

CAS 2026/A/12215 Santos FC v. Al Markhiya Sports Club

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: José Luis Andrade, Attorney-At-Law, Porto, Portugal

in the arbitration between

Santos Futebol Clube, Brazil

Represented by Mr Cristiano Caús, Mr Raphael Paço Barbieri, Mr André Thomas Feher Junior and Mrs Beatriz Araujo Salazar, Attorneys-at-Law at CCLA Advogados, São Paulo, Brazil

Appellant

and

Al Markhiya Sports Club, Qatar

Represented by Mr Nezar Ahmed, Sports Legal Services, Chesterfield, Michigan, USA

Respondent

I. THE PARTIES

1. Santos Futebol Clube (the “Appellant” or “Santos”) is a professional football club with its registered seat in Santos, São Paulo, Brazil, affiliated to the Brazilian Football Association (“CBF”), which in turn is a member association of the *Fédération Internationale de Football Association* (“FIFA”).
2. Al Markhiya Sports Club (the “Respondent” or “Al-Markhiya”) is a professional football club with its registered seat in Doha, Qatar, affiliated to the Qatar Football Association (“QFA”), which in turn is also a member association of FIFA.

II. KEY FACTS

A. Relevant Background

3. Mr Yusupha O. M. Njie (the “Player”) is a professional football player of Gambian nationality, born on 1 March 1994.
4. On 30 June 2024, the Respondent, the Appellant and the Player entered into a Loan Agreement, pursuant to which the Player’s registration was temporarily transferred from the Respondent to the Appellant for the period from 30 July 2024 until 30 June 2025 (the “Loan Agreement”).
5. Pursuant to Clause 4.1 of the Loan Agreement, the Appellant undertook to pay the Respondent a loan fee of EUR 350,000 (the “Loan Fee”), payable in two instalments of EUR 175,000 each, due on or before 31 January 2025 and 31 May 2025 respectively.
6. Clause 4.4 of the Loan Agreement further provided that the Appellant was to deduct 5% from the Loan Fee on account of the FIFA solidarity contribution pursuant to Article 21 and Annexe 5 of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”), and to distribute that amount to the clubs and/or associations entitled thereto.
7. On 28 January 2025, the Respondent, the Appellant and the Player entered into a further agreement designated “Loan Agreement Termination” (the “Termination Agreement”), the object of which was to terminate the Loan Agreement and agree on the settlement of the pending financial obligations under the Loan Agreement.
8. Clause 1.4.1 of the Termination Agreement stipulated that, in consideration of the loan, Santos would pay EUR 350,000 in seven equal instalments of EUR 50,000 each, according to the following schedule: EUR 50,000 on 31 January 2025; EUR 50,000 on 15 February 2025; EUR 50,000 on 31 March 2025; EUR 50,000 on 30 April 2025; EUR 50,000 on 31 May 2025; EUR 50,000 on 30 June 2025; and EUR 50,000 on 31 July 2025.
9. Clause 1.6 of the Termination Agreement provided as follows: *“In the event that any payment stipulated in clause 1.4.1. is not made on or before the due date specified therein, default interests at a rate of 10% p/a shall accrue in addition to and on top of*

which SANTOS shall also be liable to pay a penalty equivalent to 10% (ten percent) of the total outstanding amount, after a grace period of 05 (five) days.”

10. Between 5 February 2025 and 31 July 2025, the Respondent issued to the Appellant seven invoices, one in respect of each instalment referred to above. The Appellant did not dispute the receipt or contents of any of those invoices.
11. The Appellant did not pay any of the seven instalments due under the Termination Agreement.

B. Proceedings before the FIFA Football Tribunal

12. On 20 August 2025, the Respondent lodged a claim before the Players' Status Chamber of the FIFA Football Tribunal (“PSC”), requesting payment by the Appellant of (i) EUR 350,000 as outstanding debt under the Termination Agreement; (ii) interest at a rate of 10% per annum on the outstanding amounts; and (iii) a delay penalty of EUR 35,000, pursuant to Clause 1.6 of the Termination Agreement.
13. On 9 December 2025, the PSC rendered a decision (the “Appealed Decision”), the grounds of which were subsequently notified on 30 January 2026, whereby it partially upheld the Respondent's claim.
14. In particular, the PSC held that (i) the Loan Fee was a gross amount from which a 5% solidarity contribution deduction applied, reducing the principal debt to EUR 332,500; (ii) the five-day grace period in Clause 1.6 of the Termination Agreement did not require a prior written default notice and was deemed to commence automatically upon default; (iii) default interest of 10% per annum was to be calculated on each of the seven instalments (net of the 5% deduction) from the day following the respective contractual due date until effective payment; and (iv) the Appellant was liable to pay a contractual penalty of EUR 33,250 (10% of EUR 332,500), without additional interest accruing on the penalty amount.
15. The operative part of the Appealed Decision ordered the Appellant to pay the Respondent (i) EUR 332,500 as outstanding remuneration, plus 10% per annum interest calculated separately on seven tranches of EUR 47,500 each, running respectively from 1 February 2025, 16 February 2025, 1 April 2025, 1 May 2025, 1 June 2025, 1 July 2025 and 1 August 2025, in each case until the date of effective payment; and (ii) EUR 33,250 as contractual penalty. The PSC further ordered the Appellant to bear costs of USD 25,000 and rejected all further claims.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 20 February 2026, the Appellant filed its Statement of Appeal against the Respondent and FIFA with the Court of Arbitration for Sport (“CAS”) with respect to the Appealed Decision, in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The Appellant requested that the matter be submitted to a Sole Arbitrator and indicated English as the language of the proceedings.

17. On 27 February 2026, FIFA requested to be removed as a party to the proceedings, on the basis that it did not consider itself to be a party to the dispute.
18. On 4 March 2026, the Appellant confirmed its agreement to the exclusion of FIFA from the proceedings. Accordingly, FIFA was removed as a party, it being noted that it would nonetheless receive a copy of the final award.
19. On 2 March 2026, the Appellant filed its Appeal Brief, pursuant to Article R51 of the Code.
20. On 17 March 2026, the CAS Court Office informed the parties that, considering the absence of any objection from the Respondent to the appointment of a sole arbitrator, the uncertainty regarding the Respondent's payment of its share of the advance of costs, the reasonable amount in dispute, and the desirability of keeping the advance of costs reasonable, the President of the CAS Appeals Arbitration Division had decided, pursuant to Article R54 of the Code, to submit the matter to a Sole Arbitrator.
21. On 29 April 2026, the Respondent filed its Answer, pursuant to Article R55 of the Code.
22. On 5 May 2026, the Respondent indicated that it did not consider necessary to hold a hearing in these proceedings.
23. On 7 May 2026, the Appellant expressed its preference that a hearing be held in these proceedings.
24. On 8 May 2026, the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr José Luis Andrade, Executive Vice President of FC Porto, Porto, Portugal, as Sole Arbitrator. No challenge was raised by either party with respect to that appointment.
25. On 28 May 2026, the Parties were informed that, having considered their respective positions, and pursuant to Article R57 of the Code, the Sole Arbitrator had determined that he was sufficiently well informed to decide the present matter on the basis of the parties' written submissions alone, without the need to hold a hearing.
26. On 9 June 2026, the CAS Court Office circulated the Order of Procedure to the Parties. The Respondent returned a duly signed copy on 9 June 2026, and the Appellant returned a duly signed copy on 16 June 2026. By signing the Order of Procedure, the Parties confirmed that the Sole Arbitrator could decide the matter based on the written submissions and that their right to be heard had been fully respected.

IV. SUMMARY OF PARTIES' POSITIONS

27. The following section summarizes the Parties' main arguments in support of their respective requests for relief. While the Sole Arbitrator has examined the full record submitted by the Parties, he refers below only to the arguments which, in his view, are relevant to deciding the issues in this appeal.

A. The Appellant

28. The Appellant's main arguments can be summarised as follows:

- The Appellant does not dispute the existence of the principal debt arising under the Termination Agreement, nor the 5% solidarity deduction applied by the PSC to arrive at a net principal of EUR 332,500.
- Clause 1.6 of the Termination Agreement expressly provides for a five-day grace period before either default interest or the contractual penalty may apply. The purpose of that clause is that, in the event of late payment, the Respondent was required to place the Appellant in default by written communication and grant a five-day period to remedy the delay before any additional charges could accrue.
- This reading is consistent with the rationale of Article 12bis of the FIFA RSTP, which requires a creditor to put a debtor club in default in writing and to grant a minimum period to comply before overdue payables may attract regulatory consequences.
- The Respondent never issued any written notice placing the Appellant in default and granting the contractual five-day grace period. Accordingly, the Appellant cannot be deemed in default, and no interest or penalty can accrue, prior to the notification of the Respondent's claim before FIFA, i.e. 20 August 2025.
- The combination of a 10% per annum interest rate and a 10% contractual penalty is excessive and disproportionate under Swiss law. Article 73 of the Swiss Code of Obligations (“SCO”) requires interest rates to comply with standards of reasonableness and equity, and an interest rate that exceeds market standards and has a punitive or deterrent effect takes on the character of a penalty regardless of its label.
- Establishing a default penalty of 10%, plus an interest rate of 10% leads to a situation of unjust enrichment and has a deterrent and sanctioning effect characteristic of a penalty clause.
- Article 163 (2) and (3) SCO empowers a tribunal to review and reduce penalties, including disguised penalties, that are excessive having regard to the criteria developed in Swiss case law, including the creditor’s interest in performance, the seriousness of the breach and of the parties’ fault, the parties’ financial situation, and the maximum presumed damage suffered.
- An interest rate of 10% per annum combined with a 10% penalty, totalling 20%, clearly exceeds standard rates of 5% to 8% accepted in international commercial contracts and does not reflect any genuine loss suffered by the Respondent, but instead operates to punish the Appellant and unjustly enrich the Respondent.

- Even if the interest rate is not deemed to be a penalty clause, Article 116 SCO permits the revision of interest rates that are manifestly excessive.
- Accordingly, the Appellant requests that the contractual penalty be limited to 5% per unpaid instalment and that the applicable interest rate be reduced to 5% per annum, running, in any event, only as from 20 August 2025.

B. The Respondent

29. The Respondent's main arguments can be summarised as follows:

- The Appellant does not dispute the existence or amount of the principal debt arising under the Termination Agreement; the appeal is confined to the date from which default interest and the penalty accrue, and the reasonableness of the interest rate and the penalty.
- Pursuant to Article 102 (2) SCO, where a contract fixes a specific date for performance, the debtor automatically falls into default upon expiry of that date, without the need for a formal notice of default. CAS jurisprudence consistently confirms this principle, including in circumstances where a contract also contains a grace-period mechanism.
- On a proper interpretation of Clause 1.6 of the Termination Agreement, the grace period does not postpone the occurrence of default; it merely delays the point at which the contractual penalty becomes chargeable. The clause expressly ties the accrual of default interest to non-payment "*on or before the due date specified*", and separately makes the penalty payable "*after a grace period of five days*"; nothing in the clause conditions the accrual of interest on a prior written notice.
- The grace period affects only the penalty clause, not the accrual of default interest.
- Under Article 163 (1) SCO, parties are free to determine the amount of a contractual penalty, and Article 163 (3) SCO permits a tribunal to reduce a penalty only where it is clearly and flagrantly excessive, a standard confirmed by Swiss Federal Tribunal jurisprudence and applied restrictively by CAS panels. Moreover, higher penalty amounts may be justified where the clause is intended not only to compensate the creditor for potential damages, but also to deter the debtor from breaching its contractual obligations, thereby fulfilling both a punitive and deterrent function.
- A penalty of 10% of the outstanding amount is modest by comparison to penalties CAS panels have upheld in comparable disputes between professional football clubs, some considerably higher, and does not create any manifest imbalance between sophisticated, professionally advised commercial parties who freely negotiated the Termination Agreement.
- Pursuant to Article 104 (2) SCO, parties are free to agree a contractual default interest rate exceeding the statutory rate of 5% per annum under Article 104(1) SCO; Swiss

and CAS practice has accepted materially higher contractual rates, and interest and penalty clauses may validly coexist where clearly agreed.

- No unjust enrichment arises from the enforcement of a freely negotiated penalty and interest clause; such clauses serve a legitimate function of securing contractual performance and are not intended to mirror actual damages.
- Accordingly, the Respondent requests that the Appeal be dismissed in its entirety and the Appealed Decision be confirmed.

V. PARTIES' REQUESTS FOR RELIEF

30. In its Appeal Brief, the Appellant requested the following relief:

- “I. Declare that the Court of Arbitration for Sports ("CAS") has jurisdiction to hear Appellant's claims against the Respondents.*
- II. Set aside the Decision rendered by the FIFA Player's Status Chamber on 16 December 2025, with reference number FPSD-20444, in its entirety;*
- III. Determine that any default penalty be limited to 5% per unpaid instalment; and*
- IV. Reduce the interest rate to 5% per annum, effective from the date of distribution of the claim by the Respondent, ensuring fair and equitable compensation for both parties.”*

31. In its Answer, the Respondent requested the following relief:

- “1) Dismiss the Appeal in its entirety and confirm the Challenged Decision.*
- 2) Order Santos to bear the entire costs of the present arbitration.*
- 3) Order Santos to pay Al-Markhiya a contribution to its legal fees and other expenses in the amount of CHF 20,000.”*

VI. JURISDICTION OF THE CAS

32. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article 49 (1) of the FIFA Statutes, which provides that *“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”*, read together with Article R47 of the Code, which provides that *“[a]n 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”.

33. The jurisdiction of the CAS is further confirmed by the Order of Procedure, which has been duly signed by both Parties without reservation as to jurisdiction.
34. It follows that the CAS has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY OF THE APPEAL

35. Article 50 (1) of the FIFA Statutes provides that “[A]ppeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question”, and Article 50 (2) of the FIFA Statutes provides that “[r]ecourse may only be made to CAS after all other internal channels have been exhausted”.
36. The grounds of the Appealed Decision were notified to the Parties on 30 January 2026. The Statement of Appeal was filed on 20 February 2026, i.e. within the 21-day time limit under Article 50 (1) of the FIFA Statutes. The Appeal Brief was timely filed on 2 March 2026, within ten days of the expiry of the time limit for the Statement of Appeal, in accordance with Article R51 of the Code.
37. The appeal complies with all other requirements of Articles R48 of the Code. The appeal is, therefore, admissible.

VIII. APPLICABLE LAW

38. Article R58 of the Code provides as follows: “*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*”
39. Article 49 (2) of the FIFA Statutes provides as follows: “*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*”
40. In light of the foregoing, the Sole Arbitrator finds that the present dispute shall be resolved primarily on the basis of the applicable FIFA regulations, in particular the FIFA RSTP, and, additionally, Swiss law.

IX. MERITS

41. Pursuant to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case and may issue a new decision replacing the Appealed Decision, in whole or in part.
42. As set out above, the Appellant does not dispute the existence of the principal debt of EUR 332,500 arising under the Termination Agreement (after application of the 5% solidarity deduction), nor does either Party challenge that specific deduction in these proceedings. The issues that remain for determination are the following:
 - i. Does the five-day grace period in Clause 1.6 of the Termination Agreement require a prior written notice of default before default interest and/or the contractual penalty may accrue, and, if not, from which date do interest and penalty accrue?
 - ii. Is the contractually agreed interest rate of 10% per annum, considered on its own, excessive and liable to reduction?
 - iii. Is the contractually agreed penalty of 10% of the outstanding amount, considered on its own, excessive and liable to reduction?
 - iv. Does the combination of the 10% per annum interest rate and the 10% contractual penalty render them excessive, even if neither is excessive when considered in isolation?
 - v. Does the application of the interest rate and the contractual penalty give rise to unjust enrichment of the Respondent?
- i. Does Clause 1.6 require a prior written notice of default, and from which date do interest and penalty accrue?**
43. The Appellant's principal argument is that Clause 1.6 of the Termination Agreement, as properly construed - notably in light of the rationale of Article 12bis of the FIFA RSTP - required the Respondent to place the Appellant in default by written notice and to grant a five-day period to cure before either default interest or the contractual penalty could begin to accrue. As the Respondent never issued such a notice, the Appellant submits that no default consequences could arise before 20 August 2025, the date on which the Respondent's claim was notified.
44. The Sole Arbitrator does not find this argument persuasive, for the following reasons.
45. First, it is relevant to note with respect to the *dies a quo* of the performance of an obligation, that the question is not governed by the FIFA Regulations and must therefore be assessed according to Swiss law. Article 102 (2) SCO provides that where a specific date for performance has been fixed by agreement of the parties, the debtor falls into default automatically upon expiry of that date, without any need for a reminder or formal notice from the creditor. This is a well-established default rule of Swiss law which has been consistently applied by CAS panels adjudicating football-related payment obligations with fixed contractual due dates.

46. In CAS 2025/A/11560, the Sole Arbitrator, applying Article 102 (2) SCO to a contractual penalty clause triggered by a missed instalment deadline, held that “*where a deadline for performance of the obligation has been set by agreement, the obligor is automatically in default on expiry of the deadline*” and that “[a] notice is not necessary” (CAS 2025/A/11560, para. 80). The Sole Arbitrator sees no reason to depart from that approach here.
47. Second, Clause 1.6 of the Termination Agreement, on its plain wording, does not condition either consequence of default on a prior written notice. The clause states that “*[i]n the event that any payment stipulated in clause 1.4.1. is not made on or before the due date specified therein, default interests at a rate of 10% p/a shall accrue in addition to and on top of which SANTOS shall also be liable to pay a penalty equivalent to 10% (ten percent) of the total outstanding amount, after a grace period of 05 (five) days.*” The obligation to pay default interest is expressly and exclusively linked to non-payment by “*the due date specified therein*”; the reference to a “*grace period of 05 (five) days*” appears at the end of the sentence, grammatically and substantively attached only to the penalty obligation that immediately precedes it, not to the separate and self-contained trigger for interest.
48. Third, this construction is reinforced by considerations of contractual coherence and commercial purpose. Default interest is compensatory in nature, intended to preserve the value of an outstanding debt for the period during which the creditor is deprived of its use; there is no principled reason why such compensation should be deferred by a grace period which, on the contrary, serves a different and additional function specific to the penalty, namely to afford the debtor a short window to cure before a harsher consequence is triggered. Reading the grace period as qualifying only the penalty produces a coherent, graduated scheme: interest compensates the creditor from the moment of default, while the penalty is withheld for five days to give the debtor a final opportunity to avoid it.
49. Fourth, the Sole Arbitrator considers that reliance on Article 12bis of the FIFA RSTP is misplaced. That provision establishes a regulatory mechanism by which FIFA may sanction clubs found to have overdue payables, subject to a prior written default notice; it does not purport to govern, still less displace, the contractual mechanics that the Parties themselves negotiated for the accrual of default interest and penalties under a private agreement such as the Termination Agreement. The two mechanisms operate on separate legal bases and pursue distinct purposes, and nothing in the FIFA RSTP suggests that Article 12bis of the FIFA RSTP was intended to import a default-notice requirement into every contractual default clause between clubs.
50. Fifth, the Sole Arbitrator notes that the Respondent issued an invoice in respect of each instalment on or shortly after its due date, and that the Appellant did not, at the time, dispute the receipt or the content of any of those invoices. While not itself a formal notice of default, this conduct demonstrates that the Respondent maintained a consistent expectation of payment and pursued the debt as it fell due, further undermining any

suggestion that the Parties intended default consequences to be suspended in the absence of a separate written demand.

51. For these reasons, the Sole Arbitrator concludes that the Appellant fell into default automatically upon the expiry of each contractual due date under Clause 1.4.1 of the Termination Agreement, that default interest at the contractually agreed rate accrues from the day following each such due date, and that the five-day grace period in Clause 1.6 operates only to defer the point at which the contractual penalty becomes chargeable, and not the accrual of default interest.
52. It follows that, on this issue, the Sole Arbitrator upholds the approach taken by the PSC in the Appealed Decision.

ii. Is the 10% per annum interest rate, considered on its own, excessive?

53. Article 104 (1) SCO fixes a statutory default interest rate of 5% per annum, but Article 104 (2) SCO expressly permits the parties to agree a higher contractual rate. The FIFA Regulations do not themselves prescribe or cap any particular level of default interest applicable to overdue payables between clubs; accordingly, in the absence of any express regulatory ceiling, the question of whether a contractually agreed interest rate is impermissibly high must be resolved by reference to CAS jurisprudence and Swiss law.
54. In this respect, CAS jurisprudence has recognised a considerably higher tolerance for contractually agreed default interest than the Appellant's submissions suggest. In CAS 2025/A/11693, the Sole Arbitrator held that *"a 15% annual rate does not seem excessive under Swiss law"* and that, *"in light of the Swiss law and CAS jurisprudence, one must note that interest below 18% has been consistently considered to fall within an acceptable maximum range and, as such, is permissible"*, such that *"[i]nterest set below this threshold does not violate public policy or fundamental legal principles"* and there are *"no grounds for judicial adjustment of such interest"* (CAS 2025/A/11693, paras. 73 and 80.).
55. A contractual rate of 10% per annum is materially below the 18% threshold identified in that consistent line of authority, and the Appellant has failed to identify any specific rule of Swiss law that would render a 10% rate unlawful or excessive as between two professional football clubs. The categories of interest (compensation for the time-value of money and the unavailability of funds) and penalty (a distinct contractual mechanism, separately regulated under Article 163 SCO) serve different functions under Swiss law, and the mere fact that a contractual interest rate exceeds the statutory default rate does not, without more, convert it into a disguised penalty requiring judicial revision.
56. The Appellant has not put forward any specific evidence — as opposed to a general assertion of disproportion — indicating that a 10% per annum rate, agreed between two professional clubs in the context of a freely renegotiated settlement of an existing payment obligation, was intended to serve, or in fact operates as, anything other than compensation for delayed payment.

57. For these reasons, the Sole Arbitrator finds no basis to reduce the contractually agreed interest rate of 10% per annum.

iii. Is the 10% contractual penalty, considered on its own, excessive?

58. Under Article 163 (1) SCO, the parties are free to determine the amount of a contractual penalty. Article 163(3) SCO permits a tribunal to reduce a penalty that it considers excessive, but this discretion is to be exercised restrictively and only on a case-by-case basis, taking into account all the circumstances of the case.
59. As held in CAS 2020/A/7007, *“in general the parties are free to agree on a penalty amount and only if such penalty amount is excessively high and to be considered as being against justice and fairness, it is possible, based on Article 163 para. 3 [SCO], to reduce it”*, and a reduction of a penalty shall only be decided *“on a case-by-case basis and take into consideration all the circumstances of the case”*, including: (i) the ratio between the agreed penalty and the creditor’s interest in the fulfilment of the secured claim; (ii) the seriousness of the fault of the parties involved; (iii) the importance of the fulfilment of the principal claim for the other party; (iv) the debtor’s interest and profit in non-performance or defective performance; (v) the seriousness of the breach of the primary obligation guaranteed; (vi) the economic situation of the parties; (vii) the maximum presumed damage suffered by the creditor, it being noted that the damage actually suffered is not decisive; and (viii) the risk of damage to which the creditor was exposed in the specific case (CAS 2020/A/7007, paras. 64–65).
60. Applying those factors to the present case, the Sole Arbitrator notes the following. First, as regards the ratio between the agreed penalty and the Respondent’s interest in performance, the penalty represents 10% of the outstanding net principal (EUR 33,250 out of EUR 332,500). In CAS 2020/A/7007, the Sole Arbitrator found a penalty representing 10% of an outstanding instalment, and up to 17.5% of a further outstanding instalment, not to be disproportionate, holding that *“based on the ratio alone, the penalty amount cannot be considered as disproportionate”* (CAS 2020/A/7007, para. 68). Also, in CAS 2017/A/5233, the Panel considered that a contractual penalty corresponding to 20% of the total agreed transfer fee of a football player was not abusive (CAS 2017/A/5233, para. 68).
61. Second, the Termination Agreement was a freely negotiated settlement reached between two professional clubs, renegotiating an existing and undisputed debt; there is no suggestion in the record of unequal bargaining power, economic duress, or any circumstance that would call the voluntariness of the parties’ agreement into question.
62. Third, the Appellant’s default was total and prolonged: none of the seven instalments were paid, in whole or in part, at any point up to the filing of the FIFA claim or thereafter, notwithstanding that the Respondent issued invoices in respect of each instalment as it fell due.
63. Fourth, the Appellant has not adduced evidence establishing either the maximum presumed damage suffered by the Respondent or any specific hardship that would render enforcement of the penalty inequitable in the circumstances of this case. A party

invoking financial difficulty in support of a reduction must substantiate that allegation with evidence; a bare, unsubstantiated assertion “*does not constitute a valid reason to consider the penalty amount as being disproportionate*” (CAS 2020/A/7007, paras. 69–70). The Appellant has offered no such substantiation here. A bare assertion of general excessiveness, without more, does not meet the burden resting on the party seeking a reduction under Article 163 (3) SCO. And in any event, alleged financial difficulties do not constitute a valid reason to consider the penalty amount as being disproportionate (CAS 2020/A/7007, para. 70).

64. For these reasons, the Sole Arbitrator finds that the Appellant has not discharged its burden of establishing that the 10% contractual penalty, considered on its own, is clearly and flagrantly excessive within the meaning of Article 163 (3) SCO, and accordingly finds no basis to reduce it.

iv. Does the combination of the interest rate and the penalty render them excessive?

65. Having found, for the reasons set out above, that neither the interest rate nor the penalty is, in itself, excessive under Swiss law, the Sole Arbitrator sees no principled basis for concluding that their combination nevertheless becomes excessive.
66. CAS jurisprudence confirms that default interest and a separate contractual penalty can be cumulative, complementary remedies which serve distinct purposes. As previously mentioned, whilst interest is aimed at compensating the creditor for the debtor’s late payment and the financial loss incurred as a result of depriving it from payments it is entitled to, penalties can serve a deterrent purpose aimed at inducing the debtor to comply with its payment obligations (CAS 2019/A/6568, para. 63).
67. Moreover, CAS jurisprudence confirms that late payment interest and penalties may validly coexist without either affecting the validity of the other. CAS has held in this regard that “[i]f the contract is clear in determining that both [default interest and a penalty] can be awarded complementarily, nothing prevents an adjudicatory body from awarding both” (CAS 2014/A/3664, para. 71; CAS 2019/A/6568, para. 63).
68. Moreover, the Appellant’s submission conflates the separate legal tests applicable to interest and to penalties. The reasonableness of a contractual interest rate is assessed by reference to Article 104 SCO and the tolerance for contractually agreed rates recognised under Swiss law and CAS jurisprudence (see Section ii) above); the reasonableness of a contractual penalty is separately assessed under the multi-factor test in Article 163 (3) SCO (see Section iii) above). Neither test incorporates the other as a variable, and the Appellant has identified no rule of Swiss law, FIFA regulation, or CAS authority establishing a combined ceiling on the aggregate of interest and penalty distinct from the individual thresholds applicable to each.
69. The foregoing conclusion that interest and a penalty may validly coexist as a matter of principle does not, however, dispose of the distinct question of whether their combined magnitude is nonetheless disproportionate in the circumstances of this case. That

question calls for a separate assessment of scale, not merely of legal category, and the Sole Arbitrator turns to it now.

70. On the facts of this case, no such disproportion arises. The factors already weighed in relation to the penalty considered on its own (see Section iii) above) apply with equal force to the combined exposure: the Termination Agreement was a freely negotiated settlement between two professional clubs, with no indication of unequal bargaining power; the Appellant's default was total and prolonged, extending to all seven instalments and continuing well beyond the filing of the FIFA claim; and the Appellant has adduced no evidence of hardship or of any damage-related consideration that would render the combined exposure inequitable.
71. In addition, in absolute terms, the penalty of EUR 33,250 represents a fixed 10% of the net principal of EUR 332,500, and the interest, calculated at 10% per annum on the outstanding balance of each instalment only for the period of actual default, tracks the time-value of money genuinely withheld from the Respondent rather than accumulating on any artificially inflated or accelerated base. There is, in other words, no multiplier or acceleration effect that would cause the combined exposure to escalate disproportionately relative to the size and duration of the Appellant's default. In fact, it is important to emphasise that the accrual of the late interest payments was – and remains – entirely under the control of the Appellant, as the discharge of the payment of the amounts due evidently immediately stops said interest payments to continue to accrue.
72. This conclusion is reinforced by CAS and Swiss Federal Tribunal authority which has, on various occasions, upheld materially identical or heavier combinations of default interest and contractual penalty in comparable disputes. For example, in CAS 2021/A/7673 & 7699, the CAS decided that the combination of a fine of 10% of the outstanding amount due plus 10% p.a. interest on the outstanding amount was not excessive (CAS 2021/A/7673 & 7699, para. 125).
73. Similarly, in the decisions 4A_536/2016 and 4A_540/2016, the Swiss Federal Tribunal considered that a 12% per annum interest, combined with a 10% contractual penalty on the outstanding capital, and a further 5% per annum statutory default interest on the penalty amount itself, did not *“lead to the [debtor]'s freedom being excessively infringed upon”* (SFT 4A_536/2016 & 4A_540/2016, consid. 4.3.2).
74. The Sole Arbitrator therefore finds no basis to reduce either the interest rate or the penalty on account of their combined effect.
75. For these reasons, the Sole Arbitrator finds that the combination of the 10% per annum interest rate and the 10% contractual penalty does not render either excessive.

v. Does the application of the interest rate and the penalty give rise to unjust enrichment?

76. The Appellant further submits that the application of the interest rate and the penalty results in the Respondent's unjust enrichment. The Sole Arbitrator does not accept this submission, for the following reasons.
77. First, the Appealed Decision already addressed the risk of double recovery by declining to apply default interest to the penalty amount itself, so that no element of the award is being compensated twice.
78. Second, and more fundamentally, CAS jurisprudence confirms that statutory or contractual default interest and a separate contractual penalty are cumulative, complementary remedies which may validly coexist, and that the existence of one does not, without more, render the other — still less both together — an instrument of unjust enrichment.
79. Third, as already alluded to, a penalty clause serves a legitimate function distinct from mere compensation for loss: it exists to secure contractual discipline and deter non-performance and is not intended to mirror actual damages. Enforcing a freely negotiated penalty and interest clause between two sophisticated, professionally advised commercial parties, in circumstances of prolonged and total non-payment by the debtor, reflects the legitimate consequences the parties themselves agreed upon, and does not enrich the Respondent at the Appellant's expense within the meaning of the doctrine of unjust enrichment.
80. For these reasons, the Sole Arbitrator finds that the application of the interest rate and the contractual penalty do not give rise to unjust enrichment of the Respondent.

X. CONCLUSION

81. In light of the foregoing, the Sole Arbitrator finds that: (i) the Appellant fell into default automatically upon the expiry of each contractual due date under the Termination Agreement, that default interest at 10% per annum accrues, in respect of each instalment, from the day following its due date until the date of effective payment, and that the five-day grace period under Clause 1.6 of the Termination Agreement affects only the point at which the contractual penalty becomes chargeable; (ii) the contractual interest rate of 10% per annum, considered on its own, is not excessive; (iii) the contractual penalty of EUR 33,250, considered on its own, is not excessive; (iv) the combination of the interest rate and the penalty does not render either of them excessive; and (v) the application of the interest rate and the penalty does not give rise to unjust enrichment of the Respondent.
82. Accordingly, the Appeal is dismissed and the Appealed Decision is confirmed in its entirety.

XI. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 February 2026 by Santos Futebol Clube against the decision rendered by the Players' Status Chamber of the FIFA Football Tribunal of 9 December 2025 is dismissed.
2. The decision rendered by the Players' Status Chamber of the FIFA Football Tribunal on 9 December 2025 is confirmed.
3. (...).
4. (...).
5. All other requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 22 September 2026

THE COURT OF ARBITRATION FOR SPORT

José Luis Andrade
Sole Arbitrator