Arbitration CAS 2012/A/2889 Rodrigo Ribeiro Souto v. Anselmo de Barros Paiva, award of 12 November 2013

Panel: Mr Fabio Iudica (Italy), President; Mr Michele Bernasconi (Switzerland); Prof. Ulrich Haas (Germany)

Football
Validity and enforceability of a representation agreement
Determination of the version of the FIFA regulations applicable in a specific case
Burden of proof under Brazilian law and according to the CAS Code
Dies a quo, dies ad quem and interest rate under Brazilian law

1. **In order to establish whether an agent acted in violation of the FIFA Regulations in connection with the assignment of the economic rights of a player, the applicable regulations shall be those, which were in force at the moment when the relevant violations were allegedly committed.**

2. **According to Brazilian law, a party who claims a right on the basis of an alleged fact must carry the burden of proof, i.e. he must meet the onus to substantiate his allegations and to prove the facts on which he relies with respect to that issue. The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.**

3. **Article 405 of the Brazilian Civil Code provides that *"the default interest is counted as of the initial summons"*. The *dies ad quem* consists in the date which the due compensation is effectively paid to the creditor. Article 406 of the Brazilian Civil Code provide as follows: "*When default interest is not established, or have no stipulated rate, or arise from a law provision, it shall be fixed according to the rate in force for arrears payments due to the National Treasury*". Under Art. 161§1 of the Brazilian National Tax Code, "*In case the law does not provide otherwise, the default interest shall be calculated at a one per cent rate per month".***

I. PARTIES

1. Mr. Rodrigo Ribeiro Souto ("Appellant" or the "Player") is a Brazilian football player, born on 2 September 1983 and affiliated to the Confederação Brasileira de Futebol (CBF).

2. Mr. Anselmo de Barros Paiva ("Respondent" or the "Agent") is a football players' agent affiliated to the CBF, under the license n° 003.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced during these proceedings and at the hearing. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 2 January 2007 the parties signed the agreement "Contrato de Prestação de Serviços" (the "Representation Agreement"), which consisted in a representation contract valid until 2 January 2009, which granted the Agent the right to receive 10% (ten per cent) over the total gross amount due to the Player in connection with any and all contracts negotiated or signed by the Agent. Furthermore, the Agent was entitled to exclusively represent the Player in the negotiation of any and all types of contracts either with clubs or companies, related to employment, image rights, sponsorship, national and international transfers.

5. It is undisputed that on 2 January 2007, through the services of the Agent, the Appellant entered into an employment contract with the Brazilian football club Santos F.C., valid until 31 December 2007 and which stipulated a monthly salary of R$10.000,00 (ten thousand Brazilian Reais) (the "First Employment Agreement").

6. It is uncontested that the Agent is a shareholder of the company, duly incorporated in Brazil, named Champion Barra Sport Marketing Ltda. (the "Champion").

7. It is undisputed that the Player had long-lasting professional relationship with the Agent, since he played for Clube de Regatas Vasco da Gama. Afterwards the Player was transferred as a free agent to Clube Atlético Paranaense (the "Atlético"), through the services of the Agent. However, despite of not existing any assignment of economic rights in said transaction – since the Player was transferred as a free agent – the Agent allegedly negotiated a participation in the Player's economic rights through his company Champion by means of a co-ownership agreement.

8. On 4 January 2007 the Player, Champion, Energy Empreendimentos Participações Ltda., CDR Consultoria Esportiva S/S and Santos F.C. signed an agreement named *"Instrumento Particular de Cessão de Direitos e Obrigações",* which related to the assignment of rights and duties between the parties and which determined their co-investment and financial rights in case of a future transfer of the Player to another club (the "First Assignment Agreement"). By means of this contract, Santos FC acquired 10% (ten per cent) of the Player's economic rights for the amount of R$160,500.00 (one hundred and sixty thousand and five hundred Brazilian Reais).

9. On 2 January 2008 the Appellant entered into a new employment contract with Santos F.C., again through the services of the Agent, valid until 31 December 2010 and which stipulated the same remuneration as previously agreed (the "Second Employment Agreement").

10. On 3 January 2008, the Appellant and the company that manages his image rights, R. Souto Eventos Esportivos Ltda. (the "Company"), entered into an agreement for the assignment of the Player's image rights to Santos FC until 31 December 2010, which provided a consideration of R$4.400.000,00 (four million and four hundred thousand Brazilian Reais), to be paid in thirty-six instalments (the "Image Agreement"). It is undisputed that the Agent was involved in the negotiation of the Image Agreement.

11. On 3 January 2008, the terms of the Second Employment Agreement was amended and the Player's salary was readjusted to R$50.000,00 (fifty thousand Brazilian Reais) per month during the first year of contract; R$60.000,00 (sixty thousand Brazilian Reais) per month during the second year; and R$70.000,00 (seventy thousand Brazilian Reais) per month during the third year (the "Appendix").

12. On 4 January 2008 Santos F.C., Energy Empreendimentos Participações Ltda., Champion and the Player signed an agreement named *"Instrumento Particular de Cessão de Direitos Econômicos e Financeiros sobre Vínculo Desportivo de Atleta Profissional de Futebol e outras Avenças"*, by means of which Champion assigned to Santos F.C. its shares of the Player's economic rights, amounting to 40% (the "Second Assignment Agreement"). As consideration for the economic rights which corresponded to Champion, Santos F.C. paid to this company the amount of R$1.491.000,00 (one million four hundred ninety-one thousand Brazilian Reais).

13. It is alleged that the Respondent did not receive the 10% (ten per cent) to which he was entitled in the above-mentioned contracts, pursuant to the Representation Agreement. Consequently, and allegedly having not received his remuneration, on 3 May 2010 the Agent filed a claim before the CBF dispute resolution committee "Comissão de Resolução de Litígios - CRL" (CRL) against the Player, claiming the amount of R$228,000.00 (two hundred and twenty eight thousand Brazilian Reais) allegedly due in connection with the First and the Second Employment Agreement and the Appendix.

14. In parallel, the Agent also filed a claim against the Company and the Player before the Rio de Janeiro state courts seeking payment of the amount of R$444,000.00 (four hundred and forty-four thousand Brazilian Reais) allegedly due in connection with the Image Agreement. Considering that this claim involved one company as respondent, the Agent avers that it could not be brought before the CBF or FIFA dispute resolution bodies.

B. Proceedings before the CRL

15. Initially the CRL rejected the Player's preliminary request to suspend its proceedings in view of one claim previously lodged by the Agent before Brazilian state courts and which had allegedly the same scope. In this respect, the CRL understood that the claims had a different nature as well as objects and requests for relief.

16. In view of the Player's claims regarding prescription, he states that the Agent's claims had prescribed for two reasons: (i) the biennial prescription applies in the case, since the Representation Agreement ended on 2 January 2009 and, therefore, all claims before said date are prescribed; and (ii) the six-month prescription applies, considering that the Agent lodged his claim before the CRL six months after he ceased rendering services to the Player.

17. In light of these arguments, the CRL understood that the six-month prescription does not apply to the present case, since it relates exclusively to the termination of the activities of the Agent as a licensed agent and not to the activities or services rendered to an athlete.

18. Regarding the biennial prescription the CRL considered that it is applicable to the present case and, to this effect, should apply until 3 May 2008 considering that the Agent lodged his claim before the CRL on 3 May 2010. Therefore, the Agent is no longer entitled to claim any remuneration that would be due under the First Employment Agreement, since it ended on December 2007.

19. The CRL further understood that the arguments raised with respect to the economic rights of the Player – in connection with the First Assignment Agreement and Second Assignment Agreement – should be left aside since it did not relate to the parties' dispute, which related exclusively to the Representation Agreement signed only between the Player and the Agent, the latter not holding personally any economic rights of the Appellant.

20. Furthermore, the Appellant mentioned that the Agent received a significant amount of money in connection with the Player's economic rights, a fact that should be left aside since it does not relate to the dispute.

21. The CRL further attested that the Agent was involved in the transactions which resulted in the signing of all the employment agreements between the Player and Santos F.C. Considering that the First Employment Agreement shall not be included in the compensation, in view of the biennial prescription, the CRL ruled that the Agent is entitled to receive the agreed remuneration for the entire duration of the Second Employment Agreement.

22. The CRL, however, stated that the Agent's right to claim his remuneration under the Representation Agreement persisted until the Player terminated his employment agreement with Santos F.C., since both parties announced the Player's move to São Paulo F.C.. The CRL however could not determine when said transfer occurred.

23. On 11 July 2012, the CRL rendered a decision which partially accepted the Agent's claim (the "Appealed Decision"), which content reads as follows:

> *"By unanimous vote, the preliminary suspension of the fact is rejected until the final decision of the collection lawsuit before ordinary court; the granting of the biennial prescription to withdraw any perception of the agent's claim to remuneration based on the first contract signed by the athlete with the Santos Futebol Clube. To condemn the athlete herein Defendant to the payment of an amount equal to 10% (ten per cent) of the total of the salaries received by the athlete from the Santos Futebol Clube during the period starting 02nd January 2008 until the date of his transfer to the São Paulo Futebol*

Clube occurred in the year of 2010, and to this amount should be added a 1% (one per cent) per month statutory interest applicable as from the date of the summons of these proceedings, the quantum of which must be calculated in the settlement of the sentence.

Rio de Janeiro, 11th July 2012

Dispute Resolution Committee
Gilberto Povina Cavalcanti — *Joyce Nascimento*
President — *Secretary"*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 6 August 2012, pursuant to Article R47 of the Code of Sports-Related Arbitration (2012 edition) (the "Code"), the Appellant filed a Statement of Appeal at the Court of Arbitration for Sport (CAS) against the CRL Decision.

25. On 16 August 2012 the Appellant filed his Appeal Brief.

26. In light of the Appellant's request to nominate a sole arbitrator the Respondent objected to this request on 27 August 2012, requesting that a three-member Panel was constituted.

27. On 27 August 2012 the CBF informed it did not wish to participate in the present proceedings.

28. On 18 September 2012 and following the parties' agreement, English was chosen as the language of the arbitration.

29. On 9 October 2012 the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Arbitration Division had decided, in application of Article R50 of the Code, to submit the present dispute to a Panel composed of three arbitrators.

30. On 3 December 2012 the Respondent filed his Answer.

31. On 14 December 2012 the Appellant requested that a written statement of Mr. Marcelo Pirilo Teixeira, former President of Santos F.C., was admitted in the case file. The Player alleged that such statement became available in the Rio de Janeiro Ordinary Courts only after the appeal was lodged. In this regard, the Respondent objected to its admissibility in light of Article R56 of the Code.

32. By letter dated 18 February 2013, the CAS Court Office informed the parties that the Panel responsible for handling the present appeal had been constituted as follows: President: Mr. Fabio Iudica, attorney-at-law in Milan, Italy; Mr. Michele Bernasconi, attorney-at-law in Zurich, Switzerland appointed by the Appellant; and Prof. Ulrich Haas, Professor at the University of Zurich, Switzerland, appointed by the Respondent. The parties did not raise any objection as to the constitution and composition of the Panel.

33. On 27 February 2013 and after consultation of the parties, the Panel informed that it deemed necessary to hold a hearing in the present matter and confirmed it would be held on 28 March 2013, in Lausanne, Switzerland ("the Hearing"), to which the parties agreed.

34. On 13 March 2013, pursuant to Articles R57 and R44.3 of the Code, the Panel requested further evidentiary measures to the parties, namely (i) translations of specific documents; and (ii) to file comments related to their position on the procedural matter regarding the jurisdiction of the CAS in the present proceedings and namely what reason, if any, within the meaning of Art. 186 1bis of the Swiss Private International Law Act (PILA) could prevent the Panel to decide on its own jurisdiction. Furthermore, the Panel requested some clarifications and information to the Appellant with respect to the admissibility of the witness statement of Mr. Marcelo Pirilo Teixeira.

35. On 15 March 2013 the Appellant attested that CAS has jurisdiction to hear the present dispute, in light of Art. 186 1bis of the PILA. The Appellant also provided comments on 18 March 2013 with respect to the witness statement of Mr Marcelo Pirilo Teixeira.

36. On 18 March 2013 the Respondent replied to the Panel's requests, providing the relevant translations, as well as confirming that CAS has jurisdiction and that he does not see any reason that could prevent the Panel to rule on its own jurisdiction, all in line with Art. 186 1bis of the PILA.

37. Following the Panel's request, the CBF sent to the CAS on 18 March 2013 a copy of the case file nr. 012/2010 related to the CRL proceedings, together with a translated copy into English of the CRL Regulations.

38. On 21 March 2013 the Respondent provided a copy of the Order of Procedure signed by Mr Bichara Adão Neto, without any reservation or remarks, except for the fact that the Respondent would not attend in person at the Hearing.

39. On 25 March 2013 the Appellant provided a copy of the Order of Procedure signed by Mr Marcelo Robalinho Alves, without any reservation or remarks.

40. The Hearing took place in Lausanne on 28 March 2013. The parties were represented by the following persons: Mr. Marcelo Robalinho Alves for the Appellant; Mr Bichara Adão Neto for the Respondent.

41. In addition to the Panel, the parties' representatives and Mr Pedro Fida, Counsel to the CAS, Mr. Rodrigo Ribeiro Souto attended the Hearing by telephone.

42. During the Hearing the parties were granted the opportunity to present their oral arguments and answer the questions posed by the Panel. At the conclusion of the Hearing, the parties confirmed that they had no objections with respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

43. At the end of the Hearing the Respondent agreed to admit in the file the written statement of Mr. Marcelo Pirilo Teixeira, former President of Santos F.C., as well as to suspend the execution of the Appealed Decision until the CAS issued an award. These agreements were confirmed in writing after the Hearing took place.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant's Submissions and Requests for Relief

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

(i) Initially the Appellant raises two procedural objections, being the first related to the fact that the Respondent sought redress before Brazilian ordinary courts to claim commissions from the Player, therefore, not respecting the prohibition imposed by FIFA in Article 68 of its Statutes (edition 2012). Furthermore, the Appellant states that the CRL violated his right to be heard and to produce evidence in the course of the first instance proceedings. In this respect, the Player avers that (i) relevant evidence could not be produced, such as the Respondent's copy of his income tax declaration and the articles of incorporation of the Respondent's company Champion Sport; and (ii) the CRL rejected his request to stay the procedure until two witnesses were heard in the ordinary court proceedings which involved the parties and the Player's company R. Souto Eventos Esportivos Ltda.

(ii) The Appellant addresses that the Appealed Decision is contradictory, since it recognized the application of the biennial prescription as from 3 May 2008 until 3 May 2010 (date in which the Respondent started proceedings before the CRL) and simultaneously ruled that the Player should pay the Respondent 10% (ten per cent) of the remuneration received by him as of 2 January 2008 (starting date of the Second Agreement). The Player subsidiarily argues that even the 6-month time limit for an agent to claim his rights after the termination of his activities would have been passed, since the Representation Contract expired on 2 January 2009 and the Respondent brought his claim before the CRL on 3 May 2010.

(iii) The Appellant alleges that, as free agent being transferred from Atlético to Santos F.C. there could not be any assignment or creation of economic rights. The Player further states that the Agent could not hold the Appellant's economic rights while acting as the Player's agent – even if through a company –, pursuant to allegedly express prohibitions in the FIFA Regulations (i.e. Article 18bis FIFA Regulations on Status and Transfer of Players, "RSTP", and Articles 19.8, 20.1 and 29.1 & 29.2. FIFA Players Agent Regulations, "FIFA PAR", edition 2008). In this respect the Appellant avers that all the amounts received by the Respondent in connection with these economic rights shall be considered as unjust enrichment, because the Agent was entitled to receive only 10% (ten per cent) for the services rendered under the Representation Agreement.

(iv) The Respondent acted only on behalf of his company and in conflict of interests, considering he desired to sell the Appellant's economic rights to the highest value possible, even surpassing the Appellant's earnings under his contracts with Santos FC.

(v) The Respondent was hired by the Appellant to render services exclusively to him and his interests, having agreed as consideration a maximum 10% (ten per cent) of the Player's salaries. The Agent, however, did not respect the scope of the Representation Contract and, by selling the Appellant's economic rights, the Agent had more financial benefits than the Player, a fact which could have allowed the Player to earn higher salaries at Santos FC in the event the Respondent did not own the Appellant's economic rights.

(vi) Considering that the Respondent's services were defective and improper, generating a potential conflict of interest, the Appellant deems that disciplinary sanctions should be applied to the Agent.

(vii) The Appellant requests, subsidiarily and in case of any condemnation, that interests at a rate of 5% p.a. shall apply, pursuant to Swiss Law. Furthermore, interests shall start to run as from the date which the Appealed Decision was published in CBF's website and not from the date the Appellant was summoned to present his answer.

45. In his statement of appeal, the Appellant submitted the following prayers for relief:

"1. The appellant by decision of Dispute Resolution Committee of the Brazilian Football Confederation (CBF) was indebted to payment of commissions to the agent appealed in the period from 01/02/2008 to early 2010;

2. The contested accepts decision that the Agents Regulation issued by FIFA in 2008 does not rule between the parties, what would allow the agent to provide services in conflict of interests and receive a percentage of the values from the transfer and furthermore, to charge by extra services as the athlete's agent;

3. Denied to the Appealed [Respondent] the exercise of legal defense, therefore was required for 2 (two) times that the judgment hadn't been realized before the submitting evidences before the Court of Justice;

4. Despite recognizing the biennial prescription, imposed condemnation that goes beyond the period covered by prescription, either by taking in consideration the date of previous notification;

5. Prevailing the decision of the national association (CBF) the AGENT/Appealed will be enriching with no legitimate cause, once that he is hired to advise the athlete, obligated himself to earn the maximum of 10% (ten per cent) of salaries and to provide the services in the interests of the athlete; however he ended up receiving much more, due to utilization of maneuver to create economical rights for AGENT, when in reality the player leaves the Clube de Regatas Vasco da Gama to the Atlético Paranaense Club in "free" condition, by the end of employment agreement;

6. The appellant intends the annulment of decision for the offense to the right of legal defense in the association that renders the decision and alternatively the reform of decision to declare that the AGENT/Appealed acted unlawfully against the FIFA rules, received more than what he should by

transfer, and must refund to the athlete/Appellant the amounts that has received which exceed 10% (ten per cent) contractually provided, or minimum to declare that nothing is due by the bad service; besides applying sports penalty to the Appealed or his contrary acts to the dictates of rules. It is also required that all expenditure be charged to the appealed".

46. In his appeal brief, the Appellant submitted the following prayers for relief:

> *"The appellant intends the annulment of decision for the offense to the right of legal and full defense in the association that renders the decision and alternatively the reform of decision to declare that the Agent acted unlawfully against the Regulations on the Status and Transfer of Players and Players' Agents Regulation both edited by FIFA, because it has influenced as third-party, participated of the economic rights due to the representation agreement, and must refund to the athlete the amounts that has received which exceed 10% (ten per cent) contractually provided, under penalty of enrichment without just cause; or minimum to declare that nothing is due by end of right to claim and/or defective services rendered by Agent, besides applying sports penalty to the agent for his contrary acts to the dictates of the rules. It is also required that all expenditure be charged to the appealed".*

B. Respondent's Submissions and Requests for Relief

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

(i) The Respondent confirms he filed two claims against the Appellant, one before the CRL and the other before Rio de Janeiro State Courts. However, even though related to the Representation Agreement, there is no identity as to the parties and as to the *causae petendi* to these disputes. While the first procedure aims to levy the Respondent's remuneration with regard to the First and Second Employment Contracts, the second dispute arose from the Image Agreement entered between the Player, Santos FC and the company R. Souto Eventos Esportivos Ltda., responsible for the administration of the Appellant's image rights. In this respect, the Respondent avers that the dispute before the CRL involves a players' agent and another FIFA member (i.e. player), and the dispute before ordinary courts involves an image rights contract and a party alien to football family (i.e. a company), which does not rest under FIFA's umbrella and may be submitted to an ordinary court of law.

(ii) Secondly, the Respondent alleges the supposed violation of the Appellant's right to defence and to produce evidence are baseless, as the CRL could not issue any compelling order against the Respondent, the Brazilian Ministry of Treasury or even the Brazilian tax authorities to have the requested documents presented. Furthermore, in relation to the witnesses, the Respondent states that the testimonies in question would refer to a different procedure, involving other parties and different facts.

(iii) The Respondent states that the Appellant's interpretation with regard to the biennial prescription is wrong, because the event or incident giving rise to said prescription is not the conclusion of the Second Employment Agreement and its amendment, but the moment in which the Respondent's remuneration was payable, i.e. the end of each contractual year of the First and the Second Employment Contracts.

(iv) The Respondent alleges he was never the owner of any percentage of the Appellant's economic rights, but instead the company Champion Sport, which the Respondent is a shareholder. The Agent also clarifies that, according to the wording of the First Assignment Agreement, the Player's economic rights had been assigned by Atlético in favor of Champion Sports. Alternatively, in case the Panel understands that Agent has personally received the amounts of economic rights concerned, the Respondent refers to the provisions set out in FIFA PAR 2001, applicable to the present dispute and which did not contain any restriction for the assignment of such kind of revenue in favor of players' agent. In this regard, being undisputed that the original assignment of economic rights was related to employment contract between the Player and Atlético, there would not be any rules preventing the Agent to own and afterwards sell them to Santos FC.

(v) The Respondent alleges he rendered services to the Appellant efficiently, constantly and always aiming the Player's interests. The Agent was in charge not only of taking care of negotiating the terms of the relevant employment and image contracts, but also of ensuring that these were appropriately and conveniently drafted for the Appellant. An example is the increase of salary the Agent could negotiate for the Appellant, achieving a 3-year employment contract with Santos FC with an increase of 500% in the Player's salaries in the first season and that would reach 700% in two years.

(vi) The Respondent pleads, subsidiarily, that in the event the Panel shall deem the FIFA PAR 2008 as rule of law applicable to the present case or that it shall deem that, despite applying the FIFA PAR 2001, the Respondent has in anyway whatsoever violated them, one shall carefully analyze the eventual consequences of such a violation. In this respect, the Respondent asks the Panel to consider, amongst other reasons, that the Appellant was always aware of the deals in which the Agent entered and which could involve the Player, the services performed always favored the Appellant, and the acquisition of the Player's economic rights by Champion in his transfer to Atlético was not at all to the detriment of the player.

(vii) The Respondent requests that interests at a rate of 1% per month shall apply in the present case, according to Brazilian Law. Therefore, interests shall start to run as from the date that the Appellant was summoned to present his answer in the first instance proceedings.

48. In his answer, the Respondent submitted the following prayers for relief:

"a) Dismiss the Appeal filed by Mr. Rodrigo Ribeiro Souto on the merits and thus maintain the Appealed Decision passed by the CRL on 11 July 2012;

b) Alternatively, shall the CAS rule to set aside the Appealed Decision, condemn Mr. Rodrigo Souto to pay to Mr. Anselmo de Barros Paiva an amount established upon the evidence herewith submitted;

c) In any case, to rule that Appellant shall bear with any and all the legal fees and costs relative to the present proceedings".

V. ADMISSIBILITY

49. Article R49 of the 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".

50. The Panel notes that the CRL rendered the Appealed Decision on 11 July 2012, and notified by electronic mail on 16 July 2012. Considering that the Appellant filed his statement of appeal on 6 August 2012, the Panel is satisfied that the Appellant's appeal was timely filed and is therefore admissible.

VI. JURISDICTION

51. Article R47 of the 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.

52. Article 75 of the CBF Statutes provides as follows:

"The CBF shall ensure the obedience and full compliance by the clubs, players, referees, coaches, doctors, physical trainers, assistants, matches' agents and football players' agents of any definitive decision from the FIFA bodies or TAS [CAS]".

53. Article 33 of the Internal Regulations of the CRL provides as follows:

"33.1. As a last resort the CRL decisions may be subject of an appeal before an arbitration court recognized by the Confederação Brasileira de Futebol – CBF.

33.2. The time limit for an appeal will be twenty days beginning on the day the decision is published, by electronic mail".

54. Furthermore, the CRL issued a directive accompanying the Appealed Decision, concerning appeals proceedings before the CAS, in which it states as follows:

"Pursuant to article 63, par. 1 of the FIFA Statutes, article 75 of the CBF Statutes and article 33 of the CBF DRC Regulations, the present decision can be appealed against before the Court of Arbitration for Sport (CAS), with seat in Lausanne, Switzerland […]

The statement of appeal shall be sent directly to the CAS within 21 (twenty one) days from the receipt, by facsimile or mail, of the decision appealed against and shall contain all the elements indicated under item 2 of the CAS directives […]".

55. The Appellant filed his appeal with the CAS and the Respondent did not raise any jurisdictional objections. Furthermore, both parties confirmed that the CAS has jurisdiction in this matter by signing the Order of Procedure and also reconfirming the CAS jurisdiction at the Hearing on 28 March 2013. In light of these elements and based on Articles 75 of the CBF Statutes, Article 33 of the CRL Regulations and the directive issued with the Appealed Decision, the CAS has jurisdiction over the present appeal.

VII. APPLICABLE LAW

56. 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 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".

57. Article 2 of the CRL Regulations provides as follows:

"In the exercise of its jurisdiction, the CRL shall apply the Statutes and regulations of the Confederação Brasileira de Futebol, in particular those based on the FIFA Statutes and regulations. The CRL shall also take into account the national laws, as well as the specificity of the sport".

58. Clause 5 of the Representation Agreement stipulates as follows:

"The parties agree to adhere to the provisions of the public law in force, which govern the work placement, and other compulsory national legal provisions of the relevant country, as well as the international Law and other applicable treaties".

59. The Panel noted that the Representation Agreement, signed by the parties on 2 January 2007, provides for an implicit choice of Brazilian law to govern any dispute that arises in connection with said agreement as well as FIFA Regulations, in view of the nature and scope of the agreement. Therefore, in light of this provision and Article 2 of the CRL Regulations the Panel deems that FIFA Rules and Regulations are primarily applicable, with Brazilian law applying subsidiarily.

60. The Panel is of the opinion that the parties, in their respective written and oral submissions, refer namely to the FIFA Players' Agents Regulations. The applicable edition of these regulations is, however, disputed between the parties.

61. In fact, according to the Appellant, FIFA PAR edition 2008 shall apply since they came into force on 1 January 2008, at the time when the agent allegedly acted in conflict of interests with

the player. On the contrary, the Respondent claims the application of FIFA PAR edition 2001 based on the fact that these were the rules in force at the time when the Representation Contract between the parties was concluded.

62. While FIFA PAR edition 2001 (art. 14, lit. d) only sanctions conflicts of interests in relation to player transfers, FIFA PAR edition 2008 (art. 19, par. 8) set forth a general ban for agents to act in conflict of interests, which reads as follows: *"Players' agents shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interests of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a cooperation agreement* ***or shared interests with one of the other parties*** *or with one of the other parties' players' agents involved in the player's transfer or in the completion of the employment contract"* (emphasis added).

63. As a consequence, if FIFA PAR edition 2001 was applicable to the present dispute, any claim by the Appellant based on the alleged conflict of interests should be excluded from the outset under the provisions of art. 14, lit. d), since there is no relation with any player's transfer. On the contrary, if the edition 2008 were to be applicable, the alleged conflict of interests would not necessarily be excluded, at least in abstract terms.

64. Without prejudice to the following considerations, the Panel believes that in order to establish whether the Agent acted in violation of the FIFA PAR in connection with the assignment of the economic rights of the Player, the applicable Regulations shall be those, which were in force at the moment when the relevant violations were allegedly committed.

65. In the Panel's opinion, however, for the purpose of deciding the present dispute, it is irrelevant to determine which edition of the FIFA PAR, between 2011 and 2008, is applicable, for the reasons expressed under subsequent par. 95.

VIII. LEGAL DISCUSSION

A. Preliminary Procedural Issues: Duplicity of Claims & Right to be Heard

a. Duplicity of claims

66. The Appellant avers that the Respondent sought redress before Brazilian ordinary courts to claim commissions from the Player. In this respect, the Panel notes that this fact is undisputed, since the Agent acknowledged it and further explained the differences of scope and objects of each of these proceedings. Therefore, the Panel is of the view that the present appeals proceedings relate exclusively to the Representation Agreement signed by the parties and the allegedly due remuneration of 10% (ten per cent) to the Agent and which could only be properly judged under the auspices of the FIFA framework.

67. Consequently, the Panel is satisfied that the claim lodged by the Respondent before the state courts of Rio de Janeiro has not only a different scope and object, but also there is no identity as to the parties, since the Company is also a party in said state proceedings – element which

would impede the referral of that dispute to any FIFA or National Association dispute resolution body.

68. In view of the above, the Panel rejects the Appellant's argument of *lis pendens* or the existence of any relation between the above-mentioned proceedings.

b. Appellant's right to be heard before the CRL proceedings

69. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the Appealed Decision, or may annul the decision and refer the case back to the previous instance.

70. Considering the Appellant's allegations that his right to defence and to produce evidence were not respected by the CRL, the Panel draws the parties' attention that by filing an appeal before the CAS, eventual procedural flaws are cured by the opportunity they have to present any and all evidences which are deemed appropriate, provided that the provisions of the Code with regards to the production of evidence is respected.

B. Prescription

71. After analyzing the parties' submissions on the issue of prescription, the Panel shares the CRL understanding with regards to both the six-month and the biennial prescription.

72. Such conclusion is grounded by analyzing the wording of the relevant provisions either in the FIFA PAR 2001 (Art. 22 (3)) or FIFA PAR 2008 (Art. 30 (4)). In this respect, the Panel notes that both provisions are similar and follow the same rationale:

Art. 22 (3) FIFA PAR 2001

"Complaints about the work of a players' agent shall be directed in writing to the national association concerned or to FIFA ***within two years of the incident in question*** *and in any case* ***no later than six months after the players' agent concerned has terminated his activities as such***" (Emphasis added).

Art. 30 (4) FIFA PAR 2008

"The Players' Status Committee or single judge (as the case may be) shall not hear any case subject to these regulations if more than two years have ***elapsed from the event giving rise to the dispute*** *or* ***more than six months have elapsed since the players' agent concerned has terminated his activity****. The application of this time limit shall be examined ex officio in each individual case"* (Emphasis added).

73. By comparing both provisions, indeed the Appellant's interpretation regarding the six-month prescription is erroneous, because it is applicable only when a licensed agent ceases his/her activity towards the FIFA in general and not only a specific player. Therefore, independently

of the applicable FIFA PAR editions in these proceedings, the potential incidence of the six-month prescription in this case is groundless and must be rejected.

74. The situation is, however, different when discussing the biennial prescription in this matter. Independently of the applicable FIFA PAR editions, the Panel understands that the *"incident in question"* or *"event giving rise to the dispute"* shall be understood as the moment in which the Agent's remuneration is due and not the date of conclusion of the Second Employment Agreement as stated by the Respondent.

75. In light of these elements, the Panel also brings to the parties' attention the wording of the relevant provision in the FIFA PAR 2001 (Art. 12 (5)) (which is similar to the FIFA PAR 2008 (Art. 20 (2)).

Art. 12 (6) FIFA PAR 2001

"The players' agent and the player shall decide in advance whether the player will remunerate the players' agent with a lump sum payment at the start of the employment contract that the players' agent has negotiated for the player or whether he will pay annual instalments at the end of a contractual year".

76. In the present case it is undisputed that the parties agreed to remuneration in annual instalments at the end of every contractual year. Therefore, the Panel infers that no lump sum payments were made and, therefore, the biennial prescription shall be applied in connection with each instalment due to the Agent, i.e. end of every contractual year of the Second Employment Agreement. In this regard, the Panel shares the CRL's understanding that the biennial prescription is applicable to the present case and, therefore, it shall apply until 3 May 2008 considering that the Agent lodged his claim before the CRL on 3 May 2010. Consequently, the Agent's rights deriving from the First Employment Contract shall not be taken into consideration by the Panel because in relation to them the prescription has occurred.

C. Merits

77. Following the exchange of written submissions and the Hearing, the Panel notes that the present arbitral proceedings relate exclusively to the validity and enforceability of the Representation Agreement concluded between the Appellant and the Respondent on 2 January 2007.

a. Validity and enforceability of the Representation Agreement

78. In the course of these proceedings the parties have brought the Panel's attention to the several agreements that were signed between the parties, as well as those involving exclusively the Player as a result of the Agent's services.

79. The Panel is also aware of a pending procedure before the state courts of Rio de Janeiro, which relates to a different contract, object and scope, i.e. the Image Agreement.

80. The following questions shall then have to be answered by the Panel in order to better assess the law and extensive arguments and evidence adduced by the parties:

(i) Is the Representation Agreement concluded between the parties valid?

81. It is undisputed that on 2 January 2007 the parties concluded and signed the Representation Agreement. Pursuant to this document, the Appellant authorized the Respondent to represent the Appellant in the negotiation of any and all types of contracts either with clubs or companies, related to employment, image rights, sponsorship, national and international transfers. As consideration the parties had agreed to a 10% (ten per cent) fee over the total gross amount due to the Player in connection with any and all contracts negotiated or signed by the Agent.

82. Based on the evidence submitted by the parties, the Panel concludes that neither the Appellant nor the Respondent have contested that such an agreement was signed. The Player mainly argues that since the Agent had already received significant amounts of money in connection with his economic rights and also image rights in the past years since the Player's transfers to Atlético and Santos F.C., the Appellant avers that he does not owe the 10% (ten per cent) fee stipulated in the Representation Agreement.

83. In view of these elements, the Panel is satisfied that there is a valid contract between the parties and that the issue at stake is whether the Respondent is entitled to any remuneration in connection with agreements that were ultimately signed by the Appellant.

(ii) In case of a positive answer to the question under (i), is the Respondent entitled to any payment for the activities and/or services he may have rendered in relation to agreements that were ultimately signed by the Appellant - by virtue of the Representation Agreement?

84. Firstly, the Panel concludes that the Respondent has rendered services for the Appellant after 2 January 2007. The Panel refers in this context to the First Employment Agreement and in particular to the Second Employment Agreement and the Appendix. As a result of the employment agreements concluded by the Appellant and Santos F.C., the evidence and the parties' submissions, it is also undisputed that the Image Agreement was duly signed through the services of the Agent.

85. By analyzing the First and Second Employment Agreements, duly registered before the CBF, the Panel noted that these documents included a provision in section 20 stating that the Agent had represented the Player. It is also undisputed that the Respondent intervened in the signature of the Appendix.

86. In light of the above, the Panel concludes that the Representation Agreement has been performed and the Respondent has rendered services of a football players' agent to the Appellant, all in accordance with the scope of said agreement.

87. On the basis of all the evidence submitted in these proceedings, the Panel concludes that the Respondent acted on behalf of the Appellant in relation with the employment agreements and the Appendix with Santos F.C. and, therefore, he is entitled to claim a fee for his services.

(iii) In case the Respondent is entitled to any payment for the activities and/or services he may have rendered under the Representation Agreement, what should be his remuneration?

88. In parallel to the employment agreements and the Image Agreement signed by the Appellant, through the services of the Agent, it was brought to the Panel's attention the existence of agreements related to the Appellant's economic rights, i.e. First and Second Assignment Agreements.

89. In this regard, the Panel notes that these assignment agreements consist in private contracts signed between companies, clubs and the Player. Furthermore they provide a specific set of obligations and compensation mechanisms, which differ from an employment agreement and specially an agent's representation agreement.

90. The Appellant does not contest that the Agent contributed to the signature of his employment agreements. However, the Player alleged that the Agent would not be entitled to the agreed 10% (ten per cent), because he had already received significant amounts in connection with the Player's economic rights and the services provided by the Respondent were not satisfactory, as well as there was an alleged conflict of interests since the Agent seemed to have acted simultaneously on behalf of the Player and on his own interests during the negotiations with Santos F.C. The Player also submitted that the Agent expressly told him that the agreed commission under the Representation Agreement was not due any longer, since he had already been compensated with the amounts related to the Player's economic rights and Image Agreement.

91. According to Brazilian law, a party who claims a right on the basis of an alleged fact must carry the burden of proof, i.e. he must meet the onus to substantiate his allegations and to prove the facts on which he relies with respect to that issue. The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence (cf. CAS 2005/A/1003; CAS 2003/A/506; CAS 2008/A/1468; and CAS 2009/A/1810-1811). In the present case, the Appellant carries the burden to prove that a new agreement was allegedly reached between the parties, by means of which the 10% (ten per cent) commission was no longer due to the Agent in view of the amounts he had already received. Consequently, the Appellant should have presented the relevant evidence that could attest such understanding.

92. In the Panel's view, the Player did not provide any documents, invoices, receipts, bank statements nor checks that could prove that part of the payment had been made to the Agent or that a new agreement existed between the parties, which would exempt the Player from paying the agreed 10% (ten per cent) commission. Furthermore, the Player's declaration during the Hearing did not clarify this issue and he made only general allegations that he and the Agent agreed that he would be exempted from paying the 10% (ten per cent) commission,

since the Respondent already earned money in connection with the economic and image rights of the Player. Therefore, the Panel considers that in the absence of any relevant evidence to support the Player's allegation, the Panel has no reason to accept that the 10% (ten per cent) commission is no longer due to the Respondent.

93. Considering the Panel's conclusion and its understanding with respect to the biennial prescription (see Section C), the Appellant shall pay to the Agent the fee initially agreed in the Representation Agreement, i.e. 10% (ten per cent), in connection with the Second Employment Agreement and the Appendix, until the moment the Player was registered with Santos F.C., i.e. 31 December 2009, since this date is undisputed between the parties, whereas the transfer date to São Paulo could not be proved by the parties.

94. As a conclusion, the sum due to the Respondent corresponding to the 10% (ten per cent) commission under the Representation Agreement, amounts to:

-	R$ 50.000,00 x 0.1 x 12 months (period 02/01/2008 – 31/12/2008):	=	R$60.000,00
-	R$ 60.000,00 x 0.1 x 12 months (period 01/01/2009 – 31/12/2009):	=	R$72.000,00
	Total:	**=**	**R$132.000,00**

b. Economic rights of the Player and potential conflicts of interests

95. Notwithstanding the considerations under par. 64 above, the Panel is of the view that, irrespective of the FIFA PAR applicable to the present case, between edition 2001 and edition 2008, the Appellant has not proved in these proceedings that any conflict of interests has occurred indeed, this in contrast with the rule of the burden of proof.

96. Actually, in his Appeal Brief, the Appellant assumes that he would have received a higher salary if Santos FC had not been obliged to pay the relevant sums for the economic rights of the Player, but this allegation is not demonstrated by any document or testimony.

97. Moreover and contrary to the above, the Panel believes that it emerged from the proceedings that while negotiating the *Second Employment Agreement,* the Agent's concern was to obtain the highest remuneration for the Player since his own remuneration, according to the Representation Agreement, consisted in a percentage (10%) of the annual gross salary earned by the player from Santos FC. Therefore the Panel believes that the Agent's interest was not conflicting with the interest of the Player.

98. On the other hand, the Respondent has shown the fairness of his services to the Appellant by proving that the *Second Employment Agreement* negotiated on 3 January 2008 with Santos FC granted the Player an increase of his remuneration amounting to 500% for the first year of contract, to reach the 700% in the two next years of contract (wages which, in light of the

documentation produced during the proceedings, are the highest ever achieved by the Player in his career).

99. Therefore the Panel rejects the Appellant's claim in relation with the alleged conflict of interests.

c. Interest rate

100. The Panel decided that the Appellant shall pay the amount of R$132,000.00 (one hundred and thirty-two thousand Brazilian Reais) to the Respondent. The Respondent also requested that interests shall apply to this amount.

101. In every claim for interests a triple question arises: (i) the *dies a quo*, (ii) the *dies ad quem* and (iii) interest rate.

(i) Dies a quo

102. The *dies a quo* refers to the date that the interests shall start to run from.

103. The parties diverge to the starting point of said calculation. In this respect, considering that Brazilian law is subsidiarily applicable to this case, the Panel refers to Article 405 of the Brazilian Civil Code (Law nr. 10.406, 10 January 2002), which provides that *"the default interest is counted as of the initial summons"*. Consequently, as established in the Appealed Decision and inferred from the CRL file, the interests shall start to run from the summons of the CRL proceedings, i.e. 3 May 2010.

(ii) Dies ad quem

104. The *dies ad quem* consists in the date which the due compensation is effectively paid to the Respondent.

(iii) Interest rate

105. The Representation Agreement does not provide any interest rate. In light of this situation, Article 406 of the Brazilian Civil Code and Article 161 of the Brazilian National Tax Code (Law nr. 5.172, from 25 October 1966) shall apply, which read as follows:

"Art. 406 - When default interest is not established, or have no stipulated rate, or arise from a law provision, it shall be fixed according to the rate in force for arrears payments due to the National Treasury".

"Art. 161 – […]

§1. In case the law does not provide otherwise, the default interest shall be calculated at a one per cent rate per month".

106. The Appellant requested to apply an interest rate of 5% (five per cent) per annum, in accordance with Swiss law. The Respondent, however, requested to apply an interest rate of 1% (one per cent) per month, pursuant to Brazilian law.

107. In view of the above, the Panel rules that the interest rate of 1% per month shall apply to the amount which is due by the Player, as from the summons of the CRL proceedings, i.e. 3 May 2010.

108. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

IX. CONCLUSION

109. In view of the above reasoning, the Panel rules that the decision issued by the Comissão de Resolução de Litígios of CBF on 11 July 2012 shall be confirmed, which means accordingly that the Appellant shall pay to the Respondent the amount of R$132,000.00 (one hundred and thirty-two thousand Brazilian Reais) plus 1% interest *per month* as from 3 May 2010.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr. Rodrigo Ribeiro Souto on 6 August 2012 is dismissed.

2. The decision issued by the Comissão de Resolução de Litígios of CBF on 11 July 2012 is confirmed.

3. (…).

4. (…).

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