,

I'll try to explain the situation as well as I can.

On wednesday the board agreed that we would make the contract with you. So we of course thought that everything was clear.

On thursday, when I sent you the final contract to sign and when you had a meeting with the staff we were in belief that everything was clear. But when our CEO didn't sign the contract and the board members started to ignore our messages we had to keep you in the shadows until we knew what was going on. When the board told us on thursday evening that they had opened the head coach search again we basically realized that things didn't go as planned.

So in conclusion, the board walked over sport department. This of course is not any excuse for the way we dealt with you, and the only thing I can really say is to apologize.

I've asked our board members to get in touch with you and Vesa but I assume that they haven't done it.

I myself don't really know anything else that the board has continued to negotiate with Paatelainen.

Im very sorry that the club treated you this poorly. It's extremely unprofessional to say the least and I unfortunately can't say anything more.

18. By courier on 20 May 2022, the Coach requested the Club to fulfil and perform the contract within 25 days. The letter further indicated that once the deadline provided expired, the contract would be terminated by the Club's *"exclusive decision"*.

19. On 26 May 2022, the Coach sent the same letter via e-mail.

20. By correspondence on 23 June 2022, the CEO of the Club indicated to the Coach's legal representative the following (quoted verbatim):

"Dear Mr. Puggioni:

My name is Jarno Salmivourri and I am the Managing Director of HIFK Fotbol Ab (the "Company"). I refer to your letter dated 26 May 2022 regarding the position of Mr. Fabrizio Piccareta.

First of all, I apologize for any possible misunderstanding or miscommunication that may have occurred during the contract negotiations between the Company and Mr. Piccareta. However, as with any negotiations, there are always a few candidates involved and a final contract is concluded only after approval by all parties and especially the appropriate body company.

Although Mr. Piccareta has been communicating with both Mr. Mika Lönnström and Ms. Annika Kulha, neither of them have by virtue of law or the Articles of Associations of the Company any authority to enter into any contract or agreement for, on behalf of or in the name of the Company, or to legally bind the Company to any commitment or obligation regarding the appointment of a new head coach. The ability to control the Company's business by electing what obligations to undertake is a matter that is reserved for the Board of Directors of the Company.

In this particular case, the Board of Directors of the Company never approved the final version of the contract and therefore also ceased any further negotiations with Mr. Piccareta. It is of course unfortunate that the communications with Mr. Mika Lönnström and Ms. Annika Kulha reached a level where Mr. Piccareta was led to believe that an approval would be a mere formality, but as the content of the contract did not meet the requirements and expectations of the Board of Directors of the Company, they had no other alternative than refuse approval.

I do understand the frustration of Mr. Piccareta but as the Company never has concluded a legally valid and binding contract with Mr. Piccareta, there cannot be any breach of contract not to mention any valid claim for the performance of the contract [...]"

21. By correspondence on 24 June 2022 and on 27 June 2022, the Coach wrote to the Club and stated the following, *inter alia*:

"We both know Mr Piccareta has been lead to sign the contract due to your club's behavior. This may be seen in only two ways.

- a. We consider the contract as signed, so I will ask for total compensation under international, sport and Finnish Law*
- b. We consider the contract as not signed, so I will ask total compensation under pre-contract or general principles of tort law under international (and sport) Law*

Both choices will drive to a time consuming and expensive court case, which we both most probably prefer to avoid. On your side I may assume this option would also be quit annoying also considering, as reported in local newspaper, you need to clear your financial records in order to proceed with your attempt to save the club

At the light of above I remain awaiting an acceptable settlement proposal within 5 days from today. Elapsed said time I will feel free to proceed in the best seen ways to protect my client's interests".

22. On 6 July 2022, the Club replied to the Coach that from the Club's perspective there was not a valid agreement between them.
23. On 1 July 2022, the Coach signed an employment contract with the Italian club SMI SSD valid as from 1 July 2022 until 30 June 2023, including a monthly salary of EUR 1,000.

II. Proceedings before FIFA

24. On 24 October 2022, and amended on 2 November 2022, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

25. The Claimant lodged a claim against the Respondent for breach of contract.
26. In his claim, the Claimant first stated that the parties had concluded a contract considering that the contract contains all the necessary elements to be considered as a contract and added that *"when the Claimant signs the contract proposed by the Respondent and the same acquires knowledge of it, the contract itself is perfected. The Respondent, not wanting to fulfil the contract, effectively breaks the contract unilaterally and without just cause"*.
27. In this respect, the Coach considered that following the acceptance of the contract by him, the club did not honour the contract, disregarding the legal principle *pacta sunt servanda* and considered that the Club unilaterally terminated the contract without just cause.
28. The Coach considered that the termination of the contract was on 23 June 2022 after the time he provided in his default notice dated 20 May 2022 expired.
29. Alternatively, the Coach argued that *"if this Panel considers the contract not completed and considers it an agreement comparable to the pre-contract, also present in the FIFA commentary recognizes pre-contractual responsibility and legitimate expectations"*.
30. The Claimant manifested that he is entitled to compensation and that should not only include the standard residual value but the additional supplement of at least 6-months salaries. The Claimant further requested the amount he waived in his previous contract by signing with the Respondent (EUR 119,300).
31. The Claimant requested the following relief:

Principally:

- To determine that the Club unilaterally terminated the contract without just cause.
- A compensation for breach of contract of EUR 332,647
- Overdue salary payments of EUR 14,400
- 5 % interest per annum as from the due dates as follows:
 - *“5% p.a. on the amount of Euro 91.200 (compensation due by the Respondent to the Claimant) as from 23st of June 2022 (the date when the Club terminated the Contract without just cause unilaterally and prematurely); and*
 - *5% p.a. on the amount of Euro 4.800 (salary payment for the month of April 2022) as from 15st of May 2022; and*
 - *5% p.a. on the amount of Euro 4.800 (salary payment for the month of May) as from 15st of June 2022; and*
 - *5% p.a. on the amount of Euro 4.800 (salary payment for the month of June) as from 23st of June 2022; and*
 - *5% p.a. on the amount of Euro 74.800 (the total value of the Coach’s HIFK Fotbool Ab Contract variably); and*
 - *5% p.a. on the amount of Euro 14.000 (the total value of the Coach’s HIFK Fotbool Ab contract benefits); and*
 - *5% p.a. on the amount of Euro 77.300 (the total fixed waived value of the Coach’s SPAL Contract); and*
 - *5% p.a. on the amount of Euro 42.000 (the total value of the Coach’s SPAL Contract variably)”.*
- To impose sporting sanctions on the Club.
- To order the Club to assume administrative and procedural fees, if any.

In the alternative

- To recognize the pre-contractual responsibility and legitimate expectations, attributable to the conduct of the Club and to determine that the Club unilaterally and prematurely terminated the pre-contract without just cause.
- Compensation for breach of the pre-contract of EUR 347,047.
- 5% interest per annum as from the due dates until the date of effective payment as follows.
- To impose sporting sanctions on the Club.
- To order the Club to assume administrative and procedural fees, if any.

In any case:

“Condemn the Respondent to pay in favour of the Claimant all the due amounts deemed fair and reasonable in view of the Club’s termination without just cause of the abovementioned contractual relationship and the interest rate of 5% p.a. on the liquidated sum, in addition to the legal fees for this Claim”.

b. Position of the Respondent

32. In its reply, the Respondent requested the claim to be dismissed.

33. The Club indicated that there is no contract considering that (1) there is no written contract signed by both parties and (2) *"It is true that the Claimant took part in a Teams meeting with the sporting department of the club. That does not mean that there was a contract in place. This negotiation was a part of the negotiations and was held in order to facilitate Mr. Piccareta to the club should he be chosen to be the next coach. As the Claimant himself tells in the end of the meeting, the contract was still not signed by the club"*.
34. The Club further indicated that there is no pre-contract on the following grounds:
- *The "pre-contract is a signed contract between the parties that requires parties to enter into an agreement. In this case, there was no pre-contract nor was there a situation comparable to pre-contract"*.
 - *"The Claimant and his agent were well informed that the CEO or the chairman of the club's board was to sign the contract and thus make the final decision on behalf of the club. What the sports director or his assistant may have said are merely their opinions. Those possible opinions do not change the fact that the Claimant was aware of the fact that the valid contract between the parties required the signatures of both parties"*.
 - The Club's board meeting agreed to make the Claimant the next coach on one condition: *"that Fabricio Piccareta can be chosen as the new coach of the team, but only if all the information provided is correct and the contract is exactly as presented to the board. Before making final decisions and signing the contract, it has to be certain that all the conditions in the binding contract to be signed are exactly what was presented to the board"*. The contract and its provision were to be exactly as presented to the board, however some amendments were made in contract and the Claimant confirmed that said changes occurred. In this situation the Claimant cannot admissibly appeal to legitimate expectations.
 - Due to the changes made by the Coach's agent, the Club could not accept and sign the contract. Therefore, the Club has acted in good faith.
35. The Respondent added that in case FIFA decides that there is a binding agreement, FIFA shall have no jurisdiction. In accordance with the Club, the Finnish Sports Arbitration is an independent arbitration tribunal within the framework of the national association described in art. 22 par. 1 lit. c) of the FIFA Regulations on the Status and Transfer of Players (RSTP), according to the Finnish Football Association Competition Rules, namely art. 20, i.e., Cancellation of the contract and contractual disputes.
36. The Respondent further added that in case FIFA states that it has jurisdiction to decide on the matter, the decision must be based in accordance with FIFA rules and Finnish Legislation. As to the Finnish Legislation, the Club referred to chapter 12 of the Finnish Employment Contracts Act.
37. In addition, the Respondent mentioned that according to Finnish tax laws the withholding tax must be delivered to the amount of 60 % if the tax card is not delivered to the payer or

the payer has not received necessary information for the payment of the withholding tax. The Claimant has not put forward any evidence supporting his claim in this regard but has instead claimed the gross amounts. Therefore, according to Finnish law, compensation is equivalent to three months' salary deducted with 60% tax. Thus, the Respondent concluded that the maximum amount that the Claimant could receive as compensation is EUR 14,400 gross.

38. The Respondent requested the following relief:

- I. *"Dismiss the claims of Fabrizio Piccareta as there is no contract between the parties.
Or*
- II. *In case the Tribunal finds that there is a binding contract between the parties:
II.I Reject the claims of Fabrizio Piccareta due to the lack of jurisdiction
or
II.II confirm that the maximum amount of compensation, in case of valid and binding contract, shall be 14.400 euros (Gross) added with 5 % interest since 18.11.2022.*
- III. *In any event dismiss the claim about overdue payments.*
- IV. *In any event dismiss the claim about sporting sanctions.*
- V. *In any event not to award any costs in this case".*

c. Rejoinder of the Claimant

39. The Claimant contested the Club's statement and insisted on the acceptance of the Claim in its entirety.

40. The Claimant stated that the reconstruction of the facts by the Club are incorrect, in particular:

- The Coach stated that the termination was upon request of the Club.
- The Coach stated that the contract had been accepted by both parties before the Club's board meeting.
- As to the assertion that on 14 April 2022 the Coach sent a new amended version of the agreement, the Coach stated that he signed the contract sent by the Club which was agreed before the board meeting.
- As to the assertion that the Coach and Coach's agent were informed that the CEO was to sign the contract, the Coach stated that the Club did not support its statement by any evidence. From the WhatsApp communication between the Assistant and the Club's agent and his testimony, the Coach considers that it is clear that there was an agreement.

41. As to the assertions made by the Club that the Claimant was aware that the Sports Director and the Assistant were only advisory figures, the Coach stated that the Club has not provided any evidence to support it.

42. As to the competence, the Coach stated that *"the Finnish Sports Arbitration Board is a Finnish internal body, devoid of international competence and recognition with a residual competence; therefore, it certainly cannot be equated to the FIFA Sports Tribunal, which by its very nature is competent for international. Disputes between players/coaches and clubs from different countries. Furthermore, the Finnish Sports Arbitration Board is a second-level body, which has the sole competence of managing disputes between Clubs and Players, but not between Coaches and CLUBS"*.

d. Final comments of the Respondent

43. The Respondent argued the following, *inter alia*:
- The contract is not valid as it was not signed by both parties. As to who sign the contract on behalf of the Club, the contract clearly stipulated that it was the CEO of the Club.
 - Finnish law would have been applicable to the contract.
 - As to the precontractual liability, the Club acted in good faith. The Club further rejected the arguments that the Claimant has suffered a damage and loss of profit as the Coach has never been a "person of public interest in Finland".
 - As to the Finnish Sport arbitration board, the FA competition rule 20 also includes coaches. The Club further stated that:
*"It is unclear where the Claimant gets the idea that the Finnish Sports Arbitration Board is a second level body. It is possible that the Claimant has interpreted the FA rule 20 in a false manner. The article 20.5 is an independent article and disputes are handled by the Finnish Sports Arbitration Board as a first instance.
The Finnish Sports Arbitration Board can act as an arbitral panel in this matter. The derogation clause written to the employment agreement is clear and unambiguous. Moreover, the Claimant and SPAL s.r.l also had a derogation clause (art 4.) in agreement between them.4 Having accepted these kinds of clauses before, the Claimant is therefore familiar with these kinds of clauses and procedures. The Finnish Sports Arbitration Board is the only competent body to handle this matter if FIFA Tribunal finds that there is a binding contract between the parties"*.
 - Finally, the Club indicated that:
*"In the page 5 of his last submission the Claimant claims in one of the points that "HIFK states several times that: - The Claimant has violated the terms of the agreement, thus not being able to invoke the principles of legitimate expectations". The signatory does not recognize these kinds of statements by the Respondent.
On the page 7 of the submission the Claimant claims that the exhibit 6 of the Respondent is "distorted in its meaning". That is not the case. Regarding the credibility of Mr. Mäki's statement provided to the Tribunal we note the following: Mr. Mäki writes his name wrong – Maki not Mäki. He has added his date of birth, residency and passport number to the slots provided for them and the statement has not been dated. The Respondent wishes to point out these irregularities that suggest Mr. Mäki has not written the statement himself.
On the same page the Claimant claims that HIFK is very different to any other Sports Club as the Sports Director had no decision-making power. The claim is irrelevant, but also untrue.*

There are many ways to operate a football club and at least in the Nordic countries the way HIFK operates is very usual. Mr. Mäki being a Finn himself must have known this”.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

44. First of all, the Single Judge of the Players’ Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 24 October 2022 and submitted for decision on 23 May 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
45. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (March 2023), he is competent in principle to deal with the matter at stake, which concerns an employment-related dispute between a club and a coach of an international dimension.
46. The Single Judge noted however that the Respondent contested the competence of FIFA’s deciding bodies in favour of the Finnish Sports Arbitration Board, alleging that the latter is competent to deal with any dispute deriving from the relevant contract, in accordance with its clause 7.
47. As a preliminary remark, before analysing the jurisdiction of FIFA, the Single Judge clarified that the below analysis was subject to the validity of the contract, which was also contested by the Club.
48. Taking into account the above, the Single Judge emphasised that in accordance with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players, FIFA is, in principle, competent to hear an employment-related dispute between a club and a coach of an international dimension. Nevertheless, the parties may explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of coaches and clubs.
49. In this respect, the Single Judge noted that the Respondent referred to two main articles of the Finnish Football Association competition rules:

"1. Scope

1.1 The competition rules for football decided annually by the Football association of Finland's board include general rules and regulations applicable to football's competitive activities. In case of doubt, these provisions shall be interpreted in the light of the interpretation practices previously applied in relation to similar provisions.

1.2 The rules of the Football association of Finland, these rules of competition, the penal codes of the Football association of Finland and other provisions adopted by the board of the Football association of Finland or any other body authorized by it, shall be subject to all member communities and their agents and entities involved in the competition activities of football, as well as those persons and entities which, in writing or as specified by the organizer, have committed themselves to complying with the above rules and regulations or have redeemed the Football association of Finland's game or block pass, or registered as amateurs, as well as persons who have been registered in the match record or have played or have been a changer or team back-up person or have served as referees in the official match".

"20. Cancellation of the contract and contractual disputes

20.1. Unilateral cancellation of the contract is not possible without admissible cause. For the stability of the competition system, the player will not automatically receive a right to play for the new team when unilaterally cancelling the contract.

20.2. If a player has cancelled the contract and the team is objecting to it, the team or the player can bring the matter before the Finland's Football Association's competition working group within seven days after being disclosed of the matter. The competition working group shall decide, whether the player has a right to cancel the contract and whether the player has the right to represent the team.

The decision of the competition working group is subject to appeal before the Finland's Football Association's board within seven days following its disclosure.

20.3. The decision of the competition working group or Finland's Football Association's board shall be adhered to until decided otherwise with non-appealable decision.

20.4. New team, who enters or has entered into an agreement with the player who has unilaterally cancelled the contract, can be punished in disciplinary proceedings.

20.5. Team and the player can bring their dispute about the contract before the sports arbitration board".

50. The Single Judge concluded from the above that the Respondent could not prove that the national arbitration bodies of the Football Federation of Finland meets the requirements established in art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players, as detailed in the FIFA Circular no. 1010. On account of the above and referring to the principle of burden of proof contained in art. 13 par. 5 of the Procedural Rules, the Single Judge established that the Respondent's objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent, on the basis of art. 22 par. 1 lit. c) of the Regulations, to consider the present matter as to the substance.

51. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (March 2023) and considering that the present claim was lodged on 24 October 2022, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

52. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

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

i. Main legal discussion and considerations

54. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that the parties strongly dispute the validity of the contract and its consequences.

55. In this context, the Single Judge took note that while the Respondent challenges the validity of the contract in the following considerations: (1) the contract was not signed; (2) the only person that is authorised to sign a contract is the CEO of the Club and the Claimant was aware of this information; (3) the Club's board of members approved a contract which was then modified by the Claimant, thus he cannot appeal to legitimate expectations. The Claimant states that there is a contract between the parties as all the elements of a contract appears in it. Alternately, the Claimant states that in case it is decided that the contract is not completed, it shall be considered as an agreement comparable to a pre-contract.

56. In view of the foregoing, the Single Judge acknowledged that his task is to determine the following points:

- Is there an employment contract between the parties?
- In the affirmative, to determine the date of termination of the contract and whether the contract was terminated with just cause.

Is there an employment contract between the parties?

57. The Single Judge turned his attention to the facts that are not disputed by the parties, as follows:

- The Club sent an offer to the Coach on 11 April 2022.
- There were various communications between the Assistant and the Coach, and the Assistant and the Coach's agent regarding the negotiations of a future contract. In particular, the parties had discussions about the content of the contract.
- Between 13 April 2022 and 14 April 2022, via the WhatsApp application, the Assistant and the Coach's agent exchanged the following:
 - o Negotiations in order to conclude an agreement between the Coach and the Club.
 - o The different changes that were proposed by the Coach's agent for the Coach's contract.
 - o the Assistant sent 3 PDF annexes to be reviewed by the Coach's agent: (1) the first draft contract; (2) the amended copy following the comments of the Coach's agent; and (3) the final version of the contract.
 - o The Coach's agent indicated that the Coach could sign the last version of the contract, i.e., the final version of the contract.
- The Coach sent the signed version to the Club, and it acknowledged the reception.
- The content of the email sent by the Club *"After you sign PICCARETA Fabrizio Head Coach Contract HIFK 2022, the agreement will be sent to Jarno sajmivuori. Then, all parties will receive a final PDF copy by email"*.
- The offer and contract were not signed from the Club's side.
- The Coach's agent asked the Assistant that he did not receive the flight tickets for the Coach to be there.

58. The Single Judge started by recalling the Football Tribunal well-established jurisprudence which dictates that, in order for an employment contract to be considered as valid and binding, apart from the signature of both parties or any other proof of consent, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.

59. The Single Judge further recalled that the signature of a contract by both parties is an important element in order to establish an employment relationship, essentially because this is the easiest way to demonstrate mutual consent. However, having an unsigned specimen of the contract does not automatically mean there is no employment relationship between the parties, because this shall be established on a case-by-case basis and considering the entirety of the facts of the case and the elements at the disposal of the deciding authority.
60. On the basis of the above, the Single Judge considered that there is a contract between the parties considering that:
- As per the evidence provided, the parties were already under negotiations prior the sending of the contract.
 - The Club does not deny that the Assistant and the Sports Director work in the Club, but it challenges its power of negotiation. On this point, the Single Judge added that the Coach cannot reasonably know who has or not the power to make decisions in the hiring process. Moreover, the Single Judge noted that the CEO took more than 2 months following the sending of the contract to contact the Coach, which led the Single Judge to conclude that the negotiations were carried by the Sports Director and the Assistant.
 - As to the allegation of the Club that the contract signed by the Coach did not contain the same information approved by the board, the Single Judge concluded that as per the evidence provided by the Club, i.e., "*minutes from the HIFK Board meeting 13.4.2022*", said document does not provide with the document presented and approved by the Club's board. Moreover, as per the WhatsApp communications dated 14 April 2022 and 15 April 2022 between the Coach's agent and the Assistant, it appears that in fact the information of the bonus was approved during the board meeting.
 - As per the latest communications between the Coach and the Assistant, and the Agent and the Assistant, it appears that the representatives of the Club were in agreement to sign the contract:
 - o WhatsApp communications between the Agent and the Assistant on 14 April 2022:
"[...] 14.04.22. 10.01 Coach's Agent: *Fab can approve that latest version and is ready to sign it.*
14.04.22. 10.01 Assistant: *That's great, I'll send you a mail soon. Thanks Vesa [...]*"
 - o Between the Assistant and the Coach on 15 April 2022:
"[...] *On Wednesday the board agreed that we would make a contract with you, So we of course thought that everything was clear. On Thursday, when I sent you the final contract to sign and when you had a meeting with the staff we were in belief that everything was clear [...]*"

- The email sent by the Assistant to the CEO dated 14 April 2022, where the assistant sent the signed contract to the CEO.
- As per the witness statements of Mr. Pedro Henriques (Assistant Coach) and Mr. Miguel Bragarna (Fitness Coach), copies of which were in the file, they were informed that the Claimant was appointed as Coach, and during the video conference dated 14 April 2022, the Coach was introduced to the team.

The date of termination of the contract and whether the contract was terminated with just cause

61. Having established that a valid and binding contract existed between the parties, the Single Judge then proceeded to examine the issue of the termination.
62. In doing so, the Single Judge concluded that the contract was terminated on 15 April 2022 upon the reception of the WhatsApp communication of the Assistant in which the Coach was informed that the CEO did not sign the contract and consequently, the contract will not be executed.
63. The Chamber recalled the Football Tribunal long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
64. Thus, the Single Judge concluded that the contract was terminated *de facto* by the Club and without just cause.

ii. Consequences

65. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
66. Bearing in mind the foregoing as well as the claim of the Coach, the Single Judge proceeded with the calculation of the monies payable to the Coach under the terms of the contract until its term. Consequently, the Single Judge concluded that the amount of EUR 108,000 gross (i.e., EUR 4,800*7.5 + EUR 6,000*12) serves as the basis for the determination of the amount of compensation for breach of contract.

67. In this respect, the Single Judge pointed out that the gross amount derives from clause 3 of the contract and that the Club is in principle entitled to make the respective deductions over this particular amount in accordance with the relevant national law.
68. In continuation, the Single Judge verified whether the Coach had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Single Judge as well as art. 6 par. 2 lit. b) of Annex 2 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Coach's general obligation to mitigate his damages.
69. Indeed, the Coach found new employment with the Italian club "SMU SSD A RL". In accordance with the pertinent employment contract, the Coach was entitled to approximately EUR 1,000 per month. Therefore, the Single Judge concluded that the Coach mitigated his damages in the total amount of EUR 12,000, that is, 12 times EUR 1,000.
70. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of EUR 96,000 to the Coach (i.e., EUR 108,000 gross minus EUR 12,000), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
71. Lastly, taking into consideration the Coach's request as well as the constant practice of the Football Tribunal in this regard, the latter decided to award the Coach interest on said compensation at the rate of 5% p.a. as from 23 June 2022 until the date of effective payment.

iii. Compliance with monetary decisions

72. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
73. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
74. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from

registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.

75. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
76. The Single recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

77. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
78. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.
79. Lastly, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Fabrizio Piccareta.
2. The claim of the Claimant, Fabrizio Piccareta, is partially accepted.
3. The Respondent, HIFK Soccer, must pay to the Claimant the following amount:
 - **USD 96,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 23 June 2022 until the date of effective payment.
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.
6. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
8. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

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