



**Arbitration CAS 2012/A/2969 Santiago Gerardo Cuervo Villar v. Denílson Pereira Neves & Confederação Brasileira de Futebol (CBF), award of 20 December 2013**

Panel: Mr Ricardo de Buen Rodríguez (Mexico), President; Mr José Juan Pintó (Spain); Mr Stuart McInnes (United Kingdom)

*Football*

*Contract of representation between a player and an agent*

*Entitlement of the agent to receive a commission for his intervention in the negotiation of the employment contract*

*Absence of novation of the player's obligation to pay a commission*

*Principle of venire contra factum proprium*

1. According to article 20.3 of the FIFA Player's Agent regulations (2008 edition), an agent is entitled to receive a commission for his intervention in the negotiation of an employment contract in accordance with a representation contract in force between the agent and a player at the time of the relevant facts. In light of the foregoing, whether the player had just cause to terminate a subsequent representation contract is irrelevant because it would have never deprived the agent from receiving the commission he is entitled to under the first representation contract.
2. An administrative formality such as filling out the "Agent Declaration Form" and its annex, the "Payment to the Agent Declaration Form" in order to comply with the mandatory Football Association (FA) Players' Agents Regulations should not and does not supersede a principle of private law such as *pacta sunt servanda*, which binds the parties to their contractual obligations above all else. Therefore, the forms do not constitute a novation of the player's obligation to pay a commission to the agent pursuant to a valid representation contract.
3. A party cannot suddenly change its course of action to the detriment of another party when it has caused that other party to rely on those actions. This is by virtue of the principle of *venire contra factum proprium* and the general duty of good faith of contracting parties.

**I. THE PARTIES**

1. Mr. Santiago Gerardo Cuervo Villar, (hereinafter, the "Appellant" or the "Agent") is a football player's Agent licensed by and registered with the Brazilian Football Confederation.
2. Mr. Denílson Pereira Neves (hereinafter, the "First Respondent" or the "Player") is a Brazilian football player.

3. Confederação Brasileira de Futebol (hereinafter the “Second Respondent” or the “CBF”) is the National Association in charge of the organization of football in Brazil, affiliated to the Fédération Internationale de Football Association (hereinafter, “FIFA”).

## II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the parties' submissions and the evidence taken. Additional factual background may be also mentioned in the legal considerations of the present award.

### II.1 THE AGREEMENTS SIGNED BY THE AGENT, THE PLAYER AND ARSENAL FOOTBALL CLUB. THE EVENTS GIVING RISE TO THE DISPUTE

5. It is undisputed that the Appellant worked as an agent for the Respondent since 2004.
6. The Appellant and the First Respondent signed four representation contracts each with a duration of two years and registered before the CBF:

- (i) 31 May 2004 to 31 May 2006 (hereinafter, the “2004 Representation Contract”);
- (ii) 1 June 2006 to 1 June 2008 (hereinafter, the “2006 Representation Contract”);
- (iii) 2 June 2008 to 2 June 2010 (hereinafter, the “2008 Representation Contract”);
- (iv) 3 June 2010 to 3 June 2012 (hereinafter, the “2010 Representation Contract”).

7. Clause 2 of each Representation Contract provided (using the translation from Portuguese to English presented by the Appellant, that was not disputed by the First Respondent):

*“Only the ‘contracting party’ has to remunerate to the ‘player’s agent’ for his work.*

*a) The ‘Football player’s Agent’ will receive a commission of 10% (ten per cent) over the full gross annual salary fixed on his employment contract, and over any other contract that the ‘player’s agent’ could negotiate, in the name and behalf the ‘contracting party’.*

*b) The payment of the commission agreed has to be made by the ‘contracting party’ on the term of 24 hours after the receipt of the amounts related any contract in which negotiations intervened the ‘player’s agent’. In the case the ‘CONTRACTING PARTY’ renounces to the right to receive any amount agreed, in full or partially, in any case, the commission which corresponds to the ‘PLAYER’S AGENT’ can be reduced.*

*c) In the case of the signature of an employment contract, or any other contract, which term be after the term of the mediation agreement, the amount related the commission will have to be paid to the ‘PLAYER’S AGENT’ up to the end of the corresponding contracts”.*

8. On 30 August 2006, the First Respondent was transferred from São Paulo Football Club (hereinafter, “São Paulo”) to Arsenal Football Club (hereinafter, “Arsenal”).

9. It is undisputed that the Appellant intervened as intermediary during the transfer negotiations between São Paulo and Arsenal.
10. Arsenal agreed to pay the Appellant EUR 200.000 for his services as intermediary in the First Respondent's transfer to Arsenal, which would be complemented by periodic payments from the First Respondent subject to the First Respondent's salary levels. The sums payable to the Appellant are expressed in the Declaration of Payment to a Licensed Agent, dated 20 October 2006, presented by the Appellant within its appeal brief. The First Respondent made no objections to this document in his submissions or in evidence.
11. On 6 August 2009, the First Respondent made a payment of GBP 12.000 to the Appellant.
12. On 12 August 2009, the Player signed a new employment agreement with Arsenal, valid until 30 June 2013, (hereinafter, the "Employment Contract") and duly registered with the Football Association (hereinafter, the "FA") which provided for a basic salary of:
  - (i) GBP 2.200.000 for the season 2009/2010;
  - (ii) GBP 2.200.000 for the season 2010/2011;
  - (iii) GBP 2.300.000 for the season 2011/2012; and,
  - (iv) GBP 2.300.000 for the season 2012/2013.
13. It was further stipulated in the Employment Contract that the First Respondent would receive a "loyalty bonus" in the amount of GBP 560.000.
14. On 12 August 2009, Arsenal sent a letter to the Agent terminating the Declaration of Payment to a Licensed Agent but agreeing to pay to the Appellant a termination payment of GBP 100.000. The relevant text of the letter provides as follows:

*"Accordingly, upon the execution of this letter agreement by both you and us, and in consideration of the mutual promises set out in this letter agreement, you and Arsenal agree to terminate the Agreement in full with immediate effect.*

*Arsenal agrees to pay to the FA for transmission to you, within five business days of date of this duly executed letter agreement, the sum of GBP 100,000 (one hundred thousand pounds), plus any applicable VAT on receipt of a valid VAT invoice therefore from the Agent (the "Termination Amount").*
15. On 12 August 2009, the Appellant, the First Respondent and Arsenal signed two forms: the "Agent Declaration Form – AG1" and its annex, the "Payment to the Agent Declaration Form – Player – AG1/P" (hereinafter, the "AG1" and the "AG1/P", respectively). These forms detailed the remuneration payable to the Appellant by the First Respondent, totalling GBP 334.000, to be paid in the following instalments:
  - (i) GBP 154,000 to be paid on 01/09/2009;

- (ii) GBP 60,000 to be paid on 01/09/2010;
- (iii) GBP 60,000 to be paid on 01/09/2011; and
- (iv) GBP 60,000 to be paid on 01/09/2012.

16. The pertinent text of the AG1 form provides as follows:

*“The FA’s Football Agents Regulations (F.1 and H.10) require this form (including annexes AG1/RC, AG1/FC) to be completed in respect of any Transaction or Contract Negotiation involving a Registration Event with a Club where an Agent has been involved on behalf of any of the parties [...].*

[...]

**DECLARATION BY ALL PARTIES TO THE TRANSACTION**

*The undersigned confirm that the above information is correct, complete and accurate to the best of their knowledge. They acknowledge that, pursuant to the requirements of the FA Football Agents Regulations, they are required to provide the above information to the FA. They confirm that no other Agents have been involved in the Transaction or Contract Negotiation.*

*The undersigned confirm that they have completed the relevant disclosure documents for payments made to Agents in relation to the Transaction or Contract Negotiation and acknowledge that the provision of untrue or misleading information may result in disciplinary action [...].”*

17. The pertinent text of the AG1/P form provides as follows:

*“The FA’s Football Agents Regulations (F.1 and H.10) require this form to be completed in respect of any Transaction or Contract Negotiation where an Agent conducts Agency Activity on behalf of a Player that is registering with a Club in an English league and/ or is remunerated in relation to such activity. [...].*

REGISTRATION EVENT: *Extended registration. DATE: 12.8.2009.*

REGISTERING CLUB: *Arsenal FC.*

PLAYER: *Denilson*

[...]

*If the Agent being remunerated for services to the Player? YES*

AGENT NAME	AMOUNT(\$)	DATE DUE
<i>Santiago CUERVO VILLAR</i>	<i>154.000</i>	<i>1.9.2009</i>
<i>“</i>	<i>60.000</i>	<i>1.9.2010</i>
<i>“</i>	<i>60.000</i>	<i>1.9.2011</i>
<i>“</i>	<i>60.000</i>	<i>1.9.2012</i>

[...]

*DECLARATION BY THE PLAYER AND THE AGENT(S) (AND THE CLUB if applicable)*

*The undersigned confirm and acknowledge that:*

- *the above information is correct, complete and accurate to the best of their knowledge and all terms are mutually agreed and accepted;*

[...]

- *the above sums are being paid pursuant to the terms of the relevant Representation Contract(s) and that a copy of the contract(s) has been provided to The FA;*
- *the Agent(s) services and fee(s) stated above arise as a result of the Registration Event;*
- *no other payment to an agent, other than those disclosed elsewhere on the form AG1 and its annexes, will be made, sought or accepted by the undersigned in respect of this Transaction; and*
- *the provision of untrue or misleading information may result in disciplinary action”.*

18. It is undisputed that the First Respondent made monthly payments to the Appellant from August 2009 until October 2010. However, the reason for making the monthly payments is disputed by the parties.
19. The First Respondent’s monthly payments to the Appellant occurred as follows:
  - (i) Payment on 6 August 2009 of GBP 12.000;
  - (ii) Payment on 17 September 2009 of GBP 9.500;
  - (iii) 12 monthly payments from October 2009 to October 2010 of GBP 9.275. These payments amount to a total of GBP 132.800.
20. It is also undisputed that the First Respondent paid the Appellant the sum of GBP 336.000 on 23 October 2009.
21. On 3 June 2010, the Appellant and the First Respondent signed the 2010 Representation Contract, which contained the same conditions as the earlier Representation Contracts.
22. On 21 December 2010, the First Respondent sent a letter to the Appellant informing the Appellant that he had decided, from that point forward, to conduct all future negotiations with regards to his professional career on his own account, including, but not limited to, the negotiation of employment and image rights contracts. In its most pertinent part, the letter states as follows:

*“In this way, by means of this (letter), we notify to you and to HOLDING SPORTS SOCCER ASSESSORIA LTDA. That the player has decided, after today, act personally and by himself on all the negotiations and conversations to close agreements related his professional career, like, but not limited to, employment and image contracts”.*

## **II.2 THE PROCEEDINGS BEFORE THE DISPUTE RESOLUTION COMMITTEE OF THE BRAZILIAN FOOTBALL FEDERATION**

23. On 10 August 2011, the Appellant filed a claim against the First Respondent before the CBF Dispute Resolution Committee (hereinafter, the “CBF DRC”), requesting the following:

*“(i) To condemn Mr. Denilson Pereira Neves to pay a commission of 10% stipulated on the Clause 2 of the Representation Contract regarding the Employment Contract signed with Arsenal FC on 12 August 200;*

*(ii) To determine the Player to pay a fine according to article 32 FIFA Agents Regulations;*

*(iii) To forbid Mr. Denilson Pereira Neves, in case the Player does not fulfil with the Decision of the CBF DRC and does not pay the commission due to the Agent, to participate in any official competition until he carries out with the Decision of the CBF DRC;*

*(iv) To determine that, in case the Player does not comply with the sanctions imposed by the CBF DRC, the player will be ban to play football according to article 34 FIFA Agents Regulations.*

*(v) To assign to Mr. Denilson Pereira Neves all the legal costs connected with the proceeding”.*

24. On 28 September 2011, the First Respondent filed his Statement of Defence at the CBF DRC making the following requests:

*“(i) To dismiss all the claims made by Mr. Santiago Gerardo Cuervo Villar.*

*(ii) To condemn the Agent to a fine of 1% of the amount requested by the Agent*

*(iii) To assign to Mr. Santiago Gerardo Cuervo Villar all the legal costs connected with the proceeding”.*

25. The First Respondent initially submitted that the CBF did not have jurisdiction to hear the claim given that, at the time of the transaction with Arsenal, the parties had chosen the FA as the forum to settle any conflicts arising from their contractual relationship.

26. The First Respondent also contested the claim stating that no money was due to the Appellant as the payments claimed had already been made. Furthermore, the First Respondent asked that the Appellant be sanctioned for malicious prosecution and be condemned to bear the procedural costs.

27. On 2 October 2012, the CBF DRC rendered a decision (hereinafter, the “Appealed Decision”), in which it held:

*“By unanimous vote, to dismiss the requests formulated in the Representation managed by agent Santiago Gerardo Cuervo Villar against athlete Denilson Pereira Alves. The Applicant shall pay a fine in the sum of 3.340 Pounds (three thousands three hundred and forty Pounds Sterling)- equivalent to 1% of the sum received by the agent- to be converted to local currency on the date of its payment. After final judgements, comply with this decision within a period of 20 (twenty) days. Costs to be borne by Applicant. At same time: the litigation in bad faith fine will be to the National Entity, or say, C.B.F”.*

### **II.3 THE PROCEEDINGS BEFORE THE CAS**

28. On 23 October 2012, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (the “CAS”), challenging the Appealed Decision, in which he requested the appointment of a sole arbitrator to solve the present dispute. The Appellant also requested the suspension and the posterior extension of ten days of the time limit to file his appeal brief, upon receipt of the case file related to the Appealed Decision and once it had been translated from Portuguese to English.
29. On 6 November 2012, the First Respondent agreed with the Appellant’s request for suspension of his time limit to file the appeal brief and informed that he accepted English as the language of the proceedings. In the absence of objections from the Second Respondent within the prescribed deadline, the CAS Court Office suspended the Appellant’s time limit to file his appeal brief.
30. On 8 November 2012, in view of the First Respondent’s agreement and the Second Respondent’s silence, the CAS Court Office confirmed English as the language of these proceedings.
31. On 12 and 14 November 2012, the First and Second Respondents disagreed, respectively, to submit this appeal to a sole arbitrator and requested a three-member panel to be appointed.
32. On 13 November 2012, the CBF sent a copy of the Appealed Decision duly translated into English.
33. On 14 November 2012, given the parties’ disagreement with respect to the number of arbitrators, the CAS Court Office advised that this issue would be resolved by the President of the CAS Appeals Arbitration Division, or his Deputy, pursuant to Article R50 of the Code.
34. On 15 November 2012, the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit this dispute to a three-member panel and, therefore, invited the Appellant to nominate an arbitrator, in accordance with Article R53 of the Code.
35. On 16 November 2012, the Appellant appointed Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain, as arbitrator.

36. Given that the Second Respondent agreed to collaborate with the CAS Court Office and with the Appellant's requests of 23 October 2012, the CBF sent on 21 November 2012 a copy of the entire file related to the Appealed Decision.
37. On 23 November 2012, the First Respondent appointed Mr. Stuart C. McInnes, Attorney-at-law, London, United Kingdom as arbitrator for the Respondents, to which the Second Respondent agreed on 28 November 2012.
38. On 30 November and 4 December 2012, the Second Respondent clarified that it intended to participate in these proceedings, since the Appealed Decision established a disciplinary sanction against the Appellant. However, CBF highlighted that its participation as Respondent should be considered merely passive and, therefore, requested that the costs of the present proceedings should be solely borne by the Appellant.
39. Following the parties' agreement to suspend the Appellant's time limit to file his appeal brief upon receipt of the case file related to the Appealed Decision, the Appellant filed his Appeal Brief on 20 December 2012, pursuant to Article R51 of the Code of Sports-related Arbitration (2012 Edition) (the "Code").
40. On 10 January 2013, the CAS Court Office informed the parties that the Panel had been constituted as follows, pursuant to Article R54 of the Code:  

President: Mr. Ricardo de Buen Rodríguez, Attorney-at-law, Mexico City, Mexico

Arbitrators: Mr. José J. Pintó, Attorney-at-law, Barcelona, Spain; and  
Mr. Stuart C. McInnes, Attorney-at-law, London, United Kingdom
41. On 22 January 2013, the First Respondent filed his Answer, pursuant to Article R55 of the Code.
42. By letter dated 1 February 2013, the Second Respondent informed the CAS Court Office that it would not file an answer, in accordance with its position previously stated in the letters of 30 November 2012 and 4 December 2012.
43. On 7 February 2013, the Appellant requested the Panel to replace the holding of hearing for a second round of written submissions, to which the First Respondent objected.
44. Following a consultation with the parties, pursuant to Article R57 of the Code, the Panel decided that a hearing should be held and, to that effect, the hearing in the present case took place at the CAS Headquarters in Lausanne on 9 April 2013.
45. The following persons attended the hearing:
  - (i) For the Appellant: Mr. Sergio Sánchez, Attorney-at-law;



- (ii) For the First Respondent: Mr. Marcos Motta and Mr. Stefano Malvestio, Attorneys-at-law.
- 46. The Appellant was also in attendance and was cross-examined by the First Respondent's counsels as well as the Panel. The Appellant was also questioned on direct examination by his own counsel.
- 47. The parties were afforded the opportunity to present their cases, submit their arguments and answer the Panel's questions.
- 48. At the end of the hearing, the Parties explicitly agreed that their right to be heard and their right to be treated equally in the arbitration proceedings had been fully observed. Furthermore, the parties stated that they did not have any objections to the constitution of the Panel.
- 49. On 9 April 2013, the CAS Court Office, on behalf of the Panel, issued an order of procedure, which was accepted and countersigned by the parties.

### **III. SUMMARY OF THE PARTIES' POSITIONS**

- 50. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. However, the Panel has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows.

#### **III.1 THE APPELLANT**

- 51. In summary, the Appellant's submissions are as follows:
  - (i) The Appellant acted in the name of the Player during the negotiations with Arsenal in order to sign the Employment Contract according to the terms and conditions fixed in the 2008 Representation Contract.
  - (ii) According to the 2008 Representation Contract, the First Respondent had to pay the Appellant an amount equal to 10% of the Employment Contract. The amount was to be calculated over the total gross salary of the First Respondent (GBP 9.000.000 payable in four annual instalments).
  - (iii) On 20 October 2006, Arsenal signed the Declaration of Payment to a Licensed Agent, whereby it agreed to pay 50% of the First Respondent's liability under the Representation Contracts corresponding to the Appellant's fees for the negotiation of the First Respondent's transfer to Arsenal.
  - (iv) On 12 August 2009, Arsenal informed the Appellant that, following the introduction of the new FA Player's Agents Regulations (the "FA PAR"), the Declaration of

Payment to a Licensed Agent was no longer valid. Arsenal instead offered to pay the Appellant the sum of GBP 100.000 to finally settle its obligations with the Appellant.

- (v) Also in substitution of Arsenal's former agreement with the Appellant, the club included the loyalty bonus in the Employment Contract in the calculation of the 5% payable to the Appellant.
- (vi) The lump sum payment of GBP 336.000 represented 5% of the First Respondent's gross salary from 2009 to 2011, and was equal to the amount Arsenal agreed to pay to the Appellant under the Declaration of Payment to a Licensed Agent.
- (vii) Following the signing of the AG1/P form, there was no variation of the substantive obligation of the contractual parties under the 2008 Representation Agreement.
- (viii) Notwithstanding the execution of the AG1/P form, the First Respondent continued to fulfil the obligations under the 2008 Representation Contract by payment of the sum of GBP 336.000 without explaining the nature of the payment.
- (ix) After signing the AG1 and AG1/P forms, the Player made monthly payments to the Agent for 13 consecutive months, the first payment amounting to GBP 9.500 and all subsequent payments amounting to GBP 9.275. Therefore, the Player's own actions contradict his arguments.
- (x) The only reason why the Agent, the Player and Arsenal signed the AG1 and AG1/P forms was because they were compulsory pursuant to the new FA PAR. In no way can these forms be considered to modify or novate the existing contracts.
- (xi) The Player terminated the 2010 Representation Contract without just cause and, thus, the Agent shall be indemnified.
- (xii) After deducting the payments made by the First Respondent from August 2009 until October 2010 (totalling GBP 128.324) and the payment of GBP 336.000 made in October 2009 from the First Respondent's total liability of GBP 900.000, the First Respondent still owes the difference of GBP 435.676 to the Agent.

52. In his statement of appeal, the Appellant submitted the following prayers for relief:

*"I) That the Panel declares that the Player DENILSON PEREIRA ALVES breached and terminated without just cause the agency contract signed on 3 June 2010, between the player and the Agent SANTIAGO GERARDO, registered on the C.B.F. on the 27/09/2010.*

*II) That, as fees and compensation, the Panel order to the player to pay to the Agent an amount not lower than the 5% of his current contract signed with ARSENAL FC on 12 August 2009, in which negotiations acted and intervened the Agent, and which remains in force after the termination of the agency agreement. This amount will be exactly fixed as soon as we receive the FULL FILE; with the allegations and the proofs of the payments ordered by the player in favour of the Agent, that, up to the moment, are unknown for this party, given the way the procedure is conducted in Brazil, where it is possible that a party present documents which are not notified neither communicated to the other party (the final submissions sent by the respondents).*

III) *That all the cost of this procedure be assumed by the RESPONDENTS*

IV) *That as a contribution toward the legal cost assumed by this party, the Panel fix the amount of 10.000.-CHF”.*

53. In his appeal brief, the Appellant submitted the following prayers for relief:

*“1. To uphold the appellation and revoke the decision taken by the DRC of the CBF notified on 3 October 2012, issued on the file 004/2011, between Santiago Gerardo and the player DENILSON PEREIRA NEVES, and, instead, declare:*

- i. That the player DENILSON PEREIRA NEVES breached and terminated without just cause the contract signed on 3 June 2010, between the player and the Agent SANTIAGO GERARDO.*
- ii. Order to the Player DENILSON PEREIRA NEVES to pay the total amount of FOUR HUNDRED AND THIRTY FIVE THOUSAND AND SIX HUNDRED AND SEVENTY SIX POUNDS (435.676-L) as fee and / or compensation to the agent, for the services rendered in connection with the negotiation of the employment contract signed between the player and ARSENAL FC on 12 August 2009.*
- iii. That all the cost derived of this procedure be assumed by the RESPONDENT*
- iv. That as contribution toward the legal cost assumed by this party, the panel condemn the player to pay 10.000.-CHF”.*

### III.2 THE FIRST RESPONDENT

54. The First Respondent’s position can be summarised as follows:

- (i) The commission due to the Appellant by the First Respondent in connection with the Employment Contract does not correspond to 10% of the total amount fixed as gross salary plus the loyalty bonus. The Appellant and the First Respondent renegotiated the amount due as commission under the 2008 Representation Contract by signing the AG1 and AG1/P forms. These forms established a flat commission due to the Appellant in connection with the Employment Contract in the amount of GBP 334.000 to be paid as follows: GBP 150.000 on 1 September 2009; GBP 60.000 on 1 September 2010; GBP 60.000 on 1 September 2011; and GBP 60.000 on 1 September 2012.
- (ii) The AG1 and the AG1/P forms are required by the FA PAR, according to which all information related to a transaction involving an English club must be disclosed.
- (iii) The activity of the Appellant falls within the scope of the FA PAR as he is included within the definition of a Registered Overseas Agent and must comply with the rules of the FA.

- (iv) Although the Appellant and the First Respondent had agreed to pay the commission in four instalments, the Appellant requested the First Respondent pay the total amount of the commission in a single instalment. Such request was accepted and the First Respondent discharged this obligation on 8 October 2009. The Appellant received GBP 336.000 on 23 October 2009 as per the bank transfer receipt and the letter issued by Barclays Bank on 23 July 2012.
- (v) The Appellant's request for payment of GBP 435.676 is completely illegal and does not correspond to the information provided to the FA.
- (vi) The Appellant bases his arguments on the Representation Contracts signed between the Appellant and the First Respondent prior to and including the 2008 Representation Contract. Nonetheless, the contracts prior to 2008 are not relevant to the present dispute since the Employment Contract was signed only under the validity and effectiveness of the 2008 Representation Contract.
- (vii) In this respect, the Appellant's request that the Panel shall "*declare that the player Denilson Pereira Neves breached and terminated without just cause the contract signed on 03 June 2010*" is not logically related to the cause of action since the Representation Contract in question is not the 2010 Representation Contract but the 2008 Representation Contract. Therefore, the Panel shall dismiss such request.
- (viii) The monthly payments for 13 consecutive months to the Agent were not paid in connection with the Representation Contracts. Rather, these payments were a cost allowance in order to allow the Agent to organise his agency occupation as a business. In this respect, the Agent has failed to prove that such monthly payments corresponded to the Agent's commission.
- (ix) The Player did not breach the 2010 Representation Contract because he decided to negotiate his contracts on his own behalf and, additionally, the Representation Contract did not prohibit unilateral termination. The First Respondent requests that the Panel decides the present appeal based only on the 2008 Representation Contract, and in any case, to declare that the First Respondent did not breach the 2010 Representation Contract.
- (x) In the unlikely event that the Panel understands that the commission in the amount of 10% is due to the Appellant in connection with the Employment Contract, the loyalty bonus shall not be considered in order to calculate such amount since it contravenes article 20.1 of the FIFA Players' Agents Regulations (2008 Edition) (the "FIFA PAR").
- (xi) The First Respondent questions why the Appellant accepted the terms of the AG1/P without expressing any objection and with full knowledge of the content of the form. It is attested in the file that the Agent's affirmations do not correspond to the truth and violates the Code of Professional Conduct inserted in article 3 of Annex 1 of the FIFA PAR.

55. In his answer, the First Respondent submitted the following prayers for relief:

*“a. dismiss all the allegation put forward by Mr. Santiago Gerardo Cuervo Villar in its appeal brief;*

*b. upheld in totum the decision rendered by the CBF DRC on 02.10.2012, communicated to the Parties on 03.10.2012; and*

*c. order that Mr. Santiago Gerardo Cuervo Villar shall bear with all arbitration and legal costs incurred by Mr. Denilson Pereira Neves”.*

### **III.2 THE SECOND RESPONDENT**

56. As stated in its letters dated 30 November 2012 and 4 December 2012, the Second Respondent did not file an answer.

## **IV. LEGAL CONSIDERATIONS**

### **IV.1 ADMISSIBILITY**

50. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

51. The Panel notes that the CBF DRC rendered the Appealed Decision on 2 October 2012, and notified it by fax on 3 October 2012. Considering that the Appellant filed his statement of appeal on 23 October 2012, the Panel is satisfied that the Appellant’s appeal was timely filed and is therefore admissible.

### **IV.2 JURISDICTION**

52. 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”.*

53. Article 75 of the CBF Statutes provides as follows:

*“The CBF shall ensure the obedience and full compliance by the clubs, players, referees, coaches, doctors, physical trainers, assistants, matches' agents and football players' agents of any definitive decision from the FIFA bodies or TAS [CAS]” (free translation into English).*

54. Article 33 of the CBF DRC Regulations provides as follows:

*“33.1. As a last resort the CRL decisions may be subject of an appeal before an arbitration court recognized by the Confederação Brasileira de Futebol – CBF.*

*33.2. The time limit for an appeal will be twenty days beginning on the day the decision is published, by electronic mail” (free translation into English).*

55. Furthermore, the CBF DRC issued a directive accompanying the Appealed Decision, concerning appeals proceedings before the CAS, in which it states as follows:

*“Pursuant to article 63, par. 1 of the FIFA Statutes, article 75 of the CBF Statutes and article 33 of the CBF DRC Regulations, the present decision can be appealed against before the Court of Arbitration for Sport (CAS), with seat in Lausanne, Switzerland. [...]*

*The statement of appeal shall be sent directly to the CAS within 21 (twenty one) days from the receipt, by facsimile or mail, of the decision appealed against and shall contain all the elements indicated under item 2 of the CAS directives. [...]*” (free translation into English).

56. The jurisdiction of the CAS to decide on the present case arises out of Article R47 of the Code and Article 33 of the Procedure before the CBF DRC. The Panel observes that the Appellant and the First Respondent agreed that CAS is competent to decide on this case on the grounds of Article 33 of the CBF DRC Regulations. Furthermore, the Panel also notes that neither the Appellant nor the Respondents have contested CAS jurisdiction.

57. In light of these elements and based on Articles 75 of the CBF Statutes, Article 33 of the CBF DRC Regulations and the directive issued with the Appealed Decision, the Panel considers that CAS has jurisdiction over the present appeal.

### **IV.3 APPLICABLE LAW**

58. Article R58 of the Code reads 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

59. Article 2 of the CBF DRC Regulations provides as follows:

*“In the exercise of its jurisdiction, the CBF DRC shall apply the Statutes and regulations of the Confederação Brasileira de Futebol, in particular those based on the FIFA Statutes and regulations. The CBF DRC shall also take into account the national laws, as well as the specificity of the sport” (free translation into English).*

60. Clause 5 of the Representation Contracts stipulates the following:

*“The parties agree to respect the by-laws, regulations and the decisions of the FIFA competent bodies, as well as those ones enacted the relevant associations. In addition, they agree to respect the labour law legislation and other laws applicable at the territory of the association and the international legislation and the applicable treaties”.*

61. In accordance with these provisions, the Panel will decide the present dispute based on FIFA’s Regulations, particularly the FIFA PAR (2008 Edition) and, subsidiarily, Brazilian Law.

#### **IV.4 MERITS**

##### ***IV.4.1. The object of the dispute***

62. The following sections refer to the substance of the parties’ allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties’ allegations, arguments and evidence on record, whether or not expressly referred to in what follows.

63. The main objects of the dispute are :

- (i) Was the 2010 Representation Contract terminated with just cause by the Player, and which were the consequences of the termination?
- (ii) Does the execution of the AG1 and AG1/P forms result in the termination of the obligations arising from the 2008 Representation Contract?
- (iii) Does payment of the various sums of money from the First Respondent to the Appellant after signing the Employment Contract and the AG1 and AG1/P forms demonstrate a continuation of a legal relationship between both parties?

##### ***IV.4.2. Was the 2010 Representation Contract terminated with just cause by the Player, and which were the consequences of the termination?***

64. On one hand, the Appellant argues the First Respondent did not have just cause to terminate the 2010 Representation Contract through the letter sent to the Appellant on 21 December 2010 and should therefore receive compensation. On the other hand, the First Respondent sustains he did not breach the 2010 Representation Agreement because he duly notified the Appellant in writing of his decision to terminate the contract and handle his professional matters personally, and the 2010 Representation Contract did not forbid him from negotiating contracts on his own behalf.

65. The Panel refers to article 19.7 of the FIFA PAR, which state as follows:

*“The provisions set out in this article are without prejudice to the client’s right to conclude an employment contract or a transfer agreement without the assistance of a representative”.*

66. Furthermore, the Panel agrees that there is nothing in the 2010 Representation Contract that would impede the First Respondent from handling his affairs personally instead of through an agent.

67. This being said, the Panel deems it appropriate to refer to Clause 2 c) of the Representation Contracts, which states:

*“c) In the case of the signature of an employment contract, or any other contract, which term be after the term of the mediation agreement, the amount related the commission will have to be paid to the ‘PLAYER’S AGENT’ up to the end of the corresponding contracts”.*

68. Moreover, the Panel notes that the abovementioned provision is in line with article 20.3 of the FIFA PAR, which provides:

*“If the players’ agent and the player do not decide on a lump sum payment and the player’s employment contract negotiated by the player’s agent on his behalf lasts longer than the representation contract between the players’ agent and the player, the player’s agent is entitled to annual remuneration even after expiry of the representation contract. This entitlement lasts until the relevant player’s employment contract expires or the player signs a new employment contract without the involvement of the same players’ agent”.*

69. In the case at hand, it is undisputed that the Appellant intervened in the negotiation of the Employment Contract, and, at the time of the conclusion of the Employment Contract, the 2008 Representation Contract was in force. The existence of the 2008 Representation Contract at that moment in time forms the basis for the Appellant’s right to claim a commission until the end of the Employment Contract in 30 June 2013.

70. In light of the foregoing, whether the First Respondent had just cause to terminate the 2010 Representation Contract, is irrelevant because it would have never deprived the Appellant from receiving the commission he is entitled to under the 2008 Representation Contract.

71. Therefore, the Panel shall continue its analysis in light of the parties’ signature of the AG1 and AG1/P forms and subsequent actions.

***IV.4.3 Does the execution of the AG1 and AG1/P forms result in the termination of the obligations arising from the 2008 Representation Contract?***

72. The position of the parties regarding the effect of signing the AG1 and AG1/P forms can be summarized as follows:

- (i) The Appellant considers that the signature of the aforementioned documents does not affect the obligations under the Representation Contracts and in particular the 2008 Representation Contract that was in force at the commencement of the Employment Agreement signed on 12 August 2009. Thus, the First Respondent breached the 2008 Representation Contract and owes the Appellant the sum of GBP 435.676.



- (ii) The First Respondent argues there was no breach of the 2008 Representation Contract. Rather, there was a novation of the contract when the Appellant signed the AG1 and AG1/P forms.

73. Firstly, it is undisputed that both parties have signed the AG1 and AG1/P forms.

74. The AG1 form provides as follows:

*“The FA’s Football Agents Regulations (F.1 and H.10) require this form (including annexes AG1/RC, AG1/FC) to be completed in respect of any Transaction or Contract Negotiation involving a Registration Event with a Club where an Agent has been involved on behalf of any of the parties [...].*

*[...]*

#### DECLARATION BY ALL PARTIES TO THE TRANSACTION

*The undersigned confirm that the above information is correct, complete and accurate to the best of their knowledge. They acknowledge that, pursuant to the requirements of the FA Football Agents Regulations, they are required to provide the above information to the FA. They confirm that no other Agents have been involved in the Transaction or Contract Negotiation.*

*The undersigned confirm that they have completed the relevant disclosure documents for payments made to Agents in relation to the Transaction or Contract Negotiation and acknowledge that the provision of untrue or misleading information may result in disciplinary action [...].”*

75. Additionally, the AG1/P form provides as follows:

*“DECLARATION BY THE PLAYER AND THE AGENT(S) (AND THE CLUB if applicable)*

*The undersigned confirm and acknowledge that:*

- *the above information is correct, complete and accurate to the best of their knowledge and all terms are mutually agreed and accepted;*

*[...]*

- *the above sums are being paid pursuant to the terms of the relevant Representation Contract(s) and that a copy of the contract(s) has been provided to The FA;*
- *the Agent(s) services and fee(s) stated above arise as a result of the Registration Event;*
- *no other payment to an agent, other than those disclosed elsewhere on the form AG1 and its annexes, will be made, sought or accepted by the undersigned in respect of this Transaction; and*
- *the provision of untrue or misleading information may result in disciplinary action”.*

76. At this stage, the Panel must assess whether, by signing the AG1 and AG1/P forms, the parties intended to modify the existing obligations under the 2008 Representation Contract in favour of a new agreement, thereby novating the 2008 Representation Contract.
77. The Panel notes that a novation is generally intended as an instrument of private law, and is considered a substitution of an old obligation for a new one.
78. From the introductory paragraph of the AG1 and AG1/P forms, it is clear to the Panel that the parties only filled out the AG1 and AG1/P forms as an administrative formality in order to comply with the mandatory FA Players' Agents Regulations, and such an administrative formality should not and does not supersede a principle of private law such as *pacta sunt servanda*, which binds the parties to their contractual obligations above all else.
79. Therefore, the Panel finds that the AG1 and AG1/P forms do not constitute a novation of the First Respondent's obligation to pay a commission to the Appellant pursuant to the 2008 Representation Contract. This conclusion is reinforced by the subsequent acts of the First Respondent, which shall be discussed below.

***IV.4.4. Does payment of various sums of money from the First Respondent to the Appellant after signing the Employment Contract and the AG1 and AG1/P forms demonstrate a continuation of a legal relationship between both parties?***

80. Having determined that the AG1 and AG1/P forms were not a novation of the 2008 Representation Contract, the Panel must now determine what the effect of the First Respondent's actions after signing the forms was on the Agent-Player relationship.
81. The Panel believes the First Respondent affirmed his obligation to pay a commission to the Appellant until the end of the Employment Contract when he made monthly payments to the Appellant for 13 consecutive months and renewed the Representation Contract in 2010.
82. It is well established, as a generally accepted principle of law and in CAS jurisprudence, that a party cannot suddenly change its course of action to the detriment of another party when it has caused that other party to rely on those actions. This is by virtue of the principle of *venire contra factum proprium* and the general duty of good faith of contracting parties. In the case CAS 2009/A/1956, the Panel stated in paragraph 16:

*“Finally, the Panel is of the opinion that it is totally against the good faith principle that the contract is to be considered invalid. It does not result from the text of the contract that the agreement would be conditional upon approval by the Faroese Football Association. Furthermore, the Appellant has clearly performed its contractual obligations between January and April 2008. In that respect, the Appellant has clearly shown that it was willing to rely upon the signed agreement, so that it may not repudiate it. Such repudiation would clearly be contrary to the attitude adopted by the Appellant before the termination, which is prohibited by the general principles of good faith (venire contra factum proprium)”.*

83. Given the principles mentioned above, and in view of the Appellant's reliance on his continuing relationship with the First Respondent by virtue of the Representation Contracts

and the latter's actions, the Panel finds that the Appellant was entitled to receive a commission until the expiration of the Employment Contract.

#### ***IV.4.5. Compensation Owed to the Agent***

84. After the parties signed the AG1 and AG1/P forms, the First Respondent proceeded to make monthly payments to the Appellant for 13 consecutive months. The first monthly payment, in September 2009, amounted to GBP 9.500. All 12 subsequent monthly payments, from October 2009 to October 2010, amounted to GBP 9.275 each. During the period in which the First Respondent made the abovementioned monthly payments, neither party ever complained nor did they modify the terms of payments.
85. The First Respondent contends this monthly payments were purposed for a monthly cost allowance so the Appellant could set up his agency activity as a business. Conversely, the Appellant argues the payments were indeed his commission derived from the negotiation of the Employment Contract. The Panel considers the First Respondent has not sufficiently proven his allegation. As such, the only reasonable inference that can be drawn from these facts is that the First Respondent and the Appellant tacitly accepted the payment terms of monthly payments equalling GBP 9.500 each that would continue until the end of the Employment Contract on 30 June 2013.
86. The Panel considers the Appellant is entitled to receive the remaining monthly payments the First Respondent would have made to the Appellant from November 2010 until the Employment Contract expired in 30 June 2013, or 32 months.
87. The total amount the Appellant would have received during those 32 months is:  $GBP\ 9.275 \times 32 = GBP\ 296.800$ .
88. Therefore, the First Respondent shall pay GBP 296.800 to the Appellant.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Santiago Gerardo Cuervo Villar against the decision issued on 2 October 2012 by the CBF Dispute Resolution Committee is partially upheld.
2. The decision issued on 2 October 2011 by the CBF Dispute Resolution Committee is set aside.
3. The Panel orders Denilson Pereira Neves to pay an indemnity to Santiago Gerardo Cuervo Villar in the amount of GBP 296.800.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.