Arbitration CAS 2011/A/2550 Lenilson Batista de Jesus v. Showmex S.A. de C.V. (Jaguares de Chiapas), award of 26 June 2012

Panel: Mrs Margarita Echeverría Bermúdez (Costa Rica), Sole Arbitrator

Football
Termination of a contract of employment
Prescription of acts under the Mexican Federal Labour Law
Interruption of the prescription period
FIFA's delay to promote the claim and two year prescription period
Swiss law on claims arising from the employment relationship

1. **Article 516 of the Mexican Federal Labour Law establishes that the acts prescribe within one year from the day following the date in which the obligation becomes mandatory.**

2. **The prescription period is to be understood as interrupted if the appellant's action of seeking remedy for his situation was done before the FIFA Dispute Resolution Chamber (DRC) three months after the respondent's default but FIFA DRC was not competent to rule on the claim and had to refer the case back to the competent body of the Mexican Federation.**

3. **If a claim was brought before FIFA within the period provided by the FIFA Procedural Regulations and FIFA delayed to promote the claim, the two year prescription as of the date when the dispute arose is not considered to have lapsed even if the appellant became aware of the matter after the two year period lapsed. The appellant should therefore not suffer any adverse consequences if the delay was not his fault.**

4. **Under Article 339 para. 1 of the Swiss Code of Obligations, all claims arising from the employment relationship shall become due upon its termination.**

I. THE PARTIES

1. The appellant is Lenilson Batista de Jesus (hereinafter referred to as the "Player" or the "Appellant") who is a Brazilian professional football player, born on 1st of May of 1981.

2. The respondent is Showmex S.A de C.V (Jaguares de Chiapas) (hereinafter referred to as the "Club" or the "Respondent") first division, professional Mexican football club, affiliated to the Mexican Football Federation (hereinafter referred to as "FEMEXFUT").

II. BACKGROUND FACTS

3. The parties signed a professional football agreement on 23 July 2007 with an expiration date for the 31 May 2010 (hereinafter referred to as "Employment Agreement"). Meaning that both parties agreed for the seasons 2007/2008, 2008/2009 and 2009/2010, according to clause 5.

4. The parties agreed in clause 5.3 to an annual salary, free of taxes, of US$ 500.000.00 (five hundred thousand American dollars) for each season divided in ten payments of US$50.000. It was also agreed according with clause 5.2 a payment for the federative rights of the Player for an amount of US$400.000.00 (four hundred thousand American dollars) which would be paid in three different payments as shown: first payment of US$120.000 in a date that was not indicated on the contract, second payment of US$ 140.000.00 on 1 February 2008 and a third payment of US$140.000.00 on 30 May 2008.

5. At the end of the first season of the contract, the parties settled to loan the Player to the Atlético Mineiro Club, a Brazilian club, from August 2008 until December 2008.

6. Once that loan ended the parties settled to loan the Player again, but this time to the Paraná Football Club, a Brazilian club, from December 2008 until May 2009.

7. Completed the season 2008/2009 the Club informed the Player that they were not willing to continue with the contract that they had signed, which still had one year remaining. Under the above, both parties signed an "Agreement of Early Termination of Contract" (hereinafter referred to as "Early Termination Agreement") the 30 August 2009.

8. In the agreement above mentioned, the parties resolved that the club would have to pay to the Player the amount of MX$ 1.300.000,- (one million three hundred thousand Mexican pesos) on 17 September 2009. It was established that if the Club did not paid the amount agreed within 10 (ten) days after 17 September 2009 the agreement would lose its legal validity. The payment did not happen within the time limit.

9. At the time of the signing of the Early Termination Agreement, the Club was owing the Player the amount of US$140.000,00 (One hundred and forty thousand American dollars) for the concept of the third payment of the signing bonus agreed in the contract signed on 27 July 2007.

III.A. THE PROCEEDINGS BEFORE FIFA

10. Whereas in view of the nonpayment by the Club, the Player filed a formal claim before FIFA Dispute Resolution Chamber (FIFA DRC) on 11 March 2010.

11. On 20 November 2010 FIFA administration decided that the Dispute Resolution Chamber of the Mexican Football Federation was constituted in accordance with the provisions of the

FIFA Regulations on the Status and Transfer of Players and therefore considered itself not in position to intervene in the case. The decision established:

> *"… In the context of the present matter, we wish to refer you to art. 22 lit. b) of the Regulations on the Status and Transfer of Players (hereinafter the Regulations), according to which FIFA is competent to hear employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement. In this respect, we would like to inform you that the Conciliation and Resolution of Controversies Commission (CRCC) established at national level within the framework of the Mexican Football Federation appears to be constituted in accordance with the provisions of the Regulations. Furthermore we would like to confirm that the FIFA Dispute Resolution Chamber(DRC) already passed a decision, by means of which the FIFA DRC decided that the CRCC fulfilled the prerequisites laid down in art.22 lit b)of the Regulations and in the FIFA Circular 1010 of the 20th of December of 2005. In light of the above, we regret having to inform you that we do not appear to be in a position to intervene in the present matter since the case of the reference seems to fall within the scope of jurisdiction of the relevant deciding bodies in Mexico…".*

III.B. THE PROCEEDINGS BEFORE THE "COMISIÓN DE CONCILIACIÓN Y RESOLUCIÓN DE CONTROVERSIAS – CCRC" (DISPUTE RESOLUTION COMMISSION OF THE MEXICAN FOOTBALL FEDERATION)

12. Based on the decision issued by FIFA, dated 17 February 2011, the Player presents before the Conciliation and Resolution of Controversies Commission of the Mexican Federation (hereinafter referred to as "**CRCC**"), a claim against InterticketSport S.A of C.V (Jaguares, Chiapas).

13. Although the contract was signed between the Player and Showmex S.A of C.V (Jaguares, Chiapas) the claim before the CRCC is done against InterticketSport S.A. of CV (Jaguares, Chiapas) since the resolution of the CRCC says that during the hearing the representative of the club said that on 18 May 2010, Showmex signed a contract of sale and transfer of assets with InterticketSport S.A of C.V. However, the Respondent club never filed an exception of passive legitimation in its defense, and replies the claim without mentioning this situation, even accepting that they had signed the Early Termination Agreement with the Player (meaning that they also accept having signed the professional football player contract with the Player).

14. According with the CRCC Regulations, , the parties were summoned to attend a conciliation hearing on 28 April 2011, at 12am, however at that moment the parties indicated they were having negotiations related to the possible amicable solution of the present matter. Given this fact and during the same session, a new conciliation hearing was scheduled for 9 May 2011, at 11am, but that same day, again the parties requested to postpone the hearing for the same reasons as before. This means that they were still talking about a possible amicable solution

to the issue. As the parties failed to reach an agreement by 18 May 2011 a new conciliation hearing was scheduled, in which each party presented its evidences and position in the matter.

15. On 26 July 2011 the CRCC issued the decision in which it declared that it was not competent to entertain and rule on the matter at stake because the right of the Player was prescript according to Mexican Law and Article 11 of the CRCC Regulations.

IV. THE APPEALED DECISION

16. The CRCC issued, on 26 July 2011, a decision as follow:

"CONSIDERANDO

UNICO: Esta Comisión de Conciliación y Resolución de Controversias, deberá determinar en primera instancia, su COMPETENCIA para conocer sobre el asunto que nos ocupa. De conformidad con lo establecido en el Estatuto de la Federación Mexicana de Fútbol, Asociación A.C precisamente en sus artículos, 77,79 y 85 se señala lo siguiente:

Artículo 77. Los Organos Jurisdiccionales de la FEDERACION son:

77.2 Comisión de Conciliación y Resolución de Controversias

Articulo 79. La Comisión de Conciliación y Resolución de Controversias es un órgano autónomo e independiente que tendrá como función CONOCER y RESOLVER todas las reclamaciones que los afiliados de LA FEDERACIÓN tengan entre sí.

Artículo 85. Los afiliados a LA FEDERACIÓN, atento a lo dispuesto por el Estatuto de FIFA en lo conducente, deberán presentar las reclamaciones que tengan con cualquiera de los órganos de la FEDERACIÓN, Asociaciones, Clubes o cualquier afiliado a ésta, ante la Comisión de Conciliación y Resolución de Controversias… la Resolución que emita la Comisión antes citada será DEFINITIVA y de inmediata ejecución por conducto de la Secretaría General de LA FEDERACIÓN… LA FEDERACIÓN tendrá la jurisdicción de disputas nacionales internas, es decir, disputas entre partes afiliadas a la misma. La FIFA tendrá la jurisdicción de disputas internacionales, es decir, disputas entre Clubes de distintas Asociaciones o Confederaciones.

El Reglamento que rige las actuaciones de esta Comisión de Conciliación y Resolución de Controversias estableœ en su artículo 1 que:

El presente ordenamiento es reglamentario del Artículo 77 del Estatuto de LA FEDERACIÓN.

La Comisión de Conciliación y Resolución de Controversias es un órgano autónomo e independiente, encargada para CONOCER, ATENDER Y RESOLVER las reclamaciones que se susciten, entre jugadores y Clubes, Clubes entre sí, y en general entre afiliados a LA FEDERACIÓN.

…Sus afiliados (de LA FEDERACIÓN) tienen la obligación de someter las diferencias que se susciten entre ellas, a la Comisión de Conciliación y Resolución de Controversias, y sus resoluciones serán obligatorias en la forma y términos previstos en la misma.

Ahora bien, es importante precisar los conceptos de COMPETENCIA y JURISDICCIÓN, definiciones que a continuación se describen:

COMPETENCIA. Idoneidad atribuida a un órgano de autoridad para conocer o llevar a cabo determinadas funciones o actos jurídicos.

JURISDICCIÓN. Campo o esfera de acción o de eficacia de los actos de una autoridad.

En ese orden de ideas, la COMPETENCIA de esta Comisión se limita, de acuerdo con lo establecido en nuestro Reglamento, precisamente en su artículo 11, a CONOCER solamente de asuntos con una antigüedad no mayor de dos años, tomando en cuenta, el término de prescripción que la Ley señala para el ejercicio de la acción que se intente de acuerdo con la Ley Federal del Trabajo.

Ahora bien, al existir un incumplimiento del Convenio de Terminación anticipada de Contrato Laboral celebrado por las partes en la ciudad de Tuxtla Gutiérrez, Chiapas, motivo de la presente controversia por el Club demandado el 27 de septiembre de 2009, la regla general de la Ley Federal del Trabajo establecida en el artículo 516 señala claramente que las acciones prescriben en un año contado a partir del día siguiente a la fecha en que la obligación sea exigible y por lo tanto nuestra JURISDICCIÓN, que abarca los conflictos laborales ocurridos en el lapso de dos años, está LIMITADA, según el artículo 11 de nuestro Reglamento, a un año para conocer de ellos, solo prescribiendo en dos años los Convenios celebrados ante la Junta de Conciliación y Arbitraje, que no es el presente caso, es decir, la acción intentada por el jugador está fuera del término para el ejercicio de la acción correspondiente.

17. Por los Antecedentes y Consideraciones expuestas esta Comisión:

RESUELVE

PRIMERO. Esta Comisión de Conciliación y Resolución de Controversias con fundamento en lo dispuesto por el artículo 11 del Reglamento que rige sus actuaciones, se declara NO COMPETENTE para conocer del asunto que nos ocupa.

SEGUNDO. Notifíquese a las partes la presente Resolución, así como a las Autoridades de esta Federación Mexicana de Fútbol Asociación, A.C. correspondientes.- Cúmplase.- En su oportunidad archívese el presente expediente como asunto total y definitivamente concluido.

Así, en forma definitiva lo resuelve la Comisión de Conciliación y Resolución de Controversias debiendo observarse de conformidad con los Artículos 79 y 85 del Estatuto de la Federación Mexicana de Fútbol Asociación A.C. y firmando los que en ella intervinieron y quisieron hacerlo".

V. PROCEDURE BEFORE CAS

18. On the 16 August 2011 the Player filed a statement of appeal against Showmex S.A of C.V (Jaguares of Chiapas) regarding the decision taken by the CRCC on 26 July 2011. On 25 August 2012 the Appellant filed his appeal brief.

19. On 26 September 2011 the Club filed its answer to the appeal brief.

20. On 27 September 2011, the parties were invited to inform the CAS Court Office, by 4 October 2011, whether their preference was for a hearing to be held in the present case or for the Panel to issue an award based on the parties' written submissions.

21. On 27 September 2011, the Respondent advised the CAS Court Office that its preference was for a hearing to be held in this matter. However, on 4 October 2011, the Appellant informed that his preference was for the Panel to issue an award based on the parties' written submissions.

22. On 10 February 2012, pursuant to Article R54 of the Code, the parties were informed that the Sole Arbitrator appointed to decide the present case, by the President of the CAS Appeals Arbitration Division, was Ms. Ms Margarita Echeverria, attorney-at-law in San José, Costa Rica.

23. Finally, in accordance with Article R57 of the Code and after having duly consulted the parties, the Sole Arbitrator decided not to hold a hearing in the present proceedings, since she deemed herself to be sufficiently well informed.

VI. THE PARTIES' POSITIONS

VI.1. Appellant's Submissions

24. The Player claims that as the Respondent failed to comply with the Early Termination Agreement in the established date, such agreement lost its legal validity, and for so the Contract signed by both parties on 23 July 2007 must be fulfilled. Given that the club informed the Player that they were not willing to continue their labour relationship, even when there was still one more year remaining in the contract *i.e.* the season 2009/2010, the Club is obliged to pay the amount of US$500.000 (five hundred thousand American dollars) free of taxes, as agreed in the Contract for each season, divided in ten payments of US$50.000. Furthermore, the Club must also pay the amount of US$140.000 (one hundred and forty thousand American dollars) for the third payment of the federative rights that should have been paid on 30 May 2008, for a total amount of US$640.000 (Six hundred and forty thousand American dollars) plus 5% of interest, according to article 104 of the Swiss Code of Obligations, plus costs and legal expenses.

25. As a consequence of the Respondent's lack of compliance with its contractual obligations, the Appellant faced with no alternative than to revert to the FIFA DRC on 11 March 2010. However FIFA on 29 November 2010 decided that the CRCC was competent to know the case and, therefore, considered itself not in a position to intervene in the matter.

26. On 17 February 2011 the Player filed a claim against the Club before the CRCC. This Commission resolved that the case was prescript so they were not competent to entertain the matter in question. Applying the Mexican Law and the Regulations of the CRCC, the prescription of the action is of one year and being that the right of the Player to file the claim began on 27 September 2009, but it is until February of 2011 that the Player submits his claim before the CRCC.

27. The Player states that it is legally inadmissible the decision of the CRCC given that they applied the prescription of one year of the Mexican law instead of the prescription of two years of the FIFA Regulations, since according to Article 25.5 of the Regulations on the Status and Transfer of Players, the prescription is two years and this regulation extends to all the member associations of FIFA. Consequently, as the Mexican Football Federation is a FIFA member, FIFA's Regulations should be the ones applied. Under these circumstances the decision taken by the CRCC is in violation of the FIFA Regulations that are established for its association members.

28. The Appellant further states that according with Article 62.2 of the FIFA Statutes, the cases that are filed before the Court of Arbitration for Sport CAS shall apply the Code of Sports-Related Arbitration. CAS shall primarily apply the various regulations of FIFA and additionally Swiss Law. According to Swiss Law, CAS and FIFA jurisprudence, the debtor that is in default regarding the payment of an amount of money owes default interest at the rate of 5% even if a lower rate has been fixed. So the Club should have to pay an interest of 5% per year in the following way: over US$500.000,00 as from 30 August 2009 and over US$140.000,00 as from 30 May 2008. The Appellant further requests to establish that the Respondent bears with all the costs of the present arbitration and all the legal expenses incurred by the Appellant in connection with the present proceedings.

VI.2. Respondent's Submissions

29. The Respondent agrees that the parties signed the Employment Agreement with the Player on 23 July 2007 for three seasons until the end of the 2009/2010 season. However the parties agreed upon mutual termination of the Employment Agreement on 30 August 2009. The Respondent agreed to pay to the Player the amount of MX$ 1.300.000.- no later than 17 September 2009, but due to unforeseen circumstances the Club could not manage to make the payment in time.

30. The Appellant filed a claim before FIFA DRC on 11 March 2010. On 29 November 2010 the DRC took the decision that CRCC is established at a national level within the framework of the FEMEXFUT and it is constituted in accordance with the provisions of Art.22 (b) of the FIFA Regulations, so CCRC is competent to entertain the case. In this sense, the Appellant filed a claim before CRCC on 17February 2011, almost one year and a half after 27 September 2009 which was the final date when the Respondent was supposed to pay.

31. As expected, the CRCC stated in its decision of 26 July 2011 that it was not competent to decide upon the present dispute because the prescription period of one year as established in Mexican Labour Law had already expired.

32. In accordance with Article R58 of the CAS Code, the CRCC Regulations shall apply primarily. Since the CRCC is a body of the Mexican Football Federation, Mexican Law applies subsidiarily. Article 11 of the CRCC Regulations determines the competence of the CRCC and provides for a prescription period of two years to take notice of a dispute. However, the

prescription period applicable to labour disputes established in Mexican Labour Law shall also be taken into account:

"La Comisión solamente conocerá de asuntos con una antiguedad no mayor de dos años, tomando en cuenta, en cada caso, el término de prescripción que la ley señala para el ejercicio de la acción que se intente de acuerdo con la Ley Federal del trabajo"

"The Commission will hear only cases no older than two years, taking into account, in each case, the statute of limitations that the Act provides for criminal action is attempted according to the Federal Labour Law"

(Respondent Free translation).

33. The Respondent alleges that the general rule regarding labour disputes in Mexican Labour law (Article 516 Ley Federal del Trabajo – Federal Labour Law) clearly stipulates a prescription period of one year to take notice of such dispute. Consequently, the jurisdiction of the CRCC is limited to one year when it comes to decide on labour disputes.

"Artículo 516.- Las acciones de trabajo prescriben en un año, contado a partir del día siguiente a la fecha en que la obligación sea exigible, con las excepciones que se consignan en los artículos siguientes".

"Article 516.- The labour actions precript in one year, […]".

34. Since FIFA states by letter 29 November 2010 that they do not appear to be in a position to intervene because the present case seems to fall within the scope of jurisdiction of the relevant deciding bodies in Mexico, the two-year prescription period allegedly stated in Article 25 (5) of the FIFA Regulations by the Appellant does not apply and, as a consequence, each national association is free to establish a prescription period in the national regulations different from the one established in the FIFA Regulations. As stated in Article 11 of the CRCC Rules, it is established a two-year prescription period, but in labor cases, according with Mexican Labour Law, the prescription is one year to take notice of such dispute.

35. The Respondent requests that the statement of appeal be entirely rejected and that it be confirmed in all its contents the decision of the CRCC issued on 26 July 2011. Furthermore, it requests the condemnation of the Appellant to bear all the administrative costs related to the present arbitration proceedings, arbitrator fees, as well as a sum of CHF15.000 for the legal and other costs incurred by the Respondent.

36. According with the Respondent it seems that the Appellant joined the Brazilian Club Vitória on 1 March 2010, three months before his Contract with the Respondent would have expired. Therefore, if hypothetically the CAS panel decides that the Respondent is liable to pay any amount to the Appellant, the panel should take into account the three months of salary that the Appellant earned at Vitória, and that this amount shall be deducted from the amount payable by the Respondent.

VII. CAS JURISDICTION

37. The CAS jurisdiction, which is not disputed by the parties, derives from article R47 of the Code of Sport-related Arbitration (hereinafter referred to as the "Code") and Article 86 of the Mexican Football Federation's Statutes.

38. According with Article 86 of the FEMEXFUT's Statutes, it recognizes CAS as the Appeal body to all decisions taken by its relevant Dispute Resolution Chamber (CRCC). It follows that the CAS has jurisdiction to decide on the present dispute.

39. Under article R57 of the Code, the Panel has the full power to review the facts and the law. It may issue a new decision which replaces the challenged decision or annul the decision and refer the case back to the previous instance.

40. The Sole Arbitrator considers that the challenged decision is final in the federative instance so the Player has the right to appeal to CAS.

41. As to the time limit to lodge an appeal before CAS, article 63 par. 1 of the FIFA Statutes provides that the appeal must be lodged *"within 21 days of notification of the decision in question"*. The CRCC Decision was notified to the Appellant by means of an e-mail dated 27 July 2011and the Appellant's appeal was lodged on 16 August 2011 before CAS, therefore within the statutory time limit set forth by the FIFA Statutes, which is undisputed.

42. It follows that the appeal is admissible.

VIII. APLICABLE LAW

43. Pursuant to article R58 of the Code a panel is required to decide the dispute:

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

44. According with the parties' written submissions and the text of the Appealed Decision, the Sole Arbitrator considers the Mexican Football Federation statutes and regulations, Mexican Law for labor-related issues and the FIFA Regulations as the applicable law to the present proceedings.

IX. MERITS

45. Considering that the Appealed Decision did not analyze the main issue of the case, because it declared itself not competent, due to an alleged prescription of the action, the Sole Arbitrator will firstly analyze whether or not the prescription of the action exists. Only in the event the Sole Arbitrator considers that the action is not prescript, the merits will then be analyzed.

IX.1. Preliminary Issue: Analysis of the Alleged Prescription

46. The Appealed Decision indicated that based on the Article 11 of the CRCC Regulations, its competence is limited to solely acknowledge matters that are not older than two years, considering the legal statutory deadline for performing an intended action, according to the Mexican Federal Labour Law. The mentioned Law, in its Article 516 establishes that the acts prescribe within one year from the day following the date in which the obligation becomes mandatory. In this regard, the CRCC's understanding was that since the Early Termination Agreement signed by both parties on the last date the Club had to pay the Player, *i.e.* 27 September 2009, according to the CRCC Regulations the Player had a deadline to submit his claim until 28 September 2010 before the CRCC, but the Player actually submitted his claim before the CRCC on 17 February 2011.

47. When both parties signed the Employment Agreement, *i.e.* on 23 July 2007 - a fact which is not disputed- they established that: *"…. Any dispute which may arise from the present document shall be subjected to the courts of the Federación Mexicana de Fútbol, Asociación A.C* ***and/or*** *FIFA"* (emphasis added). According to that, the parties were allowed to file an eventual claim in any of the two instances.

48. Furthermore, it is not in dispute as well, that the parties signed the Early Termination Agreement in which the Club would pay to the Player the sum of MX$ 1'300'000.- (one million three hundred thousand Mexican pesos), at the latest by 27 September 2009.

49. It is not in dispute either, according with the Respondent's answer, that the payment agreed in the Early Termination Agreement was not able to be fulfilled due to unforeseen circumstances. Therefore, the Respondent acknowledges that it could not manage to make the payment to the Appellant.

50. As a consequence of the breach of the Early Termination Agreement, as well as the provision for FIFA jurisdiction contained in the contract signed by both parties, the Player submitted the case to the FIFA DRC on 11 March 2010, five months after the breach of the Early Termination Agreement had occurred.

51. It is beyond the sphere of the Player that FIFA, on 20 November 2012, eight months after the player submitted his claim, declared itself incompetent and, therefore, had to refer the parties to solve their conflict before the CRCC.

52. The Player acting with the adequate prudence and good faith, filed his claim before the CRCC on 11 February 2011, three months after FIFA indicated him that his case would not be analyzed in that instance.

53. Even the Appealed Decision recognizes in the chapter *"Resultando",* point nine, the action of the Player to claim for his rights before FIFA: *"… On 11 March 2010 the Player presented a claim before the Statutes of Player Committee of FIFA, however on 29 November 2010 FIFA declared itself* ***incompetent*** *to resolve the matter in question, establishing the Conciliation and Resolution of Controversies Commission (CRCC) of the Mexican Football Federation the competence to hear and resolve the conflict"* (emphasis added).

54. The actions of the Player in the sense of submitting his claim, firstly before FIFA and immediately after to the CRCC consist in clear demonstrations of his perseverant will to keep alive his right and, in this way, to preserve his patrimony.

55. The Early Termination Agreement stipulated the payments at the latest on 27 September 2009. In case of non-compliance with this agreement, it would become non-effective in legal terms, pursuant to its Clause Four. Therefore, the parties should have reverted to the original Employment Agreement signed on 23 July 2007, according to which the Player could have chosen between two different decision-making bodies to solve any dispute arising from this Agreement, namely *"the courts of the Federación Mexicana de Fútbol, Asociación, A.C.* ***and/or*** *FIFA".*

56. In view of the above, the Sole Arbitrator understands that the Player manifested his wish of pursuing the action against the Respondent, showing diligence in his actions and within the time limit of one year as foreseen in Article 516 of the Mexican Labor Act and even of the two-year time limit established by FIFA Regulations in Article 25.5.. In this sense, although FIFA DRC was not competent to rule on the claim lodged by the Player and had to refer the case back to the CRCC, the Appellant's action of seeking remedy for his situation before the FIFA DRC after three months following the Respondent's default of the Early Termination Agreement, this is to be understood as a reason for suspending the prescription time limit, as provided in Article 521 (I) of the Mexican Labor Act. Consequently, the Sole Arbitrator understands that on the day the Player filed his claim before the FIFA DRC, the prescription period was interrupted.

57. Furthermore, since the FIFA Regulations are applied subsidiarily in the present arbitration, under its Article 25.5the Player had two years to submit his claim before it would be prescript, *i.e.* his right would have expired on 28 September 2011. However, since the Player submitted his claim on 11 March 2010, his claim was thus filed in a timely manner, that is to say approximately six months after the default by the Respondent. On the other hand, if the Player would have chosen the Mexican federative instance, *i.e.* the CRCC, under Mexican Labor Law the Player had one year prescription to submit his claim, *i.e.* his right would have expired on 28 September 2010. Therefore, if the Player would have submitted this claim before the CRCC on 11 March 2010, he would still be in time. The Sole Arbitrator finds that the Appellant always had the intention to preserve his right and consequently, the submission of his claim

before FIFA on 11 March 2010 interrupted the prescription of the action. In this regard, even under Mexican Labor Law the new prescription period of one year would have expire on 11 March 2011 and since the Player submitted his claim before the CRCC on 11 February 2011, one month before the expiration of the time limit provided under Mexican Law, the Appellant was thus on time.

58. The above-mentioned understanding is confirmed by CAS jurisprudence and the Sole Arbitrator hereby highlights the understanding of the Panel in the case CAS 2007/A/1270:

"The Panel had the opportunity to review all evidence produced and accepted the fact that the claim was brought before FIFA within the period provided by the FIFA Procedural Regulations, FIFA being the party which delayed to promote the same consequently the two year prescription period as of the date when the dispute arose did not lapse even though the Appellant became aware of the matter after the two year period lapsed.

The Panel furthermore acknowledged that the delay was not the Respondent's fault and should not suffer any adverse consequences.

Consequently the Panel decided to reject the Appellant's argument as to prescription […]".

IX.2. The Merits of the Dispute

59. As in the former chapter it was declared that the right of the Player had not expired, the Sole Arbitrator will review the facts and the merits of the case.

60. The parties agreed that they signed a contract on 23 July 2007 for three seasons 2007/2008, 2008/2009 and 2009/2010. Furthermore, both parties have manifested that they signed the Early Termination Agreement on 30 August 2009 by which the Club should have to pay the Player at the latest on 27 September 2009, the amount of MX$ 1'300'000.- (one million three hundred thousand Mexican Pesos) -approximately US$ 102'464.00- and the club was clear in accepting in its answer to the statement of appeal that: *"… Due to unforeseen circumstances, the Respondent could not manage to make the payment to the Appellant in time …".*

61. The Early Termination Agreement, in its Clause Four states:

"FAILURE TO COMPLY WITH PAYMENT. Both parties agree that the failure to comply with the obligations of payment as stipulated in the third clause (consideration) will cause this document to become non-effective in legal terms within a maximum of 10(ten) days".

62. It is very clear that if by the deadline agreed to pay, the payment is not made, the Early Termination Agreement would not be effective. In view of the fact that the Club expressly recognizes that they did not make the payment to which they were obliged, the Sole Arbitrator must refer to the original Employment Agreement, in which clause 5.3 establishes that Showmex S.A of C.V. acknowledges and accepts to pay the Player throughout each season (2007/2008, 2008/2009 and 2009/2010) the sum of US$500'000.- (five hundred thousand American dollars) free of taxes divided in ten instalments of US$ 50'000.-. However, the last payment made by the Club to the Player and which is not disputed in the Respondent's answer

was at the end of the second contract season, this means that the last contractual season is still due by the Respondent, *i.e.* from August 2009 to May 2010 (which equals to ten months multiplied by US$ 50'000.-, totaling an amount of US$ 500'000.-)

63. In clause 5.2 of the Employment Agreement the parties agreed the following:

"SHOWMEX,S.A DE C.V recognizes and agrees that the payment for the federal rights of the football player LENILSON BATISTA DE JESUS, as specified in the previous paragraph, shall be delivered to MR. PABLO NEHMY and/or MR. LENILSON BATISTA DE JESUS; for the total amount of $400.000USD (Four hundred thousand American dollars00/100USD) First $120.000 USD(One hundred and twenty thousand American dollars00/100USD) Second on February 1st, 2008, the amount of $140.000USD(One hundred and forty thousand American dollars 00/100 USD) Third on May 30th, 2008 the amount of $140.000 USD(One hundred and forty thousand American dollars 00/100 USD) tax free, not exceeding from $13.00 (Thirteen Mexican pesos 00/100 Mexican Currency) the amount of 1,00 USD, the deposit shall be made to the following bank account […]".

64. According to the Appellant's claim, the last installment regarding the federal rights of US$140.000, which was due on 30 May 2008, still remains unpaid by the Respondent. In its answer the Respondent did not dispute this installment due and moreover, by letter directed to the CAS Court Office dated 18 October 2011, the Respondent in point 2 (g) admitted: *"He was also paid 260.000 USD of the signing fee (as it has been recognized by himself) by Jaguares"*. Therefore, the Sole Arbitrator concludes that the remaining amount of the signing fee or federal rights totaling US$ 140'000.- is still due by the Respondent.

65. The Respondent mentioned that it seems that the Player joined the Brazilian football club Esporte Clube Vitória (Bahia) (hereinafter referred to as "Vitória") on 1 March 2010, three months before his contract with the Respondent would have expired. The CAS Office by letter dated 21 March 2012 requested to the Confederação Brasileira de Futebol ("CBF") to send the employment contract signed between the player Lenilson Batista de Jesus and the club Vitória. By letter dated 23 March 2012 Luiz Gustavo Vieira de Castro, Director of the CBF Transfers Department stated that the Player and the club Vitória signed a contract on 1 May 2010 and also enclosed a copy of the said document. In view of these facts, only one month could be deducted from the last season contractual debt by the Respondent to the Appellant, establishing therefore, the obligation of the Club to pay the Player the amount of US$ 450'000.- (four hundred and fifty thousand American dollars).

IX.2.1. Interests

66. Further, the Appellant requests according with Art. 62 para.2 of the FIFA statutes, as follows: *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law"*. Under Swiss law, unless otherwise provided for in the contract, the legal interest due for late payment is of 5% p.a (art. 104 para. 1 of the Swiss Code of obligations) in the same sense CAS jurisprudence has established an interest rate of 5% p.a..

67. Accordingly, the Appellant requested the Sole Arbitrator to determine that an interest rate of 5% p.a be established as follows: over (i) the amount of the federative rights USD140'000.- as from 30 May 2008; and (ii) the amount related to the last Employment Agreement season, totaling USD 500'000.-, as from August 2009.

68. Since Swiss law, subsidiarily to the FIFA Regulations, is applicable to the present dispute, the Sole Arbitrator highlights Article 339 para. 1 of the Swiss Code of Obligations according to which: *"All claims arising from the employment relationship shall become due upon its termination […]"*.

69. As both parties had submitted in the statement of appeal, appeal brief and the answer that they reached an amicable settlement in order to early terminate their employment contract, it is logical to assume that the parties during the negotiations took into consideration all the amounts due and, afterwards, arrived to a final agreement, the one that was signed on 30 August 2009 (Early Termination Agreement), in which the parties agreed to finalize the Employment Agreement and stated that the total and final payment for early termination of the contract would be the amount of MX$1'300'000.- (one million three hundred thousand Mexican pesos), and the settlement of that amount should have been carried out at the latest on 27 September 2009. As the payment was never done by the Club, for reasons known only by the Respondent, according with clause four of the Early Termination Agreement, in case of failure to comply with the obligation of payment, the early termination agreed upon would become non-effective in legal terms.

70. In view of the above, the Sole Arbitrator understands that since the first day following the date in which the obligation under the Early Termination Agreement was due, *i.e.* 28 September 2009, this is to be considered that the Respondent was in breach of the Employment Agreement and, therefore, since that date the interest is due. Consequently, the Sole Arbitrator considers that the interest payment by the Respondent to the Appellant shall start as from 28 September 2009.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Lenilson Batista de Jesus against the decision issued on 26 July 2011 by the Comisión de Conciliación y Resolución de Controversias (CRCC) of the Mexican Football Federation is admitted.

2. The Decision issued on 26 July 2011 by Comision de Conciliación y Resolución de Controversias (CRCC) of the Mexican Football Federation is set aside.

3. Showmex S.A de CV (Jaguares de Chiapas) is determined to pay Lenilson Batista de Jesus the total gross amount of US$590.000 (five hundred and ninety thousand American dollars) with interest accruing over such amount at the rate of 5% (five percent) p.a., as from 28 September 2009 until the effective date of the total payment.

4. (…).

5. (…).

6. All other prayers for relief are dismissed.