CAS 2025/A/11498 Santos Futebol Clube v. Futebol Clube de Arouca

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Kepa Larumbe, Attorney-at-law in Madrid, Spain

in the arbitration between

Santos Futebol Clube, Brazil

Represented by Ms Beatriz Araujo Salazar, Mr Cristiano Caús, Mr Raphael Paçó Barbieri, Mr Leonardo Franco Belloti, attorneys-at-law in São Paulo, Brazil.

-Appellant-

and

Futebol Clube de Arouca, Portugal

Represented by Mr Emanuel Corceiro Calçada, attorney-at-law in Porto, Portugal.

- Respondent-

I. PARTIES

1. Santos Futebol Clube (the "Appellant" or "Santos") is a professional football club based in São Paulo, Brazil, and affiliated with the Confederação Brasileira de Futebol ("CBF"), which in turn is also affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Futebol Clube de Arouca (the "Respondent" or "Arouca") is a professional football club based in Arouca, Portugal, and affiliated with the Federação Portuguesa de Futebol ("FPF"), which in turn is also affiliated with FIFA.

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

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence he considered necessary to explain his reasoning.

5. On 28 July 2023, the Parties and Mr João Othávio Basso (the "Player") concluded a contract for the definitive transfer of the federative rights and partial transfer of the economic rights of the latter from Arouca to Santos (the "Contract").

6. The following clauses of the Contract are relevant to the present dispute:

> "***1. OBJECT***
>
> ***1.1.*** *In consideration for the definitive assignment of the right to federative registration and 85% (eighty-five percent) of the* ***ATHLETE****'s economic rights,* ***SANTOS*** *will pay to* ***AROUCA*** *the net amount of* ***EUR 2,500,000.00*** *(two million and five hundred thousand euros) – excluding the solidarity mechanism provided for in FIFA RSTP, which must be paid solely by* ***SANTOS****, except for any amounts owed to AROUCA as training rewards, in particular as a solidarity mechanism, amounts that are already fully included in the value now agreed - on the following dates and conditions:*
>
> *a)* ***EUR 500,000.00 (five hundred thousand euros) net until August 10, 2023****;*
> *b)* ***EUR 500,000.00 (five hundred thousand euros) net on November 31, 2023****;*
> *c)* ***EUR 750,000.00 (seven hundred and fifty thousand euros) net on March 31, 2024****;*
> *d)* ***EUR 750,000.00 (seven hundred and fifty thousand euros) net on July 31, 2024****;*

1.2. *Payment of the amounts referred to above will be made on the dates established there, by bank transfer to the account designated by* ***AROUCA****, as below. In case of default by* ***SANTOS*** *in making the payment within the established deadline, a fine of 10% (ten percent) will be added to the amount due, in addition to default interest of 1% (one percent) per month, until the effective date payment.*

1.3*. As already stated in 1.1, in addition to the value stipulated in that clause,* ***SANTOS*** *will pay to* ***AROUCA****, which rightfully reserves for itself, an amount equivalent to 15% (fifteen percent) of the economic rights, resulting from the values that may eventually be received as consideration in relation to any future onerous transfer (temporary, definitive or subject to certain conditions) of the* ***ATHLETE****, during the term of his new sporting relationship with* ***SANTOS****, including renewals and additions".*

1.4. The definition of 'Economic Rights' for the purposes of this contract corresponds to the total revenue excluding VAT (if applicable), without other deductions, that may result from the unilateral termination of the contract by the ***ATHLETE*** *or from a temporary or definitive onerous transfer of the* ***ATHLETE*** *(or that is, the temporary or definitive assignment of Federative and/or Economic Rights, in whole or in part, in a onerous manner) between* ***SANTOS*** *and a third club, sports society or other entity, including amounts received in return for the granting of a purchase option (definitive) in the case of temporary assignment, components that are only due in the case of verification of certain conditions or conditions, if the same(s) actually occur from the* ***ATHLETE****, non-pecuniary considerations related to the player or a temporary or permanent transfer, as well as any other source of monetary income or otherwise, and any other benefit or advantage, as long as it is connected, directly or indirectly, with the* ***ATHLETE****.*

1.5. The amounts to which ***AROUCA*** *will be entitled to receive under the terms of this clause will be paid proportionally in as many installments as the receipts to which SANTOS is entitled, with VAT being applicable (which is added to the amount due to AROUCA) paid in advance up to 10 (ten) days before its expiration date.*

1.6. ***AROUCA's*** *Economic Rights will exist and have full force whether in relation to the initial bond to be granted between* ***SANTOS*** *and the* ***ATHLETE****, or in relation to its renewal, extension or bond that succeeds it regardless of the time that mediates between one bond and another*

1.7. ***SANTOS*** *undertakes to deliver to* ***AROUCA*** *all documents related to the rights and payments that arise for it as stipulated above, within a maximum period of 5 (five days) after the date of its execution and consequent request by* ***AROUCA****, under penalty of* ***SANTOS*** *having to compensate* ***AROUCA*** *under the terms stipulated in 1.2.*

1.8. The Parties acknowledge that the provisions of this contract do not prejudice ***AROUCA****'s right to claim and receive any amounts as compensation for training and/or solidarity mechanism provided for in the FIFA RSTP relating to the* ***ATHLETE*** *exclusively within the scope of a future transfer of the same from* ***SANTOS*** *to third club, sports society or other entity (if entitled to any compensation under the regulations).*

*1.9. Payment of the amount provided for in clause 1.1 must be made by bank transfer to the account held by **AROUCA** listed below:*

[Voluntarily omitted]

*1.10. **AROUCA** is responsible for complying with any tax and fiscal obligations that may arise from this transfer in Portugal. **SANTOS** is responsible for complying with any tax and fiscal obligations that may arise from this transfer in Brazil''.*

7. On 1 August 2023, the International Transfer Certificate (ITC) was issued, and the Player was officially transferred from Arouca to Santos.

8. On 11 August 2023, Santos paid the first instalment of EUR 500,000 net to Arouca as contractually agreed at art. 1.1 of the Contract.

9. On 5 February 2024, the Player was transferred on loan by the Respondent to a GD Estoril Praia ("Estoril"), for a EUR 100,000 net fee payable on 15 February 2024.

III. PROCEEDINGS BEFORE THE PLAYERS' STATUS CHAMBER OF THE FIFA FOOTBALL TRIBUNAL

10. On 31 December 2024, Arouca filed a claim against Santos before the FIFA Football Tribunal's Players' Status Chamber (the "FIFA PSC"), including the following *petitum*:

"*To order [the Respondent] to pay [the Claimant] the net sum of:*

a) € 2,000,000.00 (two million euros) net, resulting from the transfer price;

b) € 15,000.00 (fifteen thousand euros) net, representing 15% of the economic rights from the player's transfer to the company 'Estoril SAD';

c) € 201,500.00 (two hundred and one thousand five hundred euros), resulting from the 10% penalty clause on each unpaid installment;

d) The amount of monthly interest agreed on contract at the legal rate of 1%, expired and due, from the default date until full payment;

e) Interest at the legal rate of 5%, expired and due, from the default date until full payment;

f) Tribunal costs as provided''

11. During the proceedings before the FIFA PSC, Santos acknowledged the outstanding nature of the transfer fee but contended that both the contractual penalty and the interest rate stipulated in the Contract were manifestly excessive. Invoking Article 163 of the Swiss Code of Obligations (SCO), Santos argued that the penalty contravenes principles of justice and fairness and, accordingly, requested the FIFA PSC to exercise its authority

to declare the penalty excessive and reduce it to a reasonable amount. Furthermore, Santos maintained that the interest rate should be reasonable and equitable pursuant to Article 73 of the SCO and therefore seek its reduction to 5% *per annum* in line with Articles 104(1) and 116 SCO. Santos further noted that the contractual interest rate of 1% per month (12% *per annum*) surpasses the general standard for international contracts, which typically ranges from 5% to 8%, and highlighted that the Football Tribunal's jurisprudence has had established a 5% *per annum* rate in similar cases.

12. Santos submitted the followings requests for relief:

"Based on all the foregoing, Santos submits to the attention of the FIFA PSC the following requests for relief:

a. To reject in full the claim filed by [the Claimant];

b. Reduce penalties to 5% penalty per unpaid instalment;

c. Reduce interest rate to 5% per annum (ensuring fair and equitable compensation for both parties)".

13. On 11 March 2025, the FIFA PSC issued the decision with reference FPSD-17382 (the "Appealed Decision"). The operative part of the Appealed Decision read as follows:

"1. The claim of the Claimant, FC Arouca is partially accepted.

2. The Respondent, Santos Futebol Clube, must pay to the Claimant the following amount(s):

- EUR 2,015,000 net as outstanding amount plus 12% interest p.a. as follows:

- 12% interest p.a. over the amount EUR 500,000 net of as from 1 December 2023 until the date of effective payment;

- 12% interest p.a. over the amount EUR 750,000 net of as from 1 April 2024 until the date of effective payment;

- 12% interest p.a. over the amount EUR 750,000 net of as from 1 August 2024 until the date of effective payment; and

- 12% interest p.a. over the amount EUR 15,000 net of as from 26 February 2024 until the date of effective payment.

- EUR 201,500 as contractual penalty.

3. Any further claims of the Claimant are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

5. 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.

6. 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.

7. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf., note relating to the payment of the procedural costs below)".

14. On 30 May 2025, the FIFA PSC notified the grounds of the Appealed Decision, determining, *inter alia*, the following:

"30. In this regard, the Single Judge recalled that penalty clauses may be freely agreed by contractual parties in the exercise of their contractual freedom, provided that they satisfy the basic criteria of proportionality and reasonableness. The Single Judge also added that, in order to determine whether a penalty clause is permissible, a deciding body must take into consideration the specific circumstances of the case.

31. Contrary to the Respondent's submission, and in keeping in line with the jurisprudence of the Football Tribunal, the Single Judge then determined that a contractually agreed penalty clause of 10% of the outstanding amounts is not considered disproportionate or excessive vis-à-vis the extent of the delay and the absence of any valid justification by the Respondent.

32. Consequently, the Single Judge decided that the Respondent is entitled to EUR 201,500 as contractual penalty as follows:

- *EUR 200,000 net as the penalty over the overdue instalments of art. 1.1 of the Contract; and*
- *EUR 1,500 net as the penalty over the overdue sell-on fee of art. 1.3 of the Contract".*

(…)

"36. In this respect, the Single Judge first recalled that, while she shall take into account the national law, as well as all relevant arrangements and collective bargaining agreement, when resolving a dispute before the Football Tribunal, FIFA regulations prevail over any national law that the parties may have chosen. In this respect, the Single Judge emphasised that the main objective of FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject to and can rely on. Therefore, the Single Judge deemed that it was not appropriate to directly apply the principles of any given national law to the substance of this matter but rather the Regulations, general principles of law and, where existing, the Football Tribunal's well-established jurisprudence.

37. In view of the above and in keeping in line with the jurisprudence of the Football Tribunal, the Single Judge determined that a contractually agreed interest rate of 12% p.a. is not deemed disproportionate and should therefore be applied on the outstanding amounts, as from the respective due dates until the date of actual payment, as follows:

- *on the second instalment as from 1 December 2023;*
- *on the third instalment as from 1 April 2024;*
- *on the third instalment as from 1 August 2024; and*
- *on the sell-on fee as from 26 February 2024.*

38. However, contrary to the assertion of the Claimant, the Single Judge decided that an additional interest rate of 5% p.a. shall not be awarded over the contractually agreed interest or over a contractually agreed penalty based on the principle of ne bis in idem".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 18 June 2025, in accordance with Article R47 and Article R48 of the Code of Sports-related Arbitration ("CAS Code"), the Appellant filed its Statement of Appeal with the CAS against the Respondent, challenging the Appealed Decision. In the Statement of Appeal, the Appellant requested that a Sole Arbitrator be appointed.

16. On 30 June 2025, the Appellant filed his Appeal Brief, in accordance with Article R51 of the CAS Code.

17. On 21 July 2025, the Respondent filed its Answer, in accordance with Article R55 of the CAS Code.

18. On 29 August 2025, the CAS Court Office, on behalf of the Director General of the CAS and further to Articles R33, R52, R53 and R54 of the CAS Code, informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

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19. On 2 September 2025, after consulting the Parties, the CAS Court Office informed the Parties that the Sole Arbitrator, pursuant to Article R57 of the CAS Code, deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.

20. The decision of the Sole Arbitrator was based on the fact that the present dispute is of a purely legal nature in which the facts are not contested, and the controversy regards the validity of the contractual penalty and the agreed interest rate. Furthermore, neither party has requested the presentation of witness or expert evidence.

21. On 2 September 2025, the CAS Court Office transmitted to the Parties the Order of Procedure, which was duly signed by the Parties. In doing so, the Parties confirmed CAS jurisdiction, that their right to be heard had been respected and consented to the Sole Arbitrator issuing its award based solely on their written submissions.

V. SUBMISSIONS OF THE PARTIES

22. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions, and the contents of the Appealed Decision were all taken into consideration.

A. The Appellant

23. The Appellant made the following requests for relief in its Appeal Brief:

"a) Declare that the Court of Arbitration for Sports ("CAS") has jurisdiction to hear the Appellant's claims against the Respondent;

b) Set aside the Decision rendered by the FIFA Player's Status Chamber on 09 May 2025, with reference number FPSD-17382, in its entirety;

c) Reduce the penalty clause set in the transfer agreement to 5% due to its excessiveness;

d) Reduce the interest rate to 5% per annum (ensuring fair and equitable compensation for both parties); and

e) Order that the Respondent shall bear the arbitration costs pertaining to these CAS proceedings and shall pay the Appellant a contribution towards legal fees and expenses in the amount of CHF 5,000 (five thousand Swiss francs)".

24. The Appellant's submissions, in essence, may be summarized as follows:

1. <u>Disproportionality of the penalty clause:</u>

Santos contends that the contractual penalty of 10% per unpaid instalment, as enforced by Arouca and upheld by the Appealed Decision, is excessive and contrary to the principles of justice and fairness under Swiss law. The Appellant invokes Article 163 of the SCO, which permits judicial reduction of penalties deemed excessive. Santos submits that the penalty imposed is manifestly disproportionate to Arouca's legitimate interest in the performance of the principal obligation and exceeds what is reasonable and equitable in the circumstances. The Appellant requests that the penalty be reduced to 5% per defaulted instalment, which it considers proportionate and consistent with established legal standards.

2. Excessiveness of the interest rate:

Santos challenges the imposition of a 12% *per annum* interest rate on outstanding amounts, arguing that such a rate is significantly above the standard rates typically applied in international commercial contracts, which generally range from 5% to 8% *per annum*. The Appellant further notes that FIFA jurisprudence commonly applies a 5% *per annum* interest rate in similar disputes. Citing Articles 73 and 104 of the SCO, Santos asserts that interest rates must comply with standards of reasonableness and equity, and that manifestly excessive rates may be revised by the adjudicating authority. The Appellant therefore seeks a reduction of the applicable interest rate to 5% *per annum*.

3. Prevention of unjust enrichment:

Santos argues that the cumulative effect of a 10% penalty and a 12% annual interest rate results in an undue and disproportionate financial burden, amounting to unjust enrichment of Arouca. The Appellant maintains that the purpose of contractual penalties and interest is to compensate for non-performance and the devaluation of money, not to provide a windfall to the creditor.

B. The Respondent

25. The Respondent made the following requests for relief in its Answer to the Appeal:

"*a) Dismiss the appeal brought by Santos FC;*

(b) fully uphold FIFA's decision in case FPSD-17382;

And as a result:

c) Order the Appellant to pay the costs of the process and other legal charges.

d) Order the Appellant to pay the Attorney's fees in the amount of CHF 10.000 (ten thousand Swiss Francs)".

26. The Respondent's submissions, in essence, may be summarized as follows:

1. Disproportionality of the penalty clause:

Arouca submits that the penalty clause of 10% and the default interest rate of 12% *per annum*, as stipulated in the transfer contract, are both lawful and enforceable under the applicable legal framework. The Respondent relies on Article 163 of the SCO, which permits parties to freely agree on penalty clauses, subject only to reduction in cases of manifest disproportionality. Arouca contends that the 10% penalty is consistent with international sports contract practice and is neither excessive nor disproportionate, particularly given the professional status and negotiating capacity of the Appellant.

2. Excessiveness of the interest rate:

Regarding the default interest rate, Arouca invokes Article 104 CO, which allows for a higher contractual interest rate than the statutory 5%, provided it is expressly agreed by the parties. The Respondent asserts that the agreed rate of 12% *per annum* is customary in international commercial contracts and is supported by the jurisprudence of both FIFA and CAS, as well as Swiss law, so long as it is not manifestly excessive.

3. Conclusion:

Arouca further emphasizes that the Contract expressly provides for the subsidiary application of Swiss law and that there is no absolute prohibition under Swiss law against such penalty or interest clauses. The Respondent maintains that the principle of private autonomy should be respected unless public order is offended, which is not the case here. Accordingly, Arouca requests the dismissal of the appeal and the full upholding of FIFA's decision.

VI. JURISDICTION

27. Article R47 of the CAS Code provides as follows:

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

28. In addition, Article 49.1 of the FIFA Statutes states:

"1. 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".

29. The jurisdiction of CAS, which is not disputed by the Parties, is based on the above-mentioned provisions. In addition, the Appellant and the Respondent confirmed the jurisdiction of CAS by signing the Order of Procedure.

30. The Sole Arbitrator is, therefore, satisfied that CAS has jurisdiction over this dispute.

VII. ADMISSIBILITY

31. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

32. Article 50.1 of the FIFA Statutes provides that:

"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".

33. It is undisputed that the appeal was filed within the 21 days set by Article 50.1 of the FIFA Statutes. The appeal also complied with all other requirements of Article R48 et seq. of the CAS Code, including the payment of the CAS Court Office fee.

34. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

35. Article R58 of the CAS 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 the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

36. CAS panels have interpreted Article R58 of the CAS Code as follows (CAS 2017/A/5465, 2017/A/5374, CAS 2018/A/5624, etc.):

"*Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS, the "Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision". It follows from this provision that the "applicable regulations", i.e. the statutes and regulations of the sports organisation that issued the decision (here FIFA) are applicable to the dispute irrespective of what law the Parties have agreed upon. In*

the Sole Arbitrator's view, the Parties cannot derogate from this provision if CAS retains jurisdiction which is the case here. To conclude, therefore, the Sole Arbitrator finds that Article R58 of the Code takes precedent over the direct choice-of-law clause contained in the Parties' agreements and that, thus, the FIFA rules and regulations apply primarily." (para. 57, CAS 2017/A/5374; para. 57, CAS 2018/A/5624)".

37. Article 49.2 of the FIFA Statutes reads as follows:

"*2. 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*".

38. The Appellant submits that the applicable law are the FIFA Statutes and Regulations and Swiss law, in accordance with Article R58 of the CAS Code and Article 49 of the FIFA Statutes.

39. The Respondent has not raised any objection to the legal framework proposed by the Appellant. Therefore, Article R58 of the CAS Code and Article 49.2 of the FIFA Statutes apply in full, and the Sole Arbitrator shall apply primarily the FIFA Regulations and, additionally, Swiss Law.

IX. MERITS

A. Summary of the dispute

40. Before addressing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the appeal and review.

41. The present dispute concerns the legal validity and enforceability of two specific contractual provisions contained in the Contract: (i) the contractual penalty clause providing for a 10% surcharge on overdue amounts, and (ii) the default interest rate of 1% per month (12% *per annum*) applicable to late payments. Other issues resolved in the Appealed Decision (such as, for instance, the principal amount) are not in dispute.

42. Accordingly, the core legal issues to be determined by the Sole Arbitrator are:

- Whether the contractual penalty of 10% on overdue amounts, as stipulated in the Contract, is valid and enforceable under the applicable law, or whether it should be reduced on grounds of disproportionality or unreasonableness.

- Whether the default interest rate of 12% *per annum*, as stipulated in the Contract, is valid and enforceable, or whether it should be reduced in accordance with the principles of reasonableness and equity under the applicable law.

- Whether the contractual penalty and the interest rate stipulated in the Contract combined result in unjust enrichment.

B. The contractual penalty

i) The position of the Parties:

43. The Appellant contends that the contractual penalty clause, which imposes a 10% surcharge on each overdue instalment, is excessive and contrary to the principles of justice and fairness as established under Article 163 of the SCO. The Appellant argues that, although parties are generally free to stipulate penalty clauses, Swiss law empowers the adjudicating authority to reduce penalties deemed manifestly disproportionate. Accordingly, the Appellant requests that the penalty be reduced to 5% per defaulted instalment, in line with standards of proportionality and equity.

44. The Respondent maintains that the 10% penalty clause is valid, enforceable, and consistent with both Swiss law and international sports contractual practice. The Respondent emphasizes that Article 163 of the SCO permits parties to freely agree on penalty clauses, subject only to reduction in cases of manifest disproportionality, which is not present in this case. The Respondent asserts that the agreed penalty is within the customary range for international football transfers and is necessary to compensate for the operational and financial consequences of delayed payment. The Respondent further argues that the Appellant, as a professional club with full negotiating capacity, voluntarily accepted the contractual terms and cannot now seek their revision absent clear evidence of excessiveness.

ii) Legal analysis:

45. The Sole Arbitrator notes that the FIFA Regulations do not specifically govern the issue of contractual penalties. Therefore, the matter must be determined in accordance with Swiss law.

46. Article 163 of the SCO empowers the adjudicator, in this case the Sole Arbitrator, to moderate or reduce penalty clauses deemed excessive. Specifically, the provision states:

"1 The parties are free to determine the amount of the contractual penalty.

2 The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed where performance has been prevented by circumstances beyond the debtor's control.

3 At its discretion the court may reduce penalties that it considers excessive".

47. There is extensive case law from CAS and the Swiss Federal Tribunal ("SFT") on this matter, including the award CAS 2020/A/7007, which, in paragraph 65 of the published version, summarises the circumstances that, according to the SFT, must be taken into account by the judge and which this Arbitrator adopts as his own:

65. There are further several decisions of the Swiss Federal Tribunal ("SFT") mainly stating that a reduction of a penalty shall only be decided if the disproportionality between the agreed penalty amount and the interest of the creditor to maintain his entire

claim is obvious. The judge shall decide on a case-by-case basis and take into consideration all the circumstances of the case, e.g.:

− the ratio between the agreed penalty and the creditor's interest in the fulfilment of the secured claim ("das Verhältnis zwischen der vereinbarten Konventionalstrafe und dem Interesse des Gläubigers an der Erfüllung der gesicherten Forderung"; SFT of 25.08.2011, 4A.107/2011, E. 3.1; SFT 82 II 142, 146);

− the seriousness of the fault of the parties involved ("die Schwere des Verschuldens der Beteiligten"; SFT of 01.05.2013, 4A.656/2012, E. 2.3; 21.12.2012, 4A.595/2012, E. 5.1; 19.01.2005, 4C.360/2004; 14.10.2003, 4C.143/2003; SFT 105 II 200, 203f. E. b, c; 103 II 135; 91 II 383);

− the importance of the fulfilment of the principal claim for the other party ("die Wichtigkeit der Erfüllung der Hauptforderung für die anderen Partei"); CAS 2020/A/7007 Al Nassr FC v. Fenerbahçe Futbol AS, award of 8 December 2020 15

− the debtor's interest and profit in non-performance or defective performance ("das Interesse und der Gewinn des Schuldners an der Nicht- oder Schlechterfüllung");

− the seriousness of the breach of the primary obligation guaranteed ("die Schwere der Verletzung der gesicherten Hauptverpflichtung"; SFT of 01.05.2013, 4A.656/2012, E. 2.3; 25.08.2011, 4A.107/2011, E. 3.1; 14.10.2003, 4C_143/2003; SFT 103 II 129, 135);

− the economic situation of the parties (SFT of 01.05.2013, 4A.656/2012, E. 2.3; 21.12.2012, 4A.595/2012, E. 5.1; 25.08.2011, 4A.107/2011, E. 3.1; 06.07.2009, 4A_233/2009, E. 4; 14.10.2003, 4C_143/2003; SFT 103 II 129, 135; 95 II 532, 539 f.), mainly the debtor. The more strained the financial situation of the debtor is, the more likely the contractual penalty must be regarded as excessive ("die wirtschaftliche Lage der Beteiligten, namentlich des Verpflichteten. Je angespannter die finanzielle Lage des Pflichtigen ist, umso eher muss die Konventionalstrafe als überhöht angesehen werden"; SFT of 20.02.2004, 4C.276/2003);

− the maximum presumed damage suffered by the creditor; however, the damage actually suffered is not decisive ("der mutmassliche Schaden, den der Gläubiger höchstens erlitten hat; der effektiv eingetretene Schaden ist hingegen nicht massgebend"; SFT of 25.08.2011, 4A.107/2011, E. 3.1).

− the risk of damage to which the creditor was exposed in the specific case ("das Schadensrisiko, dem der Gläubiger im konkreten Fall ausgesetzt war"; SFT of 17.10.2012, 4A.160/2012, E. 1.2; 08.12.2009, 4A.141/2008, E. 14 f.; SFT 133 III 43, 54 f.)".

48. In accordance with the foregoing, the assessment of the relevant circumstances must be carried out on a case-by-case basis and are as follows:

- the relationship between the agreed penalty and the creditor's interest in the performance of the secured obligation.

- the seriousness of the fault of the parties involved.

- the importance of the performance of the principal obligation for the other party.

- the interest and benefit of the debtor in the non-performance or defective performance.

- the seriousness of the breach of the principal secured obligation.

- the financial situation of the parties, primarily that of the debtor. The more strained the debtor's financial situation, the more likely it is that the contractual penalty should be considered excessive.

- the maximum foreseeable damage suffered by the creditor; however, the actual damage suffered is not decisive.

- the risk of harm to which the creditor was exposed in the specific case.

49. In the case at hand, article 1.2 of the Contract provides for a 10% penalty clause:

"1.2. *Payment of the amounts referred to above will be made on the dates established there, by bank transfer to the account designated by* ***AROUCA****, as below. In case of default by* ***SANTOS*** *in making the payment within the established deadline, a fine of 10% (ten percent) will be added to the amount due, in addition to default interest of 1% (one percent) per month, until the effective date payment".*

50. The Sole Arbitrator observes that the Appellant has failed to substantiate its claim that the penalty is excessive, relying solely on the general legal possibility of reduction without advancing any specific factual or legal arguments in support of its position. Nevertheless, after a thorough and fact-specific assessment of all relevant circumstances in this case, the Sole Arbitrator finds that the penalty clause is not disproportionate, for the following reasons:

- The seriousness of the breach, which amounts to 80% of the fixed sum agreed between the Parties in the Contract – as Santos has paid only the first of the four instalments stipulated – and to 100% of the agreed sell-on fee.

- The non-payment cannot, in any event, be attributed to the Respondent, whether by act or omission.

- Arouca's interest, which is undisputed, both in ensuring that the agreement is duly performed and in receiving the outstanding amounts, is manifest. After all, Arouca lost a player valued at EUR 2,500,000 and received only EUR 500,000.

- Finally, no arguments have been advanced as to the reasons why Santos has failed to pay 80% of the fixed transfer fee and 100% of the sell-on fee, nor regarding the financial situation of the parties.

51. In summary, the penalty agreed by the parties—set at 10% of the outstanding amount under the Contract—does not impose an unfair or disproportionate burden on Santos. On the contrary, for the reasons detailed above, the clause is both reasonable and consistent with the principles of proportionality under the applicable law. While the effectiveness of the penalty as a deterrent may be subject to debate, given that it did not ultimately prevent Santos from breaching the Contract, this fact alone does not render the penalty excessive or unjustified.

52. The Sole Arbitrator also notes that the Parties freely negotiated and agreed upon the penalty clause as part of the transfer agreement. The principle of *pacta sunt servanda* requires that such contractual terms be respected, absent compelling reasons to the contrary. As the CAS has emphasized, "*the principle of contractual liberty always has the privilege in case of doubt*" (CAS 2020/A/6809 & 6843, para. 150 of the published version):

"*150. The Panel also notes that, as it has been repeatedly established both by the SFT and CAS jurisprudence, the reduction of a penalty clause shall only be reserved for exceptional cases that occur when the penalty is grossly and evidently unfair since the possibility of a reduction affects the contractual freedom of the parties. In any case, the judge shall not reduce the penalty too easily and therefore the principle of contractual liberty always has the privilege in case of doubt (MOSER M., op. cit., ad Article 163, N 7; COUCHEPIN G., op. cit., par. 934). In this regard, the SFT has considered that penalty fees may not be deemed automatically as abusive just because they exceed the costs of damages suffered by the creditor as, the penalty clauses as such, normally include a punitive aspect that implies that the penalty amount does not have to exactly meet the amount of the damage produced to the creditor*".

53. In light of the foregoing, the Sole Arbitrator finds that the penalty is not disproportionate and rejects the Appellant's submission.

C. The interest rate

i) <u>The position of the Parties</u>:

54. The Appellant argues that the contractual interest rate of 12% *per annum*, as stipulated in the transfer agreement, is manifestly excessive and contrary to the principles of justice and fairness under Swiss law. The Appellant submits that, pursuant to Article 73 SCO, interest rates must comply with standards of reasonableness and equity, and that Article 116 SCO authorizes the revision of manifestly excessive interest rates. The Appellant further contends that the standard interest rate in international commercial contracts typically ranges between 5% and 8% *per annum*, and that FIFA's own jurisprudence generally applies a rate of 5% *per annum*. Accordingly, the Appellant requests that the interest rate be reduced to 5% *per annum*.

55. The Respondent maintains that the Parties freely agreed to the 12% *per annum* interest rate, as expressly set forth in the contract. The Respondent asserts that Swiss law permits parties to stipulate a higher interest rate than the statutory 5%, provided it is not manifestly excessive. The Respondent further submits that a 12% rate is customary and proportionate in international commercial transactions, particularly in the context of football transfers, and is supported by both FIFA and CAS jurisprudence. The Respondent therefore requests that the agreed interest rate be upheld in full.

ii) Legal analysis:

56. The Sole Arbitrator notes that the FIFA Regulations do not specifically govern the issue of the interest rates. Therefore, the matter must be determined in accordance with Swiss law.

57. Pursuant to Article 104(2) of the SCO, parties are free to agree on an interest rate higher than the statutory default rate of 5% *per annum*. This principle of contractual autonomy is well established in both Swiss law and CAS jurisprudence. As held in CAS 2020/A/6809 & 6843, "*the Parties are free to negotiate a higher amount of interest as the default interest of 5% per annum contemplated for in Article 104 par.1 of the Swiss CO* (para. 174 of the published version). Nevertheless, the principle of contractual autonomy is subject to limitations, particularly where Swiss law is applicable. In this context, interest rates not exceeding 18% are generally deemed to comply with the maximum permissible threshold under Swiss legal standards. CAS 2020/A/6809 & 6843, para. 175 of the published version states:

"*175. In addition, and as stated in CAS 2010/A/2128, this contractual freedom is not unlimited as the outcome would have to remain compatible with Swiss law when applicable, as in the instant case. In this regard, the Panel notes that interest rates under 18% are considered to be in line with the maximum level of interest applicable under Swiss law. There is no regulation that establishes that an interest rate of 15% is excessive or disproportionate and therefore the Panel, complying with the principle of pacta sunt servanda, finds that there is no reason to reduce the interest rate of 15% per annum to a lower percentage*".

58. The Sole Arbitrator notes that it is also recognized that interest rates above 5% are customary in international football transfer agreements, reflecting the commercial risks and the need to compensate the creditor for the unavailability of capital. The CAS has repeatedly upheld the validity of such rates, provided they do not exceed the threshold of usury or manifest disproportionality. In CAS 2021/A/7673 & 7699, the Panel confirmed that "an interest rate as high as 18% *per annum* is acceptable. Above this limit, the interest rate is usurious and, therefore, contrary to public morals. Hence the 10% interest agreed in the Transfer Agreement is acceptable." (CAS 2021/A/7673 & 7699, para. 131-132 of the published version)

59. The Sole Arbitrator considers that the Appellant has failed to demonstrate that the agreed interest rate of 12% *per annum* is manifestly excessive or contrary to justice and equity. 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. In the present matter, the interest rate of 12% *per annum* is well within the limits recognized by Swiss law and CAS jurisprudence, and there is no evidence that it would result in unjust enrichment or an imbalance between the Parties.

60. Finally, the principle of "*pacta sunt servanda*", prevents the Sole Arbitrator from considering the interest rate freely agreed by the Parties as unfair or disproportionate.

61. In light of the above, the Appellant's request to reduce the contractually agreed interest rate must be rejected. The agreed rate of 12% *per annum* is valid, enforceable, and consistent with both Swiss law and established CAS jurisprudence. There is no legal or factual basis to substitute the Parties' freely negotiated terms with a lower rate.

62. The alleged unjust enrichment

63. The Sole Arbitrator has also carefully considered the Appellant's argument that the cumulative effect of the contractual penalty and the default interest rate would result in unjust enrichment of the Respondent. However, this contention is not supported by the facts or by the applicable legal principles. Under Swiss law, the purpose of a contractual penalty is not only to compensate the creditor for actual loss, but also to serve as a deterrent against non-performance and to reinforce the debtor's obligation. Similarly, the agreed interest rate is intended to compensate for the time value of money and the creditor's loss of use of the funds. The mere coexistence of a penalty clause and default interest does not, in itself, constitute unjust enrichment, provided that each serves a distinct and legitimate function and that their combined effect does not exceed the bounds of proportionality and fairness.

64. In the present case, the Appellant has not demonstrated that the aggregate financial consequences imposed by the penalty and interest are manifestly excessive or that they confer a windfall upon the Respondent beyond what is justified by the breach. On the contrary, both the penalty and the interest rate fall within the range commonly accepted in international football transfers and under Swiss law. There is no evidence that the Respondent would receive more than what is reasonably due as a result of the Appellant's default.

65. Accordingly, the Sole Arbitrator finds that the contractual penalty and the default interest rate, whether considered individually or in combination, do not result in unjust enrichment and are both valid and enforceable. For all the foregoing reasons, the Appellant's claims must be dismissed in their entirety.

X. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Santos Futebol Clube on 18 June 2025 against the decision of the Players' Status Chamber of the FIFA Football Tribunal of 11 March 2025 (FPSD-17382) is rejected.

2. The Decision of the Players' Status Chamber of the FIFA Football Tribunal of 11 March 2025 (FPSD-17382) is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 12 January 2026

THE COURT OF ARBITRATION FOR SPORT

Kepa Larumbe
Sole Arbitrator