CAS 2024/A/10881 Apollon Limassol FC v. Houssain Etzaz

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain

Ad hoc Clerk: Mr. Alejandro Naranjo Acosta, Attorney-at-Law in Barcelona, Spain

in the arbitration between

Apollon Limassol FC, Limassol, Cyprus
Represented by Mr. Alkiviadis Papantoniou and Mr. Vasileios Fotiou, Attorneys-at-law at Alkis Papantoniou Law Office in Athens, Greece

Appellant

and

Houssain Etzaz, Oslo, Norway
Represented by Mr. Mathias Tadesse Grebemichael, Attorney-at-law at Ecit Law in Oslo, Norway

Respondent

I. PARTIES

1. Apollon Limassol FC (the "Club") is a Cypriot professional football club with its registered office in Limassol, Cyprus. The Club is affiliated to the Cyprus Football Association (the "CFA"), which, in turn, is affiliated to the *Fédération Internationale de Football Association* ("FIFA"), the world governing body of football.

2. Mr Houssain Etzaz (the "Player") is a Norwegian professional football player.

3. The Club and the Player are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as submitted by the Parties in their admissible submissions, pleadings and evidence examined in the course of the present proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 19 January 2023, the Club and the Player concluded an employment agreement (the "Employment Agreement") valid as from the date of signature until 30 June 2025.

6. On 1 January 2024, the Parties concluded a termination agreement (the "Termination Agreement") in order to finalize their employment relationship. The Termination Agreement provides, in its relevant part, as follows:

"A. The Club and the Player hereby terminate the "Agreement" and declare it null and void and of no effect as from today.

B. The Club shall be responsible for the following payments due to the Player under this Termination Agreement, as compensation due to the early termination of the contract of the Player and will arrange to pay the total amount of €107.085 net (one hundred and seven thousand and eighty five euro) in 11 equal instalments as follows:
- *€9.735 payable at 15/1/2024*
- *€9.735 payable at 15/2/2024*
- *€9.735 payable at 15/3/2024*
- *€9.735 payable at 15/4/2024*
- *€9.735 payable at 15/5/2024*
- *€9.735 payable at 15/6/2024*
- *€9.735 payable at 15/7/2024*
- *€9.735 payable at 15/8/2024*
- *€9.735 payable at 15/9/2024*
- *€9.735 payable at 15/10/2024*
- *€9.735 payable at 15/11/2024*

C. Both parties agree and acknowledge that this agreement constitutes the only and entire agreement between the parties and that any previous agreement with regard to the employment of the PLAYER, his remuneration or similar issues are hereby cancelled and rendered null and void and of no effect whatsoever. The agreement shall be submitted to the relevant bodies of CFA for monitoring on the financial criteria of CFA. In case of dispute both parties mutually agree that will be handled by the relevant FIFA bodies for settlement.

D. In case of any breach of this Termination Agreement, namely in case the Club delays or fails to pay to the Player the amount(s) indicated above (under letter / section B) in due time. In such a case, upon condition and prior of a written notice to be sent by email, given a term of seven (7) days to pay the outstanding amount(s) due, the Player has the right to bring this case before the competent FIFA body claiming the remaining value of the settlement sum. The Parties confirm that this penalty was freely negotiated and is reasonable and proportionate in the view damages that the player would suffer in case of breach".

7. On the same day, the Parties also concluded a financial agreement (the "Financial Agreement") (the Termination Agreement and Financial Agreement are hereinafter referred to as the "Termination Agreements") which, in its relevant part, provides as follows:

"A. Apollon and the player hereby agree that along with the "Termination Agreement" the present "Financial Agreement" shall take effect and be valid.

B. In consideration of the termination, Apollon and the player agree and accept that APOLLON shall pay (additionally to the payable amounts stipulated in the "Termination Agreement") the total amount of €176.000 net (one hundred seventy six thousand euro net) in total which will be paid as mentioned below to the personal bank account of the Player, in 11 equal instalments as follows:

1. €16.000 payable on 15/01/2024
2. €16.000 payable on 15/02/2024
3. €16.000 payable on 15/03/2024
4. €16.000 payable on 15/04/2024
5. €16.000 payable on 15/05/2024
6. €16.000 payable on 15/06/2024
7. €16.000 payable on 15/07/2024
8. €16.000 payable on 15/08/2024
9. €16.000 payable on 15/09/2024
10. €16.000 payable on 15/10/2024
11. €16.000 payable on 15/11/2024

C. Both parties agree and acknowledge that this agreement along with the "Termination Agreement" constitute the only and entire agreements between the parties and that any previous agreements with regard to the employment of the Player, his remuneration or similar issues are hereby cancelled and rendered null and void and of no effect whatsoever. The agreement shall be submitted to the relevant bodies of

CFA for monitoring on the financial criteria of CFA. In case of dispute both parties mutually agree that it will be handled by the relevant FIFA bodies for settlement.

D. In case of any breach of this Financial Agreement, namely in case the Club delays or fails to pay to the Player the amounts indicated above (under letter / section B) in due time. In such a case, upon condition and prior of a written notice sent by email, giving the term of seven (7) days to pay the outstanding amount(s) due, the Player has the right to bring this case before the competent FIFA body claiming the remaining value of the settlement sum. The Parties confirm that his penalty was freely negotiated and is reasonable and proportionate in the view of the damages that the player would suffer in case of breach".

8. On 19 January 2024, the Player contacted the Club via WhatsApp requesting the payment of EUR 9,735 and EUR 16,000 corresponding to the January 2024 instalments of the Termination Agreements.

9. On an unknown date, the Club completed the payments to the Player of the January instalments of the Termination Agreements.

10. On 20 February 2024, the Player contacted the Club via WhatsApp, requesting the payments corresponding to the February 2024 instalments of the Termination Agreement.

11. On 22, 23, 28 and 29 February 2024, the Player insisted on his request to the Club via WhatsApp.

12. On 25 January 2024, the Player and the Norwegian Club Odds Balklubb ("Odds") concluded an employment agreement (the "New Employment Agreement") valid as from 26 January 2024 until 31 December 2025. Clause 4.1 of the New Employment Agreement determined a gross monthly salary for the Player of NOK 75,000.

13. On 4 March 2024, the Player insisted before the Club for the payment of the February 2024 instalments. The Club asked if he could wait until Friday (7 March 2024), to which the Player agreed.

14. On 12 March 2024, the Club asked the Player to wait until the next day to find a solution, to which the latter agreed.

15. On 18 March 2024, the Player contacted the Club via WhatsApp requesting the payment corresponding to the February and March 2024 instalments of the Termination Agreements. The Player also sent to the Club a default notice via email informing it that the total sum due amounted EUR 51,470; the Player also informed the Club that if the payment was not made on time, he would claim the total amount agreed on the Termination Agreements.

16. On 25, 26 and 27 March 2024, the Player insisted with his request to the Club via WhatsApp.

17. On 2 April 2024, the Player contacted the Club via WhatsApp and informed it that he had no other option but to proceed with lodging the relevant claim before FIFA; moreover, the Player asked the Club whether it had any further comments.

18. On 3 April 2024, the Club paid EUR 9,735 to the Player.

III. PROCEEDINGS BEFORE THE FIFA FOOTBALL TRIBUNAL

19. On 2 May 2024, the Player filed a claim against the Club before the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC"). In such claim, the Player argued that the Club did not pay the February, March and April 2024 instalments in full, and hence he is entitled to claim the remaining value of the Termination Agreements as per the acceleration clause (Clause D of the Termination Agreements) (the "Acceleration Clause") provided in such Termination Agreements.

20. Accordingly, the Player, initially, presented the following requests for relief:

"In light of the above, the Claimant request the DRC to rule as follows:
a. *The Club is ordered to pay the due payable amounts to the Player in accordance with the Termination Agreement and the Financial Agreement, which gives a total of: sixty-seven thousand four hundred and seventy euros (EUR 67,470) for February, March and April 2024.*
b. *The Club is ordered to pay the remaining value of the owed amounts in Termination Agreement and the Financial Agreement in full to the Player in accordance with clause D in both the Termination Agreement and the Financial Agreement, which gives a total of: one hundred and eighty thousand one hundred and forty-five euros (EUR 180,145) for May, June, July, August, September, October and November 2024.*
c. *Apollon Football LTD is ordered to pay all the Player's costs and expenses related to the preparation".*

21. In his replica, the Player amended his prayers for relief as follows and sustained the following arguments:

"*In light of the response letter received from the Club (dated 05/06/2024) through the FIFA Legal Portal, and in light of the above presented arguments on behalf of the Claimant, the Claimant request the DRC to rule as follows:*
a. *The Player requests the Club's request in clause 31 (a), (b) and (c) in their response letter (dated 05/06/2024) and the requests under nr. 1-4 under "C. Request of the Respondent" – "Preliminary Request", to be dismissed / rejected by the DRC.*
b. *The Club is ordered to pay the due payable amounts to the Player in accordance with the Termination Agreement and the Financial Agreement, which gives a total of: Ninety-three thousand two hundred and five euros (EUR 93,205) for February, March, April and May 2024.*
c. *The Club is ordered to pay the remaining value of the settlement sums in the*

Termination Agreement and the Financial Agreement in full to the Player in accordance with clause D in both the Termination Agreement and the Financial Agreement, which gives a total of: One hundred and fifty-four thousand four hundred and ten euros (EUR 154,410) for June, July, August, September, October and November 2024.

d. *The Club is ordered to pay 5% interest p.a. on the outstanding amounts as from its due dates until the date of effective payment.*
e. *A warning or a reprimand (or both), in accordance with Art. 12bis par. 4 lit. a) and b), shall be imposed on the Club, by the DRC".*

- The financial terms of the termination of the employment relationship where freely negotiated by the Parties. In this respect, the agreed compensation was accepted by both Parties as reasonable and proportionate in light of the damages the Player would suffer, and without an agreed condition that the compensation should only apply if the Player did not find a new club. Accordingly, the Club is liable to the agreed consequences of not upholding its contractual obligations.

- The compensation is based on specific contractual commitments, and not on a general obligation to pay damages where mitigation might apply. Accordingly, the Termination Agreements were intended to provide the Player with financial security irrespective of future employment opportunities.

- The Club did not submit any evidence as to its financial situation or any explanation regarding the delay in the amounts payable to it.

- The Acceleration Clause provided in the Termination Agreements was validly activated, as it was proven that, on 18 March 2024, the Player sent a default letter via email referring to the outstanding amounts that were due at that time. Also, that the Player informed the Club in the default notice about his further steps in case the payment was not made, namely, the request for the overall amount agreed. Furthermore, the Player sustained that he put the Club in default on multiple occasions.

- As to the payment made by the Club after lodging the claim before the FIFA DRC, the Player alleged that it was made after the agreed payment date, and did not cover the full amount due.

22. The Club's reply can be, in essence, summarised as follows:

- The Club initially pointed out that it completed the payment of EUR 35,470 to the Player and that, due to financial difficulties, it delayed the payment of the next instalments.

- The Player managed to mitigate his damage by signing the New Employment Agreement with Odds. Consequently, his damage is not equal to EUR 283,085, but rather less. Accordingly, the compensation claimed by the Player should be mitigated

by the amount that the Player would receive as per the New Employment Agreement as from 26 February 2024 until 30 June 2025. Pursuant Article 17 of the FIFA Regulation on the Transfer and Status of Players (the "RSTP"), the employee has the duty to mitigate his damage in case of a breach of contract by the employer.

- Moreover, the Club stated that: "[*d]erogating from the stipulations of article 17 RSTP in cases of termination agreements, creates a negative precedent in employment relationships, which contradicts the principle of contractual stability. Leaving termination agreements outside the scope of art. 17 RSTP practically encourages clubs to unilaterally terminate their employment contracts in order to benefit from future mitigation of the player's damages, instead of proceeding to mutually agreed termination agreements with their players. Therefore, we state that the ratio legis of article 17 FIFA RSTP dictates the application of the duty of the employee to mitigate their damages also in cases of termination agreements*".

- The Acceleration Clause was not validly activated by the Player, as the default notice sent by him did not specify the amounts that were payable, the contractual agreements from where they arose, nor the exact dates where the amounts became due. Furthermore, the Club made a payment of EUR 9,735 before the Player lodged the Claim before the FIFA DRC, which altered the due amount and, as a result, the Player should have sent a new default notice in order to activate the acceleration clause.

- Subsidiarily, the Club considered that the Acceleration Clause constituted an excessive and unreasonable penalty and should thus be invalid. The accelerated payment requested by the Player as a penalty (*i.e.* EUR 180,145) is disproportionate to the amount which was not duly paid by the Club (*i.e.* EUR 67,470), being 3 times higher (267%) in comparison to the defaulted amount.

23. Furthermore, in its duplica, the Club argued the following:

- The Club insisted that the Parties agreed that the compensation shall, in any case, be proportionate to the damages suffered by the Player. In this respect, the Parties did not explicitly state that the amounts would be final and would not be mitigated in case the Player would manage to find a new employment contract. The Player would otherwise receive double salaries from 26 February 2024 until 30 June 2025, which would result in an unjust enrichment, and would also exceed the real damages incurred by him for the termination of the employment relationship.

- The Player did not dispute that the Acceleration Clause constituted an unreasonable and excessive penalty, in consequence, the Player accepted these arguments.

- The Player's request on interest and sanctions under Article 12bis of the RSTP should be rejected, as it was presented for the first time in his replica and constitutes an unacceptable late amendment of his requests. Furthermore, Article 12bis of the RSTP should not apply in the present case, which *"concerns a dispute in relation to a*

termination agreement and not a dispute in relation to employment contracts or transfer contract. This means that the Club does not have overdue payables towards the Player regarding services provided by the Player or the Club". In any case, the Player did not fulfil the procedural requirements of Article 12bis of the RSTP, and thus it should not apply in the present case.

24. Accordingly, the Club requested the following prayers for relief:

"*In view of all the factual and legal arguments presented in the present Response, the Respondent request by Your Respectable Chamber:*

I. Primary Requests

1. *To reject the Claim of the Claimant for the payment of the total amount of EUR 247,614.*
2. *To request by the FIFA Player Status Department and/or the FIFA General Secretariat and the Claimant to produce the contract signed between the Claimant and the Norwegian Club, ODDS BK in order to be aware of the exact amount of damages mitigated by the Claimant after the termination of the employment relationship;*
3. *To provide us with the capacity to supplement our present Response, after we receive the contract of the Claimant with the New Club, by stating the exact amount that we request to be deduced from the compensation requested by the Claimant;*
4. *To determine that the amount requested by the Claimant through his claim shall be mitigated by the payments he is to receive by the New Club for the period corresponding to the remaining term of the terminated contract with the Club (i.e., from the date of signature of the contract with the New Club until 30.06.2025).*

II. Subsidiary Requests

In case Your Chamber finds that the total amount requested by the Claimant through his claim shall not be mitigated, or in the event that Your Chamber finds that the accelerated debt of EUR 180,145 shall not be mitigated.

1. *To reject the Claim of the Claimant for the payment of the amount of EUR 180,145 as a penalty of acceleration of debt, because it is an excessive and unreasonable penalty.*
2. *To determine that the penalty of EUR 180,145 shall not be paid to the Claimant at all. Subsidiarily, to adapt the said amount of penalty in order to be reasonable and proportionate to the circumstances of the case at hand".*

25. On 8 August 2024, the FIFA DRC issued the Decision FPSD-14539 (the "Appealed Decision") ruling as follows (emphasis in the original):

"*1. The claim of the Claimant, Etzaz Muzafar Hussain, is accepted.*

2. *The Respondent, Apollon Limassol, must pay to the Claimant the following amount(s):* ***EUR 247,615 as outstanding amount*** *plus 5% interest p.a. as follows:*
   - *5% interest p.a. over the amount of EUR 16,000 as from 16 February 2024 until the date of effective payment;*
   - *5% interest p.a. over the amount of EUR 25,735 as from 16 March 2024 until the date of effective payment; and*

- *5% interest p.a. over the amount of EUR 205,880 as from 26 March 2024 until the date of effective payment.*

3. *Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*
4. *Pursuant to art. 24 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.*
5. *The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
6. *This decision is rendered without costs".*

26. On 3 September 2024, the FIFA DRC notified the grounds of the Appealed Decision to the Parties, which can be summarized as follows:

a. Was the acceleration clause validly activated by the Player?

27. The FIFA DRC observed that based on the Termination Agreements, the Player would be entitled to claim the overall amount agreed provided that (i) the Club defaulted on any of the agreed amounts and (ii) the Player put the Club in default, via email, granting seven days to comply with its obligations.

28. Then, referring to the evidence submitted by the Parties, the FIFA DRC observed that:

- On 18 March 2024, the Player put the Club in default, via email, requesting the payment of EUR 51,750, corresponding to the February and March 2024 instalments as per the Termination Agreements, which fell due on 15 February and 15 March 2024, respectively.
- On 3 April 2024, the Club paid EUR 9,735, corresponding to the February 2024 instalment as per the Termination Agreement. Accordingly, the amount of EUR 42,015 remained outstanding.
- On 2 May 2024, the Player lodged the claim at hand before FIFA, *i.e.*, more than 7 days after putting the Club in default.

29. The FIFA DRC concluded that the Player clearly and validly activated the Acceleration Clause provided in the Termination Agreements and, in accordance with the legal principle of *pacta sunt servanda*, such Acceleration Clause shall be enforced.

30. For the sake of completeness, the FIFA DRC considered that the argumentation of the

Club in the sense that the Player should have sent another default notice after it paid EUR 9,735 on 3 April 2024 shall be rejected. The FIFA DRC determined that the mentioned payment did not cure the default of the Club, as it did not cover the full payment due. Likewise, the FIFA DRC stressed that it was on the Club to avoid the acceleration of the amounts agreed, and the Player only decided to claim them after having granted countless opportunities to the Club to comply with its contractual obligations, to no avail.

b. In such case, is the agreed compensation subject to mitigation?

31. The FIFA DRC considered that Clause D of the Termination Agreements granted the Player the possibility to claim the overall amount agreed in case of a breach on the Club's side, with no further conditions. Moreover, in case the Parties intended to agree upon any type of conditions and/or mitigation of the amounts established, they should have done so in writing. Consequently, and in the absence of any written guidance to this extent, the FIFA DRC decided that the position of the Club could not be upheld.

32. Furthermore, the FIFA DRC pointed out that this is not a case of breach of contract without just cause, a scenario where the mitigation might be applicable in case the Player signs a new employment contract, but rather a contractual stipulation freely entered into, where the Parties agreed on the consequences that a default or breach of the payment scheduled would entail.

33. In application of the parties' autonomy principle, it was up to the Parties to limit the consequences of a breach of contract if they wished to do so. Along these lines, the FIFA DRC recalled that, based on the principle of *pacta sunt servanda*, unless the terms of a contract are impossible, unlawful or immoral, parties are bound to observe the clauses subscribed to by them.

34. In consequence, the FIFA DRC decided to reject the application of any mitigation on the amounts payable by the Club to the Player.

c. If not, does the agreed compensation constitute an excessive penalty?

35. The FIFA DRC pointed out that acceleration clauses are often used in termination agreements. Acceleration clauses also derive from the principle of autonomy. In casu, the Termination Agreements entitled the Player to activate the Acceleration Clause to claim the overall amount agreed in case of a breach of contract by the Club.

36. Despite the wording of the Acceleration Clause, the FIFA DRC considered that, by claiming it, the Player is only requesting the performance of the Termination Agreements rather than a penalty on top of the agreed amounts. Accordingly, the FIFA DRC determined that an acceleration clause cannot be equated to a penalty clause, being the only scenario in which the FIFA DRC would be allowed to reduce it.

37. The FIFA DRC concluded that the Player shall be awarded the outstanding and the accelerated amounts claimed.

38. In addition, taking into consideration the Player's request, as well as the constant practice of the FIFA DRC in this regard, the latter decided to award the Player interest at the rate of 5% *p.a.,* as from their due dates regarding the outstanding amounts and as from the activation of the Acceleration Clause as to the accelerated amounts. The FIFA DRC decided to reject the Club's allegation in the sense that no interest should be awarded as the Player only requested it in his replica. In this respect, the FIFA DRC determined that the Club was invited to provide its position on the replica of the Player and, consequently, its right to be heard was fully respected.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 23 September 2024, the Club filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), pursuant Article R48 of the Code of Sports-related Arbitration 2023 edition (the "CAS Code"), directed against the Player, to challenge the Appealed Decision. In such Statement of Appeal, the Club requested to submit the present Appeal to a Sole Arbitrator; additionally, the Club requested the procedure to be conducted in English.

40. On 7 October 2024, the Player informed the CAS Court Office that he agrees to submit this matter to a Sole Arbitrator; moreover, the Player accepted English as the language of the arbitration.

41. On 9 October 2024, the CAS Court office confirmed that a sole arbitrator would be appointed pursuant Article R54 of the CAS Code.

42. On 29 October 2024, within the granted extended deadline, the Club filed its Appeal Brief pursuant Article R51 of the CAS Code.

43. On 30 October 2024, the CAS Court Office informed the Player, pursuant Article R55 of the CAS Code, that within 20 days upon the receipt of such letter, he shall submit his Answer to the Appeal Brief. Moreover, the CAS Court Office stated that *"[i]f the Respondent fails to submit his Answer by the given time limit, the Sole Arbitrator may nevertheless proceed with the arbitration and deliver an award"*.

44. On 22 November 2024, the Player submitted its Answer to the Appeal Brief.

45. On the same date, the CAS Court Office acknowledged receipt of the Player's Answer to the Appeal Brief. Nevertheless, the CAS Court Office remarked that, as set in the letter sent on 30 October 2024, the Player's Answer to the Appeal Brief was due to be filed by 19 November 2024. Therefore, the Club was invited by the CAS Court Office to state whether it agrees with the late filing of the Player's Answer to the Appeal Brief.

46. Lastly, and in the same letter, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held or for the sole arbitrator to issue an award based solely on the Parties' written submissions and whether they requested a case management

conference to be held in order to discuss procedural issues.

47. On 27 November 2024, the Club objected to the late filing of the Player's Answer to the Appeal Brief and, in addition, stated that no extraordinary circumstances seem to exist that would justify such late filing.

48. On 29 November 2024, the Club requested both a hearing and a case management conference to be held in this procedure.

49. On the same date, the CAS Court office noted the Club's request and that the Player did not provide his position.

50. On 13 January 2025, the Player requested the CAS Court Office that, due to the absence of the full payment of the advance of costs by the Club, the Appeal should be deemed withdrawn.

51. On 15 January 2025, the CAS Court Office informed the Player that the Club had paid the advance of costs in the present matter.

52. On 17 January 2025, the CAS Court Office, pursuant Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the case was composed by:

Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain

53. On 31 January 2025, the CAS Court Office informed the Parties that, pursuant Article R57 of the CAS Code, the Sole Arbitrator decided to hold a hearing by videoconference in the present case.

54. After consulting the Parties' availabilities, on 5 February 2025, the CAS Court Office, on behalf of the Sole Arbitrator, called the Parties and their witnesses to appear at the hearing which would be held by videoconference on 21 March 2025.

55. On 18 February 2025, the Order of Procedure was issued and sent to the Parties by the CAS Court Office. In the same letter, the Parties were informed that Mr. Alejandro Naranjo Acosta, Attorney-at-Law in Barcelona, Spain, had been appointed as *ad hoc* Clerk in this procedure. Lastly, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that the Player's Answer to the Appeal Brief was inadmissible and that the reasons for this decision would be provided in the Arbitral Award.

56. On 24 and 25 February 2025 respectively, the Order of Procedure was duly signed and returned by the Player and the Club.

57. On 21 March 2025, the hearing was held by videoconference. In addition to Mr. José Juan Pintó Sala, the Sole Arbitrator, Ms. Amelia Moore, Counsel to the CAS, and Mr. Alejandro Naranjo Acosta, the *ad hoc* Clerk, the following persons attended the hearing:

For the Club:
- Mr. Vasileios Fotiou, Attorney-at-law.

For the Player:

- Mr. Houssain Etzaz, the Player.
- Mr. Mathias Mathias Tadesse Grebemichael, Attorney-at-law.

58. At the outset of the hearing, the Parties confirmed not to have any objection or comments as to the constitution and the composition of the Arbitral tribunal nor in respect of the conduct of the proceedings up to that moment.

59. The Parties had a complete opportunity to present their case and submit their arguments.

60. At the closure of the hearing, both Parties confirmed that they did not have any objections as to the procedure conducted by the Sole Arbitrator and that their respective rights to be heard had been fully respected.

V. THE PARTIES' SUBMISSIONS

61. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the admissible submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

A. THE CLUB'S POSITION

62. In its Appeal Brief, the Club requested the following prayers for relief:

"Primary Requests

1. *To overturn the decision of the FIFA DRC, awarding the Respondent the total amount of EUR 247,615, plus 5% interest from the days that the amounts became due.*
2. *To determine that the amount requested by the Respondent through his claim shall be mitigated by the amount of EUR 100,865.76, and to decide that the compensation awarded to the Respondent shall be reduced accordingly.*
3. *To find that the Respondent did not validly activate the acceleration clause, as per the terms of the Agreement, and therefore that the FIFA DRC erred in awarding to the Respondent the amount of EUR 180,145 as accelerated payments from the Agreement.*
4. *To determine that the Respondent's request for 5% interest p.a. was inadmissible, that it shall be rejected and to overturn the relevant part of the Challenged Decision.*

Subsidiary Requests

In case Your Court finds that the total amount awarded to the Respondent was not subject to mitigation, and/or that the accelerated debt of EUR 180,145 was validly activated:

1. *To find that the FIFA DRC erred in awarding the accelerated debt to the Respondent in its entirety, to determine that the accelerated debt is a penalty, and to adjust the said amount because it is an excessive and unreasonable penalty.*
2. *To determine that the Respondent's request for 5% interest p.a. was inadmissible, that it shall be rejected and to overturn the relevant part of the Challenged Decision".*

63. The Club's submissions to support the aforementioned prayers for relief can be, in essence, summarized as follows:

a. The compensation shall be mitigated

64. The amounts agreed on the basis of the Termination Agreements were agreed as compensation for the damage that the Player would incur due to the early termination of the employment relationship. Nevertheless, the Player managed to mitigate the damage he purportedly incurred due to the early termination (the total settled amount of EUR 283,085), by concluding the New Employment Agreement with Odds, entitling the Player to a monthly salary of NOK 75,000 (EUR 6,304.11). This means that the mitigation of the Player's damage for the term of his employment relationship with the Club was equal to EUR 100,865.76 (EUR 6,304.11*16 months).

65. At the time the Appealed Decision was issued, the total damages incurred by the Player were not equal to EUR 283,085, but rather equal to EUR 182,219.24, considering the amount that the Player would receive from his New Employment Agreement with Odds for the relevant period of time.

66. The Club refers to Article 17 of the RSTP which describes a specific mechanism of calculation of compensation for breach of contract (emphasis added by the Club):

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, ***compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria****. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period. Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*

i. In case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

ii. In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from Maintenance of contractual stability between professionals and clubs the residual value of the contract that was terminated early (the "Mitigated Compensation")…".

67. Furthermore, Article 337c of the Swiss Code of Obligations (the "SCO") stipulates that:

"[1] Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.

[2] Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work…".

68. As accepted by long-standing CAS Jurisprudence, the latter provision *"essentially*

encapsulates the duty of the employee to mitigate his damages in case of a breach of contract by the employer, which falls in line with the general principle of fairness and good faith and is also relevant in the sports industry (CAS 2015/A/4206 & CAS 2015/A/4209 paras. 235-236)" (CAS 2017/A/5125).

69. It is acknowledged that Article 17 of the RSTP does not make reference to the calculation of the compensation payable to a player on the basis of a termination agreement. Nevertheless, the Parties agreed in the Termination Agreements, as it was their intention, that the compensation would be proportionate to the damages incurred by the Player due to the termination of the employment relationship. Since these damages have been mitigated by virtue of the New Employment Agreement of the Player, the compensation payable by the Club shall be reduced accordingly. Beyond the wording of the Termination Agreements, this argument is further supported by the well-established principle of the "specificity of sport" mentioned in Article 17 of the RSTP.

70. As per the finding in the award, in the award CAS 2020/A/7145, the concept of specificity of sport as a criterion shall be used by panels to verify that the solution reached is just and fair not only from a strict civil (or common) law point of view, but also taking into due consideration the specific nature and the needs of the football world (and of parties that are stakeholders in such a world) and, therefore, reaching a decision that can be recognised as an appropriate evaluation of the interests at stake and which fits in the landscape of international football.

71. The compensation payable under the Termination Agreements shall be mitigated, as an expression of the application of the objective of contractual stability established in Article 17 of the RSTP. The latter provision states that a compensation may be mitigated by incomes received by the player for the corresponding term of the terminated contract through his new employment. The Club argues that such mitigation shall also apply in cases where the parties agree on the early termination of the employment relationship against the payment of compensation by the club. Such argument is grounded in the *ratio legis* of the said provision, which is the protection of the contractual stability between the parties and the reduction of unilateral terminations of contracts by clubs. This broad interpretation of the mentioned provision is important for achieving the objectives of Article 17 of the RSTP.

72. Leaving termination agreements outside of the scope of Article 17 FIFA of the RSTP practically encourages clubs to unilaterally terminate their employment contracts in order to benefit from future mitigation of the players' damages, instead of proceeding to mutually agreed termination agreements with their players.

73. The signing of a termination agreement —instead of a unilateral termination— establishes significantly better conditions for players in searching for new employment opportunities in the transfer market. In this manner, the signing of a termination agreement cannot entail more severe consequences for the relevant clubs in comparison to the case of a unilateral termination of a contract. Indeed, by signing a termination

agreement with the Player, the Club facilitated him to find a new club, sign a contract and complete his registration within the relevant registration period. Under this consideration, the Club argues that a potential non-mitigation of the compensation — which would otherwise apply if the Club had unilaterally terminated the contract— would be against the principles of fairness and good faith.

b. Subsidiary Arguments

- The acceleration of debts constitutes a penalty.

74. The acceleration of debt constitutes an excessive and unreasonable penalty and thus shall be invalid. From the wording of Clause D of the Termination Agreements, the acceleration of debt acts as a deterrent against the Club for its failure to pay an instalment within the provided deadline, being a *de facto* penalty for such failure.

75. A contractual penalty can be defined as a monetary punishment against the party that breaches its contractual obligations. In the event of a contractual breach, the party in breach shall pay to the other party a sum of money which was not due at the time of the breach, or that was not originally owed to the counterparty. Therefore, it is underlined that penalty clauses do not have the aim of compensating the other party for its losses but rather to threaten the debtor of detrimental financial consequences in case it does not fulfil its obligations as per the contract.

76. This was also the aim of the Acceleration Clause of the Termination Agreements. The Parties agreed that the payments should be completed within a given deadline. In case this did not happen, the Player would be in a position to provide a seven-day deadline to the Club to fulfil the said payments, before activating the Acceleration Clause. Therefore, the Acceleration Clause acted as a deterrent to the Club from breaching the Termination Agreements.

77. By the Appealed Decision, the Player was awarded a total accelerated debt of EUR 180,145, which had not been due at the day of the claim. This amount imposes additional financial obligations to the Club which were not due at the time the claim was lodged. This constitutes an apparent monetary punishment against the Club and must be assessed as a penalty clause.

- The Acceleration Clause requested by the Player is disproportionate, excessive and unreasonable.

78. The FIFA Regulations do not contain any specific provisions about penalty clauses. Therefore, this regulatory *lacuna* is covered by the subsidiary application of Swiss Law. In accordance with Article 163 para. 3 Swiss Code of Obligations, *"[a]t its discretion, the court may reduce penalties that it considers excessive*".

79. The CAS award CAS 2021/A/8356 recalled that:

""To evaluate the excessive character of the contractual penalty, one must not decide in an abstract manner, but, on the contrary, take into consideration all the circumstances at hand (CAS 2017/A/5304; CAS 2019/A/6626)";
"The factors to consider when deciding whether a reduction of a penalty clause is applicable, are as follows: (i) the creditor's interest in the other party's compliance with the undertaking; (ii) the severity of the default or breach; (iii) the intentional failure to breach the main obligation; (iv) the business experience of the parties; and (v) the financial situation of the debtor (CAS 2018/A/5857)"".

80. The accelerated payment awarded to the Player (EUR 180,145) as a penalty is clearly disproportionate to the amount which was not duly paid by the Club. In particular, the accelerated debt is approximately 3 times higher (267%) than the amount for which the Club was put in default (EUR 67,470).

81. When the Player lodged his claim, the Club had paid a total amount of EUR 35,470. Until such moment, the Club had proven its credibility to the Player since the Parties amicably agreed on the consequences of the Termination Agreements. Therefore, it is self-evident that the Club did not attempt to evade its financial obligations from the Employment Agreement. Rather, the Club agreed to pay a considerable amount of damages to the Player and let him explore different professional opportunities. Furthermore, and until the date of the claim, the Club has paid a substantial amount to the Player in order to comply with its financial obligations.

82. The Club is not in danger of liquidation proceedings, bankruptcy or administration and does not intend to "exit" organized football. Therefore, and considering all the circumstances described above, the monies payable towards the Player would not be jeopardized by a short delay in the payments.

83. The Club underlines that the financial interest of the Player was not significantly damaged because, at the time the claim was lodged, he had already found new employment with Odds.

- The FIFA DRC erred in awarding 5% interest to the Player.

84. The request for 5% interest was not presented by the Player in his initial claim, but rather was presented for the first time in his replica in the FIFA proceedings. This was an unacceptable late amendment of the requests of the Player that should have been deemed inadmissible by the FIFA DRC.

85. As per Article 18 (1) d) of the Procedural Rules Governing the Football Tribunal ("Football Tribunal Procedural Rules"), the claim shall contain *"a statement of claim, setting out full written arguments in fact and law, the full body of evidence, and requests for relief".* In addition, Article 22 Procedural Rules stipulates that *"The FIFA general secretariat will decide, where necessary, whether there shall be a second round of*

submissions. Any such submission must be submitted via the Legal Portal".

86. The requests for relief of the Player should have been presented in their entirety in the initial claim, while a second round of submissions may be granted only in exceptional circumstances. This makes evident that additional requests could not be presented at that stage of the proceedings.

B. THE PLAYER'S POSITION

87. The Sole Arbitrator recalls that the Player's Answer to the Appeal Brief is inadmissible as it was not filed in due time. Notwithstanding the above, the Sole Arbitrator reproduces, in essence, the allegations presented by the Player at the hearing in response to the Club's arguments:

- The Acceleration Clause was validly activated by the Player as Clause D of the Termination Agreements determined so. The repeated requests for payment made by the Player to the Club showed the reasonable grace period for payment granted by the Player and the recognition of debt made by the Club. Despite the efforts of the Player to avoid litigation, the Club did not comply with its financial obligations.

- The agreed compensation is not subject to any mitigation principles. The Termination Agreements expressly grant the Player the right to claim the full amount agreed with no reference to mitigation. If the Parties had intended to include a mitigation clause they should have explicitly done so in writing.

- The agreed compensation does not constitute an excessive and unreasonable penalty to the Club. The Acceleration Clause (common in termination agreements) does not impose an additional penalty it merely enforces the agreed contractual terms. Both Parties exercised their contractual freedom to define the financial consequence of a breach of contract.

- The award of 5% *p.a.* interest rate is consistent with the FIFA DRC established practice and the principle of compensating for delayed payments.

- During the FIFA DRC and CAS proceedings, the Club had failed to submit any documentary evidence regarding the alleged difficulties to perform the due payment obligations that the Club had acknowledged in favour of the Player. Similarly, the Club had not submitted evidence that it had tried to avoid litigation or attempt to settle the debt with the Player.

VI. JURISDICTION

88. The CAS jurisdiction derives from Article R47 of the CAS Code that provides as follows:

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

89. Article 49 (1) of the FIFA Statutes May 2024 edition (the "FIFA Statutes"), reads as follows:

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

90. The Sole Arbitrator notes that the Club expressly confirmed CAS jurisdiction in its submissions and the Player did not object to CAS jurisdiction.

91. CAS jurisdiction is further confirmed by the Order of Procedure, duly signed and returned by the Parties.

92. Consequently, the Sole Arbitrator concludes that CAS has jurisdiction to adjudicate and decide the present Appeal.

VII. ADMISSIBILITY

93. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

94. Article 50 (1) of the FIFA Statutes states:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question".

95. Additionally, the Appealed Decision confirmed that

"A*ccording 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*".

96. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties.

97. The grounds of the Appealed Decision were notified to the Parties on 3 September 2024 and the Statement of Appeal was filed on 23 September 2024, *i.e.* within the time limit required both by the FIFA Statutes and the CAS Code.

98. Consequently, the Sole Arbitrator finds that the Appeal filed by the Club is admissible.

VIII. APPLICABLE LAW

99. Article R58 of the CAS 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

100. In addition, Article 49 (2) of the FIFA Statutes establishes the following:

"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".

101. Moreover, the Club stated in its Appeal Brief that *"the dispute at hand shall be resolved, primarily on the basis of the FIFA RSTP provisions and, subsidiarily and for issues not provided in the FIFA Regulations, by the provisions of Swiss Law"*..

102. Accordingly with the abovementioned, the Sole Arbitrator confirms that the present dispute shall be resolved based on the applicable FIFA Regulations and, subsidiarily, on Swiss Law.

IX. MERITS

103. The present arbitration concerns the Appealed Decision ordering the Club to pay to the Player the amount of EUR 247,615 plus respective interest as per the Termination Agreements concluded by the Parties. The Club requested the mitigation of such amount and the dismissal of the respective interest.

104. As a preliminary matter and attending the late filing of the Player's Answer to the Appeal Brief, by letter of 18 February 2025 the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, that the Player's Answer is inadmissible and that the reasons for this decision would be provided in the final Award.

105. In this respect, the Sole Arbitrator recalls the following undisputed facts:

- On 30 October 2024, the CAS Court Office informed the Player, pursuant Article R55 of the CAS Code, that, within 20 days upon the receipt of such letter, he shall submit his Answer to the Appeal Brief. Moreover, the CAS Court Office stated that *"[i]f the Respondent fails to submit his Answer by the given time limit, the Sole Arbitrator may nevertheless proceed with the arbitration and deliver an award"*.

- On 22 November 2024, the Player submitted his Answer to the Appeal Brief. On the same date, the CAS Court Office remarked to the Parties that the Player's Answer to the Appeal Brief was due to be filed by 19 November 2024. Therefore, the Club was invited by the CAS Court Office to state whether it agreed with the late filing of the Player's Answer to the Appeal Brief.

- On 27 November 2024, the Club objected to the late filing of the Player's Answer to the Appeal Brief.

106. Accordingly, the Sole Arbitrator considers that the Answer to the Appeal Brief was

clearly filed when the deadline had already passed and, therefore, is inadmissible,

107. In consequence, the Sole Arbitrator deems inadmissible the Player's Answer to the Appeal Brief considering its late filing and the Club's objection for its admission,

108. For the sake of completeness, the Sole Arbitrator evokes the award CAS 2022/A/8725 in which the sole arbitrator noted that *"... the dismissal of the Answer does not result in any of the Appellant's requests for relief being deemed acknowledged by the Respondent. First, it is well-established under Swiss arbitration law that a respondent's failure to answer the claim does not constitute an acknowledgement of the claim, meaning that the arbitral tribunal must still satisfy itself that the claim is well-founded (see KAUFMANNKOHLER/RIGOZZI, International Arbitration – Law and Practice in Switzerland, 1st ed., 2015, para. 6.20). The same must apply if the Answer is filed out of time and is therefore deemed inadmissible".*

109. Moreover, the Sole Arbitrator recalls Article R55 of the CAS Code which establishes that:

"If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award".

110. In this respect, the Sole Arbitrator recalls the findings of the panel of the case CAS 2019/A/6463 as follows:

"...the Panel observes that there is no rule of the CAS Code providing that a respondent loses its right to be a party altogether and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a belated answer. Article R55 of the CAS Code, which deals with a belated answer, only indicates that "[i]f the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award".

111. Moreover, based on the Appealed Decision's findings and the Club's submissions and prayers for relief, the Sole Arbitrator observes that the facts of the case remain undisputed, namely:

- The Club and the Player concluded an Employment Agreement valid from 19 January 2023 until 30 June 2025.
- The Club and the Player terminated such Employment Agreement and determined the consequences of such termination in the Termination Agreements signed on 1 January 2024.
- The Club paid for the January 2024 instalments of such Termination Agreements and, belatedly, for the February 2024 instalment of the Termination Agreement but not for the Financial Agreement.
- The Player put in default the Club for the February and March 2024 instalments unpayment. In addition, the Player had, on multiple occasions, contacted the Club requesting the payment of the referred instalments.
- The Player concluded the New Employment Agreement with Odds valid from 26 January 2024 until 31 December 2025 with a gross monthly salary of NOK 75,000.

112. The Sole Arbitrator identifies that he is entrusted to decide on the following issues raised by the Club:

a. Shall the compensation in favour of the Player be mitigated?
   Subsidiarily if the compensation shall not be mitigated:
b. Shall the Accelerated Clause be mitigated?
c. Did the FIFA DRC err in awarding 5% *p.a.* interest rate in favour of the Player?

113. The Sole Arbitrator addresses the mentioned matters as follows:

a. Shall the compensation in favour of the Player be mitigated?

114. In essence, the Club indicates that the amounts agreed on the Termination Agreements were established as compensation for the damage that the Player would incur due to the termination of the employment relationship; accordingly, the mitigation principle established in Article 17 of the RSTP and Article 337c of the SCO shall apply as the duty of an employee to mitigate his damage.

115. The Sole Arbitrator first assesses the nature of the relation between the Club and the Player in order to establish the regulation and principles that shall apply to such a relationship.

116. Clauses A and C of the Termination Agreement were agreed between the Parties as follows:

"*A. The Club and the Player hereby terminate the "Agreement" and declare it null and void and of no effect as from today.*

(…)

C. Both parties agree and acknowledge that this agreement constitutes the only and entire agreement between the parties and that any previous agreement with regard to the employment of the PLAYER, his remuneration or similar issues are hereby cancelled and rendered null and void and of no effect whatsoever".

117. Accordingly, it is clear to the Sole Arbitrator that the relation between the Club and the Player was no longer ruled by the Employment Agreement but the Termination Agreements, and, in consequence, the amounts due by the Club to the Player emanate not from the Employment Agreement, but from the Termination Agreements.

118. The Sole Arbitrator notes that while Article 337c of the SCO refers to employment relations, the Club acknowledges that Article 17 of the RSTP *"does not make reference to the calculation of the compensation payable to a player on the bases if a termination agreement".* In consequence, such provisions are not applicable to the case at hand.

119. Furthermore, the Sole Arbitrator considers that Article 337c of the SCO and Article 17 of the RSTP are provisions that regulate the consequences of breach of contract in the case that the Parties have not previously determined such consequences. Indeed, Article 17 of the RSTP (June 2024 edition) provides that (emphasis added):

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, ***and unless otherwise provided for in the contract****, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria".*

120. As an example of the primacy of the contractual terms of the Parties (even if not strictly referred to a termination agreement), the panel of the case CAS 2012/A/2910 stated that *"Article 17 of the RSTP provides for the primacy of a contractual agreement regarding the calculation mode for compensation for breach of contract, and that the various criteria listed in Article 17, para. 1., of the RSTP regarding calculation of compensation apply only subsidiarily, i.e. only in the absence of a specific contractual agreement on the matter (cf. CAS 2009/A/1880 & 1881, consideration 73. et seq., and CAS 2008/A/1519 & 1520, consideration 66. et seq.)".*

121. The Sole Arbitrator considers that the Parties, acknowledging that the Employment Agreement needed to be terminated, gave themselves the opportunity to freely establish the consequences of such termination and rules over such consequences, this is, amount to be paid, the calendar of such payments and the consequences of a failure to comply with the agreed instalments.

122. Accordingly, the Sole Arbitrators considers that it is not suitable to accept, in the present case, that the Parties agreed upon the conditions of the termination of the Employment Agreement (and therefore departing from the general conditions of Article 17 of the RSTP), and afterwards the Club attempts to include a mitigation condition that was not agreed between the Parties.

123. For the sake of completeness, the Sole Arbitrator does not agree with the Club's allegation that "*leaving termination agreements outside the scope of Article 17 of the RSTP would encourage clubs to unilaterally terminate their employment contracts in order to benefit from future mitigation of the player's damages".* The Sole Arbitrator considers that the conclusion of termination agreements remains a suitable option, as relevant parties are entitled to determine, *inter alia*, the value of compensation and the calendar of such payment; additionally with the signature of such termination agreements, applicable sanctions for breach of the employment agreement are avoided.

124. Furthermore, the Sole Arbitrator recalls the findings in the award CAS 2021/A/8469 in which the sole arbitrator stated:

> *"… A duty to mitigate has the overall aim of limiting the damages deriving from a breach of contract and avoiding that a possible breach committed by a party leads to an unjust enrichment for the other party (cf. for example CAS 2018/A/6029, instead of many). These criteria, however, are not relevant in the case at hand. This case is not about awarding damaged but rather about enforcing the fulfilment of a mutually and freely concluded agreement between the Parties, event though if it is based on an original breach of contract. If the Parties had wanted to make such payments dependent on a new contract, the Parties, both represented by legal counsel, could have easily inserted such a mandatory reduction clause or even an automatism in the Termination Agreement…".*

125. In conclusion, the Sole Arbitrator considers that the amount established in the Termination Agreements shall not be mitigated as the Parties have not determined such an option in the mentioned Termination Agreements concluded by them.

b. <u>Shall the Accelerated Clause be adjusted?</u>

126. The Club alleges that the Acceleration Clause, as Clause D indicated, is a penalty clause that acts as a deterrent against the Club for its failure to pay an instalment within the provided deadline, and, as such, it shall be adjusted for being disproportionate, excessive and unreasonable.

127. Moreover, the Club alleges that a contractual penalty can be defined as a monetary punishment against the party that breaches its contractual obligations. The Club also underlines that penalty clauses do not aim to compensate the other party for its losses but rather to threaten the debtor of detrimental financial consequences.

128. The Sole Arbitrator understands the negative effect of the Acceleration Clause for the Club as it obliges it to pay the residual instalments that, without the Acceleration Clause, would only obey the payment calendar established by the Parties. However, having said that the amount established in the instalments of the Termination Agreements is the agreed compensation due to the Player, the Acceleration Clause only alters the initial payment calendar and does not impose an additional sum on the Club as a penalty.

129. In other words, the Parties initially determined a compensation amount that would be paid along different instalments. However, the Parties agreed as well that, in case the Club failed to comply with the mentioned payment calendar, such calendar would be altered and the same compensation amount would be enforceable.

130. Regarding acceleration clauses, the sole arbitrator of the award CAS 2020/A/7305 stated the following:

"The Sole Arbitrator considers that within transfers agreements where payments are scheduled in several instalments, it is very usual to include an acceleration clause. All in all, in due application of the party autonomy principle it becomes clear that Parties are free to determine the terms that will regulate their relationship, which, in the present case, turns the acceleration clause a valid agreement that was freely entered into by Atlético Mineiro".

131. The Sole Arbitrator does not consider disproportionate, excessive or unreasonable that the Parties had agreed beforehand a change in the payment calendar in case the Club failed to comply with such payment calendar. Likewise, the Sole Arbitrator does not consider it feasible to adjust the agreed compensation amount that had only suffered a change in its enforceability date due to the Club's payment failure with no addition in its amount.

132. For the sake of completeness, the Sole Arbitrator observes that Clause D of the Terminations Agreements refers to the Acceleration Clause as a penalty. However, the Sole Arbitrator considers that the abovementioned analysis aligns with Article 18 (1) of the SCO that determines that *"[w]hen assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

133. In conclusion, the Sole Arbitrator does not consider the Acceleration Clause of the Termination Agreements signed by the Parties as a penalty that should be adjusted.

c. Did the FIFA DRC err in awarding 5% *p.a.* interest rate in favour of the Player?

134. Lastly, the Club objects that the FIFA DRC awarded 5% *p.a.* interest rate in favour of the Player, as it had requested in the second round of submissions in the FIFA DRC proceedings and not in the initial claim of such proceedings.

135. Regarding the admissibility of the mentioned Player's claim of 5% *p.a.* interest rate, the Club refers to the Football Tribunal Procedural Rules (March 2023 edition), which, in its Articles 18 (1) d) and 22 provide respectively as follows:

"Article 18: Claims
A claim against another party must be submitted via the Legal Portal and contain the following:
(...)
d) a statement of claim, setting out full written arguments in fact and law, the full body of evidence, and requests for relief;

Article 22: Second round of submissions
The FIFA general secretariat will decide, where necessary, whether there shall be a second round of submissions. Any such submission must be submitted via the Legal Portal".

136. Nevertheless, the Sole Arbitrator recalls Article 23 of the same Football Tribunal Procedural Rules that determines (emphasis added):

"Article 23: Closure of submission phase
The FIFA general secretariat will notify the parties of the closure of the submission phase of the procedure. ***After such notification, the parties may not supplement or amend their submissions or requests for relief*** *or produce new evidence".*

137. Accordingly, the Sole Arbitrator observes that, undisputedly, the FIFA DRC proceedings involved two rounds of submissions which shall be understood as the submission phase of such proceedings; moreover, as established by Article 23 of the Football Tribunal Procedural Rules, only when the submission phase is closed, the parties may not supplement or amend their requests for relief. In consequence, the Player's claim for 5% *p.a.* interest rate, as it was done in the submission phase, is admissible.

138. Furthermore, the 5% *p.a.* interest rate awarded to the Player complies with Article 104 (1) of the SCO that states that *"[a] debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract".*

139. In conclusion, the Appealed Decision is hereby confirmed. All other prayers for relief are rejected.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Apollon Limassol FC on 23 September 2024 against the Decision FPSD-14539 rendered on 8 June 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.

2. The Decision FPSD-14539 rendered on 8 August 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 21 July 2025

THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala

Sole Arbitrator

Alejandro Naranjo Acosta

Ad hoc Clerk