TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2025/A/11360 Adilson Gancho Silva v. PSM Makassar

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jacopo **Tognon**, Professor and Attorney-at-law in Padova, Italy

in the arbitration between

Adilson Gancho Silva, Portugal

Represented by Mr Alejandro Pascual Madrid, Valencia, Spain

Appellant

and

PSM Makassar, Indonesia

Respondent

I. PARTIES

1. Adilson Gancho Silva (the "Appellant" or the "Player"), born on 30 July 1997, is a professional football player of Portuguese nationality.

2. PSM Makassar (the "Respondent" or the "Club") is a professional football club based in Makassar, Indonesia. It is a member of the Football Association of Indonesia - *Persatuan Sepakbola Seluruh Indonesia* ("PSSI") which in turn is affiliated with the *Féderation Internationale de Football Association* ("FIFA").

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' submissions, pleadings and evidence submitted during these proceedings. Additional facts and allegations 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 in the present proceedings, the present Award only refers to the submissions and evidence considered necessary to explain its reasoning.

5. The present arbitration concerns a contractual dispute between the Parties arising out of the settlement agreement concluded on 29 September 2024 (the "Settlement Agreement"), for the purpose of mutually settling the monies owed to the Appellant, pursuant to the employment contract. The central issue in this arbitration is whether the payments agreed upon remain unpaid, and if so, in which amounts.

6. The Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") rejected the Player's claim and held that the Club complied with the payment obligation towards the Player and that no further outstanding amounts were due (the "Appealed Decision"). The Player's challenge of the Appealed Decision is the subject of the present arbitration.

A. Background Facts

7. On 10 June 2024, the Parties entered into a professional employment contract valid from 1 July 2024 and "until the end of Liga 1 2025/2026 or the latest 31 May 2026" (the "Employment Contract").

8. On 29 September 2024, the Parties concluded a Settlement Agreement, in order to "(…) *to definitely settle any and all issues related to* (…) *the Employment Contract and any other contracts or relationship* (…) *and by which, after the full payment on time, the Parties will be released from any and all obligations to each other.*"

9. According to the Settlement Agreement, the Club undertook to pay the Player, a total amount of USD 38,000 net, as follows:

a) USD 19,500 by no later than 31 December 2024 (the "First Installment");

b) USD 3,250 by no later than 5 February 2025;

c) USD 3,250 by no later than 5 March 2025;

d) USD 12,000 by no later than 5 March 2025.

10. On 31 December 2024, the Club sent the Player a payment order from its bank for the First Installment in the amount of USD 19,500.

11. On 9 January 2025, the Player put the Club in default of the First Installment, requesting the said amount to be remitted within 10 days.

B. The Proceedings before the FIFA DRC

12. On 20 January 2025, the Player filed a claim against the Club before the FIFA DRC, requesting for the First Installment under the Settlement Agreement in the amount of USD 19,500, net of any taxes, plus interest as from 31 December 2024.

13. The Player specified that although the Club sent an alleged proof of payment of the amount requested in dispute on 31 December 2024, the Player's bank statements submitted in his claim demonstrate that no such payment took place. Despite being invited to do so, the Club failed to reply to the claim.

14. On 3 April 2025, the FIFA DRC passed the Appealed Decision (FPSD-17854), the grounds of which were communicated to the Parties on 14 May 2025. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant, Adilson Gancho Silva, is rejected.

2. This decision is rendered without costs."

15. The FIFA DRC (or the "Chamber") rejected the Player's claim for the below reasons:

a. The Chamber derived its competence to adjudicate the case from Articles 31 and 34 of the FIFA Procedural Rules Governing the Football Tribunal, January 2025 edition (the "Procedural Rules").

b. As to the applicable regulations, the Chamber found that the FIFA Regulations on the Status and Transfer of Players, January 2025 edition (the "FIFA RSTP") shall be applicable since the case concerns an employment-related dispute with an international dimension between a Portuguese player and an Indonesian club.

c. The Chamber noted that the burden of proof rests with the party claiming a right on the basis of an alleged fact, including the evidence generated by the Transfer Matching System (TMS), thus in line with Article 13 paras. 4 and 5 of the Procedural Rules.

d. The Chamber was to determine whether the amount guaranteed under the Settlement Agreement indeed remained unpaid, and if so, whether or not the Club had a valid justification for defaulting on such payment.

e. On the bank statements provided by the Player in demonstration of the non-payment of the disputed amount, the Chamber noted that these bank statements were limited to the period between 2 December and 31 December 2024.

f. Since the proof of payment showed the date of payment order as of 31 December 2024, the Chamber considered that the payment was ordered on the last day of the disclosed bank statements wherein with regard to an international payment, it would not have been possible for the funds to arrive on the same day, and most likely only reaching the Player's account at the very least on the next business day (*i.e.,* on 2 January 2025).

g. Based on the evidence on file, the Chamber could not exclude the possibility that the payment was not credited and eventually reflected in the Player's ledger after the relevant dates indicated in the bank statements.

h. The Chamber concluded that the Player failed to meet his burden of proof that there had been an error with the proof of payment provided by the Club. Therefore, the payment obligation of the Club, *prima facie*, was complied with and no further outstanding amounts could be claimed by the Player.

16. On 15 May 2025, the Player requested the FIFA DRC to rectify the Appealed Decision pursuant to Article 15 para. 8 of the Procedural Rules, in light of an obvious mistake in said decision. The Player argued that he mistakenly submitted the bank statements of December 2024 twice, instead of submitting the ones related to January 2025. Additionally, the Player contended that the burden of proof should not be on him to prove non-payment, as he has consistently maintained that the Club never made the disputed payment. Accordingly, the Player provided the correct bank statements of January 2025 (the "New Evidence").

17. On 11 June 2025, FIFA rejected the Player's request for rectification of the Appealed Decision based on the fact that the New Evidence was submitted after the submission phase was formally closed, thus rendering it inadmissible under Article 23 para. 1 of the Procedural Rules. FIFA also found no obvious mistake or procedural error in the Appealed Decision's legal reasoning based on the evidence available at the time.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 4 June 2025, the Appellant filed his Statement of Appeal before the Court of Arbitration for Sport ("CAS") against the Appealed Decision, pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). In his Statement of Appeal, the Appellant requested for the appointment of a Sole Arbitrator and that English be designated as the language of the proceedings.

19. On 12 June 2025, the CAS Court Office informed the Parties about the Statement of Appeal and requested the Appellant, *inter alia*, to file his Appeal Brief in accordance with Article 51 of the CAS Code.

20. On 14 June 2025, within the applicable time limit, the Appellant filed his Appeal Brief, along with all the annexes in accordance with Article 51 of the CAS Code.

21. On 16 June 2025, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondent to submit its Answer within twenty (20) days, pursuant to Article 55 of the CAS Code.

22. On 24 June 2025, the CAS Court Office acknowledged receipt of the FIFA letter of 23 June 2025, by which, FIFA renounced its right to request its possible intervention in the present proceedings and provided the CAS with a clean copy of the Appealed Decision.

23. On 14 July 2025, the CAS Court Office informed the Parties, *inter alia*, that it has not received the Respondent's Answer or any other communication within the stipulated deadline, so in accordance with Article 55 of the CAS Code, the Panel, may nevertheless proceed with the arbitration and deliver an award. Furthermore, the Parties were invited to inform by 21 July 2025 whether they considered a hearing necessary.

24. On 21 July 2025, the Appellant informed the CAS Court Office that he preferred the Sole Arbitrator to issue an award based on the Parties' written submissions, without the need for a hearing.

25. On 22 July 2025, the CAS Court Office acknowledged receipt of the Appellant's letter and informed the Parties that the Respondent has not submitted its position on this matter within the stipulated time limit.

26. On 24 July 2025, the CAS Court Office informed the Parties that the Appellant has requested for Legal Aid.

27. On 8 August 2025, the Appellant requested to set aside the deadline related to the payment of the advance of costs until a decision on the request for Legal Aid was rendered.

28. On the same date, the CAS Court Office informed the Parties that the deadline for the Appellant to pay the advance of costs was suspended until the Legal Aid Request has been resolved.

29. On 30 September 2025, the CAS Court Office informed the Parties of the "Arbitrators' Acceptance and Statement of Independence" form completed by Mr Jacopo Tognon, who had been appointed as Sole Arbitrator by the Deputy Division President. Further, pursuant to Article 34 of the CAS Code, the Parties were invited to inform if they wished to challenge the appointment of the Sole Arbitrator.

30. On 8 October 2025, the CAS Court Office informed the Parties that, in the absence of a challenge, pursuant to Article 54 of the CAS Code, and on behalf of the Deputy

President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Mr Jacopo Tognon, Attorney-at-law in Padova, Italy

31. On 3 November 2025, as per the request of the Sole Arbitrator, the FIFA provided the CAS Court Office with the entire FIFA case file from the first instance proceedings (the "FIFA case file").

32. On 10 November 2025, the CAS Court Office invited the Parties to provide their respective comments on the FIFA case file by no later than 17 November 2025. In addition, the Appellant was requested to clarify, within the same deadline, on why the New Evidence was not properly submitted during the first instance proceedings.

33. On 17 November 2025, the Appellant informed the CAS Court Office that he had no additional comments on the FIFA case file and additionally, provided certain clarification with respect to the New Evidence.

34. In the absence of any request for a hearing from the Respondent, and taking into account that the Appellant had expressly waived the right to a hearing, the Sole Arbitrator decided, in accordance with Article R57 of the CAS Code, to issue the present Award based solely on the Parties' written submissions.

35. On 25 November 2025, the CAS Court Office on behalf of the Sole Arbitrator, issued the Order of Procedure, which was duly signed by the Appellant on 1 December 2025.

36. On 11 December 2025, the CAS Court Office informed that the Respondent has failed to provide a copy of the duly signed Order of Procedure within the deadline granted.

IV. SUBMISSIONS OF THE PARTIES

37. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator has nonetheless carefully considered all claims made by the Parties, whether or not there is a specific reference to them in the following summary.

A. The Appellant's submissions

38. The Appellant's submissions, in essence, may be summarised as follows:

- According to the Settlement Agreement, the Respondent was required to pay a total amount of USD 38,000 (net of any taxes) to the Appellant, in four installments over certain deadlines. The present dispute specifically concerns the First Installment of USD 19,500, which was due on 31 December 2024.

- Whereas, the remaining installments in the Settlement Agreement shall not be considered in these proceedings as FIFA already rendered the relevant independent decision in favor of the Appellant on other such installments.

- The Appellant submits that the Respondent is in violation of the legal principle *pacta sunt servanda* by failing to pay the First Installment of USD 19,500, net of any taxes. The Respondent has failed to comply with this obligation to date, despite having been formally put in default by the Player on 9 January 2025.

- By entering into the Settlement Agreement, the Club saved a substantial amount of money *i.e.,* around 3-monthly salaries instead of 14-monthly salaries until 31 May 2026 (as stated in the Employment Contract). Further, the Appellant agreed to a 2-month payment plan, favorable to the Club, in order to facilitate compliance with the newly agreed payment obligations.

- Nevertheless, the Respondent breached the Settlement Agreement and shall be condemned to pay the relevant installment due.

- As to the Club's payment order dated 31 December 2024, the Appellant maintains that he did not receive the First Installment and submits the following evidence to deny the receipt of such payment: *(i) Player's bank statements of December 2024; (ii) Player's bank statements of January 2025; (iii) Player's bank statements from the mobile banking app; and (iv) a video of the Player's bank app.*

- During the first instance proceedings, the Appellant mistakenly submitted before the FIFA DRC, the bank statements for December 2024 twice, instead of the bank statements for January 2025. Due to which, FIFA wrongly concluded that the Player failed to meet his requisite burden of proving that there had been an error with the proof of payment order received from the Club.

- Thus, FIFA incorrectly shifted the burden of proof to the Player. This error occurred despite the fact that the Appellant never conceded receiving the payment in his claim before FIFA and that the submission of the wrong evidence was a mistake.

- Furthermore, the burden of proof could not have been reversed since the Club failed to submit a counterclaim to the Player's claim before FIFA. This failure should not only be seen as a tacit acceptance of the Player's allegation but also confirms that the Club did not prove that the payment was effectively made.

- Therefore, the burden of proving that the payment obligation was, in fact, fulfilled rests with the party alleging performance *i.e.,* the Respondent. In this regard, FIFA and CAS jurisprudence consistently uphold the principle of fairness and protection of players, especially regarding non-compliance in settlement disputes.

- In this appeal, the Appellant submits his bank statements of January 2025 and states that this new evidence shall be admitted before the CAS in accordance with Article

57 of the CAS Code. Likewise, the Appellant asserts that there was no bad faith on his part when failing to submit such evidence before FIFA during the first instance.

- The Settlement Agreement clearly stipulates that all amounts are to be paid net of any taxes and it also states that the Respondent shall provide the Appellant with the tax certificates and bear any further taxes from any tax authorities.

- Regarding the interest rate, the Appellant refers to Article 73 of the Swiss Code of Obligations ("**SCO**"), under which an interest rate of five percent (5%) *per annum* is applicable to the outstanding payment obligation.

- In the event the appeal is successful and the outstanding payment remains unpaid after 45 days, the CAS shall direct FIFA to automatically impose sporting sanctions on the Respondent, pursuant to Article 24 of the FIFA RSTP.

39. The Appellant, in his Statement of Appeal, requested the following relief:

"The Appellant requests the Panel:

1. *To accept this appeal against the FIFA Decision.*
2. *To determine that the FIFA Decision erred when considering that the burden of proof was reversed after the Club´s payment proof provided by the Player.*
3. *To condemn the Club to pay the Player the first instalment of the Settlement Agreement amounting to USD 19,500 (nineteen thousand five hundred US Dollars) plus 5% interest p.a. from 31 December 2024 until its effective payment.*
4. *To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees.*
5. *To condemn the Respondent to pay contribution towards the legal fees incurred by the Player, in the amount the CAS considers appropriate."*

40. In the Appeal Brief, the Appellant updated his prayer for relief as follows:

"As per all the above, the Player requests:

a. *To accept this appeal.*
b. *To set aside the FIFA Decision.*
c. *To condemn the Club to pay the Player the amount of USD 19,500 (Nineteen Thousand US Dollars) net of any taxes as the outstanding payment related to first installment of the Settlement Agreement plus interests on a 5% annual rate starting from 31 December 2024 until its effective payment.*
d. *To confirm any amount granted as "net of any taxes";*
e. *To request the Club to provide the Player with the relevant tax certificates for the taxes.*
f. *To determine that, following Art.24 of the FIFA RSTP, the Club shall have 45 days to pay the Player any amounts granted under this procedure and, in the contrary,*

FIFA shall impose the Club a ban on registering players, either national or international.

g. *To condemn the Club to pay all the arbitration costs and any other costs generated under this procedure.*

h. *To condemn the Club to pay the Player the amount of CHF 3,000 (Three Thousand Swiss Francs) as contribution for legal fees incurred by the Player."*

B. The Respondent's submissions

41. The Respondent has not made any submissions in this matter.

V. JURISDICTION

42. Article R47 para. 1 of the CAS Code 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."*

43. Article 49 para.1 of the FIFA Statutes provides as follows:

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

44. Article 50 para.1 of the FIFA Statutes provides as follows:

"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."

45. The Sole Arbitrator notes that the jurisdiction of the CAS is uncontested by the Parties and it is expressly confirmed by the Order of Procedure, signed by the Appellant.

46. Therefore, it follows that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

47. Article R49 of the CAS Code provides, in its relevant parts, 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.

The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".

48. Article 50 para.1 of the FIFA Statutes provides as follows:

"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".

49. The grounds of the Appealed Decision were notified to the Appellant on 14 May 2025. The Appellant filed his Statement of Appeal on 4 June 2025 *i.e.,* within the 21-day time limit and in compliance with the requirements under Article R48 of the CAS Code.

50. Notwithstanding the above, the Sole Arbitrator – as expressly mentioned by the Appellant in the Appeal Brief – takes note of the waiver clause contained in the Settlement Agreement, which is as follows:

"8. Any disputes arising from or relating to the present Agreement shall be submitted to the corresponding governing bodies of FIFA, which decision shall be final and binding, waiving the Parties in advance its right to a potential appeal".

51. In view of this clause and before entering into the merits, the Sole Arbitrator must determine whether the waiver is valid and consequently whether the appeal is admissible.

52. The Appellant argues that the waiver clause lacks clarity; does not expressly refer to CAS; and that Swiss law invalidates broad waivers of access to justice. In particular, that the right to appeal under Article 50 para.1 of the FIFA Statutes cannot be waived. Accordingly, the Appellant requests that the waiver be declared null and void.

53. As a general principle, a waiver of a right can never be assumed lightly.[1] In practice and under CAS jurisprudence, a party may waive a procedural right, such as the right to appeal, only if the waiver is free, explicit, unambiguous and not contrary to law, public policy or any procedural guarantees. In that sense, for a waiver to be considered valid, it must adhere to certain fundamental criteria.

54. This principle was reiterated in CAS 2017/A/5277, which held that *"Under Swiss law, in general rights may be waived voluntarily, unless (i) the waiver is contrary to law, public policy or good morals and further provided that (ii) the person making the waiver has the capacity/authority to do so; (iii) the waiver is made clearly; and (iv) the person has the right s/he is renouncing[2]."*

55. In the present case, the Sole Arbitrator observes that the waiver clause in question is generic and not sufficiently clear. It lacks an explicit reference to the CAS and appears to broadly exclude any right to appeal, including that before the state courts. Therefore, a blanket waiver clause such as this, formulated in advance and without any clear

[1] CAS 2006/A/1189 IFK Norrköping v. Trinité Sports FC & FFF; para. 19
[2] CAS 2017/A/5277 FK Sarajevo v. KVC Westerlo; para. 70

reference can amount to a denial of justice.

56. This approach is consistent with TAS 2023/A/9639[3], where it was held that:

[in original Spanish]

"El Árbitro Único considera que la exclusión anticipada del derecho de recurrir la Decisión Apelada ante el TAS (i.e. de resolver la controversia ante un verdadero Tribunal Arbitral), que contempla la cláusula tercera del Segundo Convenio, resulta inaplicable por atentar contra el debido equilibrio que deben guardar las partes en la relación contractual, y por resultar contraria a los derechos fundamentales al trato igualitario y de audiencia, ambos garantizados constitucionalmente al amparo del orden jurídico suizo. El Árbitro Único considera que, si bien es cierto que una parte puede renunciar al derecho a recurrir una decisión dictada por la FIFA ante el TAS, dicha renuncia sólo es válida si ocurre con posterioridad a la notificación de la decisión de la FIFA que podría recurrir."

[translation in English]

"The Sole Arbitrator considers that the advance waiver of the right to appeal the Appealed Decision before the CAS (i.e. to have the dispute adjudicated by a genuine arbitral tribunal), as provided for in Clause 3 of the Second Agreement, is inapplicable. Such waiver undermines the necessary balance that must exist between the parties in a contractual relationship and is contrary to the fundamental rights to equal treatment and to be heard, both of which are constitutionally guaranteed under the Swiss legal order. The Sole Arbitrator further considers that, although a party may validly waive its right to appeal a FIFA decision before the CAS, such waiver is only valid if it is made after notification of the FIFA decision that could be appealed."

57. Keeping the above in mind, the Sole Arbitrator finds that the waiver clause contained in the Settlement Agreement does not fulfil the prerequisites of a valid waiver under Swiss law or CAS jurisprudence. In addition, the Respondent has not contested the admissibility of the appeal or defended the validity of the waiver.

58. Therefore, the Sole Arbitrator concludes that the waiver is invalid and consequently the present appeal admissible.

VII. APPLICABLE LAW

59. Article R58 of the CAS Code provides the following:

"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

[3] TAS 2023/A/9639 Club Atlético Independiente c. Gastón Alexis Silva Perdomo; para. 73

rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

60. Article 49 (2) of the FIFA Statutes provides 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".

61. The Sole Arbitrator shall decide the present matter according to the relevant FIFA rules and regulations, as in force at the relevant time of the dispute. Furthermore, Swiss law shall be applied subsidiarily, in order to fill any existing *lacunae* in the FIFA rules and regulations.

VIII. PRELIMINARY PROCEDURAL ISSUES

62. As part of his appeal, the Appellant re-introduced the New Evidence in his submissions before the CAS. In reference to Article R57 of the CAS Code, the Appellant submits that new evidence may be admitted on appeal when it was not properly considered in the first instance. Furthermore, the Appellant argues that there was no bad faith on the part of the Player when failing to submit such evidence before the FIFA DRC.

63. Article R57 of the CAS Code, in its relevant parts, provides the following:

"*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. […]*

The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply. […]"

64. Based on the above well-established principle and long-standing CAS jurisprudence, the Sole Arbitrator has *de novo* power to examine all facts and legal issues of the present dispute, with no particular limitations. However, the full power of review has a dual meaning: (i) CAS admits new prayers for relief and new evidence and hears new legal arguments; and (ii) the full power of review means that procedural flaws, which occurred during the proceedings of the previous instances, can be cured by the CAS Panel[4].

65. Notwithstanding the above, the same article also provides that the CAS panel has discretion to exclude evidence that was available to the parties before the challenged decision was rendered or evidence that could reasonably have been discovered by the

[4] CAS 2020/A/6988, para. 129; SFT 4A_232/2024 of 3 October 2024, para 5.3.

parties before the challenged decision was rendered[5].

66. Accordingly, in order to determine whether the New Evidence submitted by the Appellant in the present matter is admissible and whether a procedural flaw occurred during the previous instance proceedings, the Sole Arbitrator requested to review the FIFA case file, in relation to the Appealed Decision.

67. Upon transferring the FIFA case file to the Parties, the Appellant's comments on the same are summarised as below:

- While intending to confirm that the outstanding payment was not received during the month of January 2025, the Appellant submitted wrong evidence due to a clerical mistake.
- The Appellant wrongly presented twice the bank statements from the month of December 2024. A mistake that did not create any advantage to the Appellant, but quite the opposite as, due to such error, the FIFA DRC decided to not award the First Installment as per the Settlement Agreement to the Player.
- Lastly, the Appellant submits that this mistake cannot be regarded as an abuse of process or acted in bad faith, as confirmed by CAS jurisprudence.

68. After a thorough review, the Sole Arbitrator finds no procedural error in the previous instance proceedings, as it was entirely the Player's own mistake to have submitted incomplete or incorrect evidence. Consequently, the FIFA DRC was correct in determining that the Player's New Evidence could not be accepted after the conclusion of the submissions phase. Likewise, the Appealed Decision contains no obvious error, as the FIFA DRC could only base its findings on the evidence in its possession at the relevant time.

69. Based on the rationale that Article R57 para. 3 seeks to prevent the abusive submission of evidence and the withholding of documents in bad faith for the purpose of presenting them for the first time before CAS, the burden of proof lies with the Appellant to demonstrate justified grounds for such late submission.

70. In this respect, the Sole Arbitrator considers that the Player's failure to submit complete or correct evidence before the FIFA DRC was the result of an inadvertent error, with no indication of bad faith, on the part of the Appellant.

71. The Sole Arbitrator concludes that the New Evidence is indeed admissible.

72. Furthermore, the Sole Arbitrator noted that, despite being duly notified of these proceedings and the applicable deadlines, the Respondent failed to submit any Answer, and has not participated in these proceedings in any manner.

73. In this respect, the Sole Arbitrator referred to Article R55 of the CAS Code, the failure

[5] Mavromati/Reeb, *"The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials"* II *ed.* 2025, para. 41

of a party to submit an Answer shall not prevent the arbitration from proceeding.

IX. MERITS

74. Having established the foregoing, the Sole Arbitrator now turns to the merits of the case. The dispute at hand concerns the alleged unpaid First Installment claimed by the Appellant in connection to the amounts agreed by the Parties under the Settlement Agreement.

75. As a preliminary remark on the standard of proof, CAS panels have consistently applied the standard of "comfortable satisfaction" which, on the standard of proof spectrum, sits in between the standard of *"beyond any reasonable doubt"* and the standard of *"balance of probabilities"* (see *CAS 2020/A/7180*).

76. Thus, the Sole Arbitrator considers that the applicable standard of proof in this case is that of "comfortable satisfaction", given that the case at hand concerns essentially matters of contractual nature.

77. Bearing in mind the above, the main issues to be addressed by the Sole Arbitrator in deciding this dispute are the following:

   A. Has the Respondent failed to comply with the Settlement Agreement?

   B. If yes, what are the consequences thereof?

78. The Sole Arbitrator will address these issues in detail below, taking into account the Parties' submissions and evidence introduced during the proceedings.

A. Has the Respondent failed to comply with the Settlement Agreement?

79. At the time of termination, the Club owed the Player, three-monthly salaries in the amount of USD 19,500 (*i.e.,* USD 6,500 x 3 months). Furthermore, pursuant to Article 9(3) of said contract, the Player was entitled to a compensation corresponding to three months' salary in the amount of USD 19,500.

80. In order to amicably settle the monies owed, the Parties entered into a Settlement Agreement on 29 September 2024, by which, they agreed on a total settlement amount of USD 38,000, to be paid by the Club in four installments on certain scheduled dates.

81. In light of the alleged non-payment of the First Installment, the Player placed the Club in default of payment on 9 January 2025. However, following the Club's non-response, the Appellant initiated a claim before the FIFA DRC, which subsequently gave rise to the present appeal before CAS.

82. In the present dispute, the Appellant submits that the Club failed to comply with its financial obligations towards the Player, in particular, the First Installment of USD 19,500 net, which was due on 31 December 2024. Consequently, the Appellant argues

that the Club is in breach of the Settlement Agreement and of the well-established principle of *pacta sunt servanda*.

83. The Respondent, on the other hand, has not made any submissions in this matter.

84. Before addressing the alleged breach, the Sole Arbitrator deems it necessary to outline the applicable framework on the burden of proof criterion. Considering that it was discussed in the Appealed Decision and argued extensively by the Appellant in his submissions, the Sole Arbitrator shall recall the relevant legal provisions governing the allocation of the burden of proof in CAS proceedings.

85. First and foremost, Article 8 of the Swiss Civil Code, provides as follows:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact."

86. This provision is also in line with Article 13 para. 4 of the FIFA Procedural Rules, stating that *"a party that asserts a fact has the burden of proving it."*

87. Furthermore, CAS jurisprudence confirms that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"*[6]

88. As such, the primary burden of proving the Club's breach of the Settlement Agreement, lies with the Appellant, who must establish, to the *"comfortable satisfaction"* of the Sole Arbitrator, that the First Installment remained unpaid.

89. The Appellant submitted a payment order dated 31 December 2024 issued by the Club, in the amount of USD 19,500 (referenced as payment for the salaries of October, November and December 2024). The Appellant asserts that, notwithstanding the issuance of the payment order, the funds were never credited to his bank account.

90. The Appealed Decision found that although the debtor usually bears the burden of proving payment, such principle did not apply in the Player's case. Since the Player himself submitted the proof of payment issued by the Club, which appeared to indicate that a transfer order had been executed, the FIFA DRC considered the payment *prima facie* established and concluded that the burden shifted to the Player to prove that the funds had not been credited to his account.

91. In this appeal, the Appellant argues that the Appealed Decision wrongly determined that the burden of proof shifted to the Player, especially since the Club failed to participate

[6] CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46; and CAS 2009/A/1975, para. 71ff

in the FIFA proceedings and the Player expressly denied the validity or effectiveness of the payment order. In accordance with the FIFA procedural practice and CAS jurisprudence, the Appellant argues that a party's failure to contest the allegation shall be interpreted as tacit acceptance.

92. When determining whether the payment order constitutes a valid proof of payment, the Sole Arbitrator recalls that, as per the general norm concerning payment disputes, the debtor shall bear the burden of proving that payment was executed *i.e.,* the funds were actually transferred and credited to the creditor's account.

93. Indeed, the Sole Arbitrator examined the evidence regarding the alleged payment. The Respondent produced a payment order dated 31 December 2024 instructing a transfer to the Appellant's account. However, a payment order alone does not prove execution or receipt of funds. The Appellant submitted bank statements and mobile banking records for January 2025, showing no incoming international transfer matching the claimed amount. Such a transfer would necessarily appear in the account activity and balance. According to established CAS jurisprudence and commercial practices, proof of payment requires confirmation of the actual transfer, such as SWIFT MT103 messages evidencing the transaction, bank debit advice confirming the funds were withdrawn from the payer's account, or bank credit advices showing receipt by the beneficiary. The Respondent provided no SWIFT confirmations or equivalent transactional evidence. Without these, the payment order cannot demonstrate discharge of the payment obligation. The Sole Arbitrator concludes that the payment order apparently provided by the Respondent does not prove the payment, while the Appellant's bank records conclusively show no such funds were received. In this context, the widely recognised standard for verifying the completion of an international payment is the SWIFT MT103 message, which is a standardised interbank communication confirming that funds have been transferred from the ordering customer's bank to the beneficiary's bank. However, the document in question does not fall into this category.

94. In this regard, the payment order issued by the Club does not effectively demonstrate that the funds ever reached the Player's account. Rather, it merely illustrates the initiation of a transfer of funds, as such it cannot be equated to proof of execution. Accordingly, the Sole Arbitrator finds that the payment order does not constitute a valid proof of payment.

95. The Sole Arbitrator must also determine whether the FIFA DRC erred in shifting the burden of proof to the Player on the ground that it could not rule out the possibility that the payment was credited after the period reflected in the submitted bank statements *i.e.,* till December 2024.

96. Under Swiss law, the principle of burden of proof applies if the required degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-

conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact.[7]

97. In the Appealed Decision, the FIFA DRC acknowledged that it could not exclude the possibility that the funds were credited after the period covered by the Player's bank statements. On that note, the Sole Arbitrator finds that such uncertainty should have been resolved against the Respondent, who bore the burden of proof. In other words, where there is a doubt or lack of conviction, the party bearing the burden of proof shall bear the consequences. Moreover, given that the Appellant expressly contested the existence of any payment, it appears incumbent upon the Respondent to prove its assertion to the contrary.

98. The Sole Arbitrator notes that the Respondent has remained entirely silent and not provided any evidence in this matter. As a result, the Club failed to discharge its burden of proving that the First Installment was paid to the Player, neither before the FIFA DRC nor before the CAS.

99. Furthermore, to establish the Club's non-payment, the Appellant submitted before this tribunal, his bank account statements for December 2024 and January 2025. Upon their review, the Sole Arbitrator notes that there is no indication of the First Installment having been credited to the Player's account.

100. In view of the above and as per the evidence on file, the Sole Arbitrator concludes that the Appellant has effectively discharged the burden of proof in establishing that the Respondent has indeed partly breached the Settlement Agreement by failing to pay the First Installment to the Player.

B. If yes, what are the consequences thereof?

101. Having determined the first issue in the affirmative, the Sole Arbitrator must now assess the consequences of the Club's breach, including the Appellant's right to the outstanding amount and other obligations expressly agreed between the Parties

102. In this regard, Clause 5 of the Settlement Agreement clearly stipulates that all indicated amounts shall be paid "net of any taxes". Furthermore, it expressly states that the Club shall provide the Player with the relevant tax certificates while bearing any further taxes from any tax authorities.

103. The Sole Arbitrator notes that the principle of *pacta sunt servanda* (agreements must be respected in good faith) applies to this case, as it can be considered a universally accepted fundamental principle of law. When applying this principle, the correct interpretation of the agreement between the Parties becomes especially important. This principle is consistently upheld by CAS jurisprudence as well.[8]

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[7] SFT 132 III 626
[8] CAS 2017/A/5077 Al Jazira Football Sport Company v. José Mesas Puerta, para. 75

104. This is further in line with Article 18 para. 1 of the SCO, which provides that:

"When 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."

105. As such, the above-mentioned Clause 5 of the Settlement Agreement rightfully reflects the clear intention of the Parties *i.e.,* to ensure that the Player receives the agreed sums in full, without any deductions arising from tax liabilities. Moreover, since the payment obligation belongs exclusively to the Respondent, it is the Club's duty to try by all means to comply with it.

106. In this respect, the Sole Arbitrator recalls that there is no sufficient evidence that the Respondent made any effort to comply with its payment obligations or to reach out to the Appellant following repeated communication. This is further consistent with the Respondent's complete lack of response throughout the present proceedings.

107. Based on the above, the Sole Arbitrator finds that the Appellant is indeed entitled to the First Installment, net of all taxes. Furthermore, the Respondent is required to provide the Appellant with all the pertinent tax certificates and bear any further taxes from any tax authorities, as contractually agreed by the Parties.

108. The Appellant also requested for a legal interest rate of 5% *p.a.* to be payable by the Respondent over the outstanding amount.

109. The Sole Arbitrator recalls that Article 73 para. 1 of the SCO, provides as follows:

"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum."

110. Moreover, Article 102 para. 1 of the SCO, provides that:

"Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee."

111. Therefore, the Sole Arbitrator finds that a default interest is due, at an interest rate of 5% *p.a.* since 10 January 2025 i.e. the day after that the Appellant put the Club in default of the First Installment, until the date of effective payment.

112. Additionally, the Appellant requests the Sole Arbitrator determine that FIFA automatically impose sporting sanctions on the Club in accordance with Article 24 of the FIFA RSTP, in case of non-payment of the amount within a 45-day deadline.

113. At the outset, the Sole Arbitrator notes that the imposition of sporting sanctions under the FIFA RSTP falls exclusively within the competence of FIFA, in exercise of its disciplinary powers. That said, the CAS, acting as an appellate tribunal has no jurisdiction to order or direct FIFA to apply such sanctions on a club.

114. This is in accordance with consistent CAS jurisprudence, which confirms that only FIFA has the exclusive jurisdiction and powers to determine and impose sporting sanctions on a non-compliant party. Whereas, CAS has only jurisdiction and powers to revise such determination and imposition.[9] Moreover, a player does not have standing to request that sporting sanctions be imposed on a club; it is solely within FIFA's prerogative to determine so (CAS 2018/A/6044; see also CAS 2018/A/6002).

115. Consequently, the Appellant's request regarding the sporting sanctions is rejected.

X. CONCLUSION

116. Based on the above, and after having taken into due consideration the applicable rules, the evidence produced and the arguments submitted, the Sole Arbitrator concludes that:

i. The Respondent has partly breached the Settlement Agreement;

ii. Consequently, the Respondent must pay the Appellant the outstanding First Installment of USD 19,500 net of all taxes and comply with the required tax obligations as per the Settlement Agreement;

iii. Additionally, the Respondent shall pay an interest rate of 5% *p.a.* on the First Installment since 10 January 2025 until the date of effective payment.

117. Finally, all other and further motions or prayers for relief are dismissed.

XI. COSTS

(…)

[9] CAS 2024/A/10431 Yeni Mersin Idrnanyurdu Futbol A.S. v. Milan Mitrovic & FIFA, para. 55

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 June 2025 by Adilson Gancho Silva against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 3 April 2025, notified with grounds on 14 May 2025, is partially upheld.

2. The Appealed Decision rendered by the FIFA Dispute Resolution Chamber on 3 April 2025, notified with grounds on 14 May 2025, is set aside.

3. PSM Makassar must pay Adilson Gancho Silva, the First Installment of USD 19,500 net of all taxes plus 5% interest p.a. as from 10 January 2025 until the date of effective payment. Further, PSM Makassar shall comply with the required tax obligations as per the Settlement Agreement.

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 11 August 2026

THE COURT OF ARBITRATION FOR SPORT

Jacopo **Tognon**
Sole Arbitrator