Arbitration CAS 2015/A/4057 Maritimo da Madeira Futebol SAD v. Al-Ahli Sports Club, award of 30 November 2015

Panel: Prof. Petros Mavroidis (Greece), President; Mr Olivier Carrard (Switzerland); Mr Jalal El Ahdab (Lebanon)

Football
Player Transfer
Hearing de novo and duty of deference
Interpretation of contract
Penalty clauses
Exclusive or cumulative nature of a penalty clause
Excessive penalty clause
Reduction of a penalty clause

1. **Article R57 of the Code contemplates a full hearing *de novo* of the original matter and grants the CAS panel the authority to render a new decision superseding that rendered by the previous instance. Accordingly, the CAS is not bound by the factual or legal findings of, or the evidence adduced before, the previous instance. The fact that the matter had been fully and thoroughly heard at the previous level cannot interfere with the scope of review of the CAS Panel, no matter how qualified the members of the previous instances are. The CAS must be able to examine the formal aspects of the appealed decisions but also, above all, to evaluate all facts and legal issues involved in the dispute. Therefore, the CAS panel has no duty of deference towards the holdings of the previous instance and has full power to review the facts and the law of the case.**

2. **When the interpretation of a contractual clause is in dispute, the true and mutually agreed upon intention of the parties is decisive, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Article 18 para. 1 Swiss Code of Obligations – "CO"). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The requirements of good faith tend to give the preference to a more objective approach. It has to be determined how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case. I.e. the emphasis is not on what a party may have meant but on how a reasonable man would have understood its declaration.**

3. **Under Swiss law (Articles 160 et seq. CO) contractual penalty provisions have to contain the following necessary elements: a) the parties bound by the contractual penalty, b) the kind of penalty that has been determined, c) the conditions triggering the obligation to pay the contractual penalty, and d) the measure of the contractual penalty.**

4. Under Swiss law, a penalty can be agreed for the event of non-performance or defective performance of a contract (Article 160 para. 1 CO). In such situation, the penalty clause is to be considered "exclusive"; i.e. the creditor must choose between compelling the performance and claiming the penalty. Alternatively a penalty can be set for the event of failure to comply with a stipulated time or place of performance (Article 160 para. 2 CO). In such situation, the penalty is "cumulative" meaning that the creditor may claim the penalty in addition to performance, provided he has not expressly waived such right or accepted performance without reservation. In such case, the creditor may also ask for default interest (Article 104 CO). In the absence of an expressly specified nature of the penalty clause, the nature of the penalty depends on the nature and meaning of the main obligation that is guaranteed. The burden of proof of the "cumulative" nature of the clause falls upon the creditor (Article 8 CC).

5. A reduction of the penalty under Article 163.3 CO is justified when there is a significant disproportion between the agreed amount and the interest of the creditor to maintain his entire claim, measured concretely at the moment when the contractual violation took place. Disproportion must significantly exceed the limits of what appears to be normal in light of all circumstances. To evaluate the excessive character of a contractual penalty, one must not decide in an abstract manner, but, to the contrary, take into consideration all the circumstances of the case at hand. Various criteria can play a determining role, such as the nature and duration of the contract, the degree of fault and of the contractual violation, the economic situation of the parties, as well as the potential subordination of the debtor.

6. The reduction of a penalty clause must meet the following material conditions: a) the penalty clause needs to be valid, failing which it will be declared void and the reduction issue will not need to be addressed; b) the main obligation needs to be valid for the creditor to be able to make an application to enforce the penalty clause. If the main obligation is void (Article 20 CO), the creditor cannot derive any right from the penalty clause; c) the debt fell due. Prior to that time, the penalty cannot be reduced; and d) the contractually agreed penalty must be excessive. As to the formal conditions, the *"non ultra petita"* principle applies i.e. a party may not be awarded anything more than or different from what it has requested, nor less than what the opposing party has acknowledged. The judge will primarily seek to enforce the parties' intention and make sure not to substitute his or her own views for that of the parties'. In other words, should the Judge hold that the penalty clause is excessive, he or she must refrain from doing anything else but reduce it so that it is not excessive anymore. In particular, the Judge cannot reduce the penalty to an amount that *he* or *she* deems fair.

I. PARTIES

1. Maritimo da Madeira Futebol SAD (the "Appellant") is a football club with its registered office in Funchal, Portugal. It is a member of the Portuguese Football Federation (Federação Portuguesa de Futebol – "FPF"), itself affiliated to the Fédération Internationale de Football Association ("FIFA") since 1923.

2. Al-Ahli Sports Club (the "Respondent") is a football club with its registered office in Jeddah, Saudi Arabia. It is a member of the Saudi Arabian Football Federation, which has been affiliated with FIFA since 1956.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

B. The agreement signed between the Parties

4. H. (the "Player") is a professional player, born in 1991.

5. On 11 July 2013, the Appellant agreed to transfer the Player to the Respondent for a sum of EUR 2,750,000. The transfer agreement provides so far as material (the "Transfer Agreement"):

> *"2.1 Transfer Fee*
>
> *Considering the above-mentioned TRANSFER, [the Respondent] shall pay to [the Appellant], as transfer fee, the net amount of € 2.7500.000,00 (…), in 3 (three) instalments, as follows:*

	Net Amounts	***Payment Dates***
A)	*1.500.000 €*	*20.07.2013*
B)	*750.000 €*	*30.12.2013*
C)	*500.000 €*	*30.06.2014*
Total Figures	***2.750.000,00 €***	

> *(…)*
>
> *Under such payment context, [the Appellant] shall submit to [the Respondent], in advance to the above-listed payment instalments, a valid invoice for all sums payable under this AGREEMENT.*
>
> *(…)*

2.3. Fine agreed for non-payment of the Transfer Fee on time:

In case [the Respondent] fails to duly comply on time with the payment obligations referred on clause 2.1, [the Appellant] shall be entitled to receive from [the Respondent], as a fine for such eventual contractual non-compliance, an extra amount of € 10.000,00 (ten thousand Euros) per each day of payment's delay (without any limit of amount), being the payment of such fine not subject/dependent on the issuance of any notice placing [the Respondent] into contractual default.

The aforementioned daily fine foreseen in the present clause is mutually agreed and was negotiated and reached upon the parties' sole responsibility and free conscious, being considered as fair and proportionate, also taking into consideration the fact that the PLAYER's ITC shall be issued before any payment being made.

(…)

SEVENTH: JURISDICTION AND RULES APPLICANT

The FIFA Regulations on the Status and Transfer of Players shall apply to this Agreement and any dispute arising from it shall be submitted to the attention and consideration of the competent FIFA Jurisdictional Bodies, or, alternatively, but only in case [the Appellant] wishes/accepts to, directly (i.e. as an Ordinary Procedure) to the Court of Arbitration for Sports (CAS), in Lausanne, Switzerland".

6. On 29 July 2013, the Appellant sent to the Respondent a letter, which reads as follows:

> *"Please find attached our invoice (…) regarding the transfer of the football player [H]. We kindly ask you to settle it according to the terms of the contract signed on July 11th, 2013, using the following bank details (…)".*

7. Attached to the letter was one invoice for the global amount of EUR 2,750,000. Under the heading *"Designação"*, this document expressly indicates *"Transferéncia do Atleta [H], Cfr ponto 2.1 do contrato "International Player's Transfer Agreement" de 11/07/2012 (sic)".*

8. The Respondent paid to the Appellant the first and second instalments of the transfer compensation, respectively on 15 July 2013 and on 7 January 2014. It is undisputed that the Appellant waived its right to claim any penalty with respect to the late payment of the second instalment.

9. On 2, 7 and 11 July 2014, the Appellant sent reminders to the Respondent, urging the latter to pay the last instalment of the transfer compensation. It recalled that *"under the agreed terms, for each day of delay, a financial penalty shall and will be applied".*

10. The Appellant's reminders received no answer from the Respondent.

11. On 6 August 2014, the Appellant lodged a complaint with FIFA against the Respondent, claiming the payment in its favour of EUR 500,000 plus a fine of EUR 10,000 per each day *"of the transfer fee payment delay as from 30 June 2014".*

12. On 14 August 2014, FIFA confirmed to the Parties that *"according to the information contained in the Transfer Matching System (TMS), the Portuguese club, Clube Desportivo Nacional, engaged the [Player] "out*

of contract, free of payment" (cf. art. 6 par. 3 of the Annexe 3 to the Regulations on the Status and Transfer of Players)".

13. On 5 September 2014, the Respondent paid to the Appellant an additional EUR 150,000.

14. To date, no other payment has been made by the Respondent in relation with the Transfer Agreement of 11 July 2013.

C. Proceedings before the FIFA Single Judge of the Players' Status Committee

15. On 6 August 2014, the Appellant lodged an appeal with FIFA, where it presented the above-mentioned claim against the Respondent.

16. In its reply, filed before the FIFA Single Judge of the Players' Status Committee (the "FIFA Single Judge"), the Respondent argued that the payment of the last instalment of the transfer fee had not been paid, because the Appellant had failed to a) deduct the solidarity contribution from its claim; and b) issue the corresponding invoice.

17. In a decision dated 20 November 2014, the FIFA Single Judge noted that, in the course of the proceedings before him, the Respondent had paid an additional amount of EUR 150,000 on 5 September 2014. As a consequence, he held that the Respondent had to pay to the Appellant the amount of EUR 350,000, which corresponded to the outstanding part of the transfer fee.

18. With reference to the solidarity contribution, the FIFA Single Judge found that the Respondent did not provide any evidence that it had in fact distributed the 5% of the relevant transfer compensation to the club(s) involved in the Player's training and education and decided to reject this argument of the Respondent. Moreover, the FIFA Single Judge stressed that *"it is clearly not the purpose of the provisions regarding solidarity contribution that the new club, i.e. the Respondent, can simply retain 5% of the transfer compensation without distributing said 5% to the clubs involved in the training and education of the player. Taking into account all the foregoing, the Single Judge considered that the Respondent could not enrich itself by retaining 5% of the transfer compensation without first distributing such percentage as solidarity contribution to the club(s) involved in the training and education of the player".*

19. As regards to the penalty of EUR 10,000 per day of delay, the FIFA Single Judge ruled that the Appellant's request *"was to be rejected in view of the content of art. 2.1 of the agreement in combination with the fact that the [Appellant] had not provided the Respondent with an invoice for the 3rd instalment prior to 30 June 2014. In the opinion of the Single judge, art. 2.1 of the transfer agreement dictated the [Appellant] to provide the Respondent with a separate invoice for every single payment. Since the [Appellant] failed to provide such invoice, the Single Judge was of the opinion that the fine corresponding to 10,000 per day could not be applied".*

20. As a result, on 20 November 2014, the FIFA Single Judge decided the following:

> *"1. The claim of [the Appellant] is partially accepted.*
>
> *2. The [Respondent] has to pay to the [Appellant] the amount of EUR 350,000,* ***within 30*** *days as from the date of notification of this decision.*

3. *In the event that the amount due to the [Appellant] in accordance with the above-mentioned number 2 is not paid by the Respondent within the stated time limit, interest at a rate of 5% p.a. will apply as of the expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.*
4. *Any further claim lodged by the [Appellant] is rejected.*
5. *The final costs of the proceedings, amounting to CHF 20,000, are to be paid,* ***within 30 days*** *as from the date of notification of the present decision, as follows:*

   5.1. The amount of CHF 15,000 has to be paid by the Respondent to FIFA (…).

   5.2. The amount of CHF 5,000 has to be paid by the [Appellant] to FIFA".

21. On 27 April 2015, the Parties were notified of the above decision (the "Appealed Decision").

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 4 May 2015, the Appellant filed its statement of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code").

23. On 7 May 2015, the CAS Court Office acknowledged receipt of the Appellant's statement of appeal, of its payment of the CAS Court Office fee and took note of its nomination of Mr Olivier Carrard as arbitrator. It drew the Parties' attention to the possibility of submitting the dispute to CAS mediation and noted that the Appellant chose English as the language of the arbitration. In this respect, it informed the Respondent that unless it objected within three days, the procedure would be conducted in English. The CAS Court Office also invited the Respondent to nominate an arbitrator from the list of CAS arbitrators within ten days, failing which the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed with the appointment *in lieu* of the Respondent.

24. On 19 May 2015, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceeding.

25. On 20 May 2015, the Appellant informed the CAS Court Office that it agreed to submit the present proceedings to CAS Mediation.

26. On 27 May 2015, the CAS Court Office informed the Parties that, in the absence of the Respondent's reaction concerning the Appellant's request to mediate, no CAS Mediation would be initiated and the proceeding would continue under the CAS Appeals Arbitration rules.

27. On 27 May 2015, the Appellant filed its appeal brief in accordance with Article R51 of the Code.

28. On 28 May 2015, the CAS Court Office made reference to its letter of 7 May 2015, by means of which the Respondent was requested to nominate an arbitrator within ten days of receipt of said letter by courier. In the absence of communication from the Respondent in this regard within the time limit granted, the CAS Court Office advised the Parties that it would be for the

President of the CAS Appeals Arbitration Division, or her Deputy, to proceed with the appointment *in lieu* of the Respondent in accordance with Article R53 of the Code.

29. On 31 May 2015, the Respondent sent a letter to the CAS Court Office and the Appellant in order to explain its first answer against the appeal. It should be, however, noted that the Respondent completed afterwards this letter and submitted it as an "answer" in accordance with Article R55 of the Code (see below).

30. On 23 June 2015, the Respondent filed its answer in accordance with Article R55 of the Code.

31. On 25 June 2015, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

32. On 29 June 2015, the Appellant confirmed to the CAS Court Office that it wished a hearing be held in the present matter. The Respondent failed to express any opinion as regards a hearing within the given deadline.

33. On 29 June 2015, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr Olivier Carrard and Mr Jalal El Ahdab, arbitrators.

34. On 14 July 2015, the Parties were informed that the Panel had decided to hold a hearing, which was scheduled for 2 September 2015.

35. On 17 and 18 August 2015, the Appellant, respectively the Respondent, signed and returned the Order of Procedure in these appeal proceedings.

36. The hearing was held on 2 September 2015 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Brent J. Nowicki, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

37. At the hearing, the Appellant was represented by its legal counsel, Mr Gonçalo Almeida, and the Respondent by its legal counsel, Mr Kai Ludwig.

38. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.

39. The Panel heard evidence from the following persons, who testified via teleconference, with the agreement of the President of the Panel (see Article R44.2 para. 4 of the Code):

- Mr Carlos Pereira, the Appellant's President;
- Mr Sancho Freitas, the Appellant's former Chief Financial Officer;
- Mrs Catarina Serrado, Appellant's internal legal counsel.

40. Each person heard was invited by the President of the Panel to tell the truth subject to the consequences (in case of non-obedience) provided in Swiss law.

41. After the Parties' final arguments, the Panel closed the hearing, and announced that its award would be rendered in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

42. The Appellant submitted the following requests for relief:

> *"In view of all the above factual and legal arguments, the Appellant hereby requests the Panel to:*
>
> 1. *Admit the present appeal;*
> 2. *Partially cancel the appealed decision;*
> 3. *Confirm that the Respondent is liable to pay to it the outstanding amount of € 350.000,00 (three hundred and fifty thousand Euros), following Clause 2.1 of the Agreement;*
> 4. *Establish that the Respondent has seriously breached the Agreement, by failing to pay on time the last instalment due on 30 June 2014 (not to mention the second instalment), which remains partially outstanding;*
> 5. *Establish that the Respondent is liable to pay to it a fine/penalty clause, corresponding to € 10.000,00 (ten thousand Euros) per each day of delay of the due payment, as from 30 June 2014 until the date of its entire and effective payment, which already totalizes the amount of € 3.300.000,00 (three million and three hundred thousand Euros) to date;*
> 6. *Establish that the Respondent is liable to pay to it default interest at the rate of 5 p.a. over the outstanding amount of € 350.000,00 (three hundred and fifty thousand Euros) as from 30 June 2014 until the date of its entire and effective payment;*
> 7. *Condemn the Respondent to bear all the proceeding costs connected with the present procedure, as well as to contribute towards the expenses incurred by the Appellant (e.g. legal assistance and other eventual expenses) in an amount still to be determined, but no less than CHF 10.000,00 (ten thousand Swiss Francs)".*

43. The submissions of the Appellant, in essence, may be summarized as follows:

- The Appellant has complied with all of its contractual obligations towards the Respondent.
- According to the clear wording of the Transfer Agreement, the Appellant had to send to the Respondent just *"one invoice for all sums, instead of 1 (one) invoice per each of the 3 (three) instalments"*. The only purpose of such an invoice was to satisfy accounting requirements provided under Portuguese law. There was no reason for the Appellant to issue a separate invoice for each instalment of the transfer compensation.
- The Respondent paid the first two instalments as well as part of the third instalment on the basis of the invoice sent by the Appellant on 29 July 2013. Under these circumstances, the

Respondent is acting in bad faith when it contends that the Appellant's claim for the payment of the third instalment fell due only after the issuance of a specific invoice. The Respondent's attitude is even more criticisable as it did not request such an invoice (or react in any manner) upon receipt of the reminders to pay the outstanding amount served by the Appellant on 2, 7 and 11 July 2014.

- As stated in the Transfer Agreement, both Parties accepted the penalty clause freely, voluntarily and unreservedly. This contractual penalty was agreed upon by the Parties *in lieu* of a bank guarantee, which the Respondent was not able to provide to the Appellant at the moment of the Player's transfer.
- The penalty clause is valid and must be respected. The Respondent seeks to escape its contractual commitments. The principle of *pacta sunt servanda* must be respected and the terms and conditions, which the Parties freely agreed on, must be fulfilled.
- The FIFA Single Judge failed *"to address the subsidiary request for the payment of default interest at a rate of 5% p.a. over the entire due amount until the date of its effective payment"*.

B. The Answer

44. The Respondent submitted the following requests for relief:

> *"**SEC. 3. INQUIRIES.***
>
> ***1.*** *Deduct the paid amount of solidarity contribution the amount of EUR 33,142.*
>
> ***2.*** *Deduct the remaining amount of the solidarity contribution that must be paid, the mount of EUR 4,.75 to AFC Ajax and EUR 4.850 to FC Groningen, or in alternative refer the two claims to Martimo da Madeira Futebol SAD.*
>
> ***3.*** *Deduct the mount of EUR 37,500 the solidarity contribution to Yongln FC U15 Baegam (EUR 22,500) and Shingal High School (EUR 15.000) or in alternative refer the claim to Martimo da Madeira Futebol SAD.*
>
> ***4.*** *Dismiss all the Appellant requests".*

45. At the hearing, both the Appellant's and Respondent's representatives confirmed that the issue related to the payment of the solidarity contribution was extraneous to the present proceedings and was not to be addressed or taken into consideration by the Panel.

46. In light of the foregoing, the Panel asked the parties to the dispute whether it should extend its review to any claims relating to the payment of the solidarity contribution. The Panel further noticed that it should not do so in light of the pending, separate dispute between the same parties, unless if explicitly requested to do so. Both parties to the dispute explicitly requested from the Panel to abstain from entertaining any claims regarding the payment of solidarity contribution.

47. The submissions of the Respondent, in essence, may be summarized as follows:

- The Appellant has no legal interest in applying for the payment of EUR 350,000, which had been confirmed by the FIFA Single Judge in his Appeal Decision. Hence, the Appellant's corresponding request for relief must be dismissed.

- After careful evaluation and consideration of all the facts and circumstances, the FIFA Single Judge concluded that, pursuant to the clear wording of Article 2.1 of the Transfer Agreement, no penalty or late interest was due as long as a specific invoice was not issued for each instalment of the transfer compensation. Under the principle of deference, the CAS Panel must accept the position of the FIFA Single Judge.

- The Respondent accepted to pay the second and part of the third instalments of the transfer compensation only on the basis of its good will.

- The Appellant's failure to issue a specific invoice for the third instalment made it impossible for the Respondent to carry out its side of the contract, as provided under Article 91, second sentence, of the Swiss Code of Obligations ("CO").

- Historically speaking, the penalty clause is based on *"damage law"*. In the present case, the Appellant has not suffered any damage.

- The penalty clause is excessive and should be reduced significantly by the Panel.

V. APPLICABLE LAW

48. Article R58 of the Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

49. The case at hand was submitted to the FIFA Single Judge on 6 August 2014, *i.e.* after 31 July 2013, which is the date when the FIFA Statutes, edition July 2013 (the "applicable FIFA Statutes"), came into force.

50. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, *"[t]he 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".*

51. Article 7 of the Transfer Agreement states that *"The FIFA Regulations on the Status and Transfer of Players shall apply to this Agreement and any dispute arising from it shall be submitted to the attention and consideration of the competent FIFA Jurisdictional Bodies, or, alternatively, but only in case [the Appellant] wishes/accepts to, directly (i.e. as an Ordinary Procedure) to the Court of Arbitration for Sports (CAS), in Lausanne, Switzerland".*

52. At the hearing before the CAS, both the Appellant and the Respondent confirmed that they agreed on the application of the relevant FIFA regulations, and accessorily, Swiss law.

53. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

VI. JURISDICTION

54. The jurisdiction of CAS, which is not disputed, derives from articles 66 *et seq.* of the FIFA Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

55. It follows that the CAS has jurisdiction to decide on the present dispute.

56. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. ADMISSIBILITY

57. The appeal is admissible as the Appellant submitted it within the deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VIII. MERITS

58. There is no controversy about the fact that the Respondent has to pay to the Appellant the amount of EUR 350,000.

59. Hence, the interpretation of Article 2.1, last para, of the Transfer Agreement is at the centre of the debate. On the one hand, the Respondent and the FIFA Single Judge are of the opinion that no late penalty or interest was due as long as a specific invoice was not issued for the third instalment of the transfer compensation, whereas the Appellant contends that the penalty clause was triggered from the very first day of delay.

60. As a result, the issues to be resolved by the Panel are the following ones:

- Does the principle of deference forbid the CAS Panel to depart from the interpretation of the Transfer Agreement given by the FIFA Single Judge?

- How must Article 2.1, last para. of the Transfer Agreement be interpreted?

- How is the penalty clause to be applied?

A. Does the principle of deference forbid the CAS Panel to depart from the interpretation of the Transfer Agreement by the FIFA Single Judge?

61. In the Appealed Decision, the FIFA Single Judge held that *"art. 2.1 of the transfer agreement dictated the [Appellant] to provide the Respondent with a separate invoice for every single payment. Since the [Appellant] failed to provide such invoice, the Single Judge was of the opinion that the fine corresponding to 10,000 per day could not be applied"*.

62. The Respondent alleges that the CAS Panel should recognize the conclusions of the FIFA Single Judge (*i.e.* Mr Geoff Thompson), considering the fact that he is a distinguished and qualified person, who was just as well placed as the CAS Panel members to evaluate and interpret the litigious provision of the Transfer Agreement.

63. Article R57 of the Code provides that *"the Panel has full power to review the facts and the law"*. Under this provision, the Panel's scope of review is basically unrestricted. The Code contemplates a full hearing de novo of the original matter and grants the CAS Panel the authority to render a new decision superseding that rendered by the previous instance. Accordingly, the CAS is not bound by the factual or legal findings of, or the evidence adduced before, the previous instance (CAS 2008/A/1718 to CAS 2008/A/1724, para. 166 and numerous references).

64. The fact that the matter had been fully and thoroughly heard at FIFA level cannot interfere with the scope of review of the CAS Panel, no matter how qualified the members of the previous instances are. The CAS must be able to examine the formal aspects of the appealed decisions but also, above all, to evaluate all facts and legal issues involved in the dispute (CAS 2008/A/1515, para. 88 and numerous references).

65. For the above reasons, the Panel finds that it has no duty of deference towards the holdings of the FIFA Single Judge and has the full power to review the facts and the law of the case.

B. How must Article 2.1, last para., of the Transfer Agreement be interpreted?

66. The question is whether the Appellant had to send to the Respondent only one invoice for the global amount of the transfer compensation or one invoice *per* instalment. The Respondent is of the view that the remaining payment of the transfer fee was conditional upon the receipt of a specific invoice sent by the Appellant.

67. The relevant provisions of the Transfer Agreement are:

> *Article 2.1, last para.:*
>
> *"Under such payment context, [the Appellant] shall submit to [the Respondent], in advance to the above-listed payment instalments, a valid invoice for all sums payable under this AGREEMENT".*
>
> *Article 2.3 para. 1:*
>
> *2.3. Fine agreed for non-payment of the Transfer Fee on time:*
>
> *In case [the Respondent] fails to duly comply on time with the payment obligations referred on clause 2.1, the [Appellant] shall be entitled to receive from [the Respondent], as a fine for such eventual contractual non-compliance, an extra amount of € 10.000,00 (ten thousand Euros) per each day of payment's delay*

(without any limit of amount), being the payment of such fine not subject/dependent on the issuance of any notice placing [the Respondent] into contractual default".

i) In general

68. When the interpretation of a contractual clause is in dispute, the judge should seek to discover the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Article 18 para. 1 CO). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664 consid 3.1; 128 III 419 consid. 2.2 p. 422). The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 133 III 61, consid. 2.2.1; ATF 131 III 606, consid. 4.1; ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The requirements of good faith tend to give the preference to a more objective approach (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration.

ii) In the present case

69. In light of Article 2.1, last para., of the Transfer Agreement, the Respondent submits that the fine corresponding to EUR 10,000 per day of delay could not be applied, because the Appellant failed to provide the Respondent with an invoice for the third instalment prior 30 June 2014.

70. As a preliminary remark, the Panel observes that Articles 2.1 and 2.3 of the Transfer Agreement do not expressly state the consequences, which could arise from the non-compliance with the obligations reflected in Article 2.1. last para. of the Transfer Agreement. For the reasons exposed hereafter, this question does not need to be addressed, given the Panel's decision regarding the correct interpretation of the litigious provision.

71. Article 2.1 last para. of the Transfer Agreement is divided in three sections: a) *"The [Appellant] shall submit to the Respondent"*, b) *"in advance to the above listed payment instalments"*, c) *"a valid invoice for all sums payable under this AGREEMENT".*

72. The litigious segment of this provision is the section c) which, according to the Respondent, should be read as *"one valid invoice for each of the sums payable under this AGREEMENT".*

73. The Appellant claims that it satisfied all the conditions set under this provision as it issued *"a valid invoice [i.e. on 29 July 2013] for all sums [i.e. for the global amount of EUR 2,750,000] payable under this AGREEMENT [i.e. payable as contractually agreed under Article 2.1 para.1]".*

74. As it can be seen, only the Respondent's proposed interpretation of section c) requires an addition to the text in order to support its position. Under such circumstances, the Respondent carries the burden of proof to establish that there are good reasons to depart from the plain text

of section c), which allegedly does not reflect the Parties' core intention (ATF 121 III 118 consid. 4b.aa).

75. In the present case, the Respondent based its whole argumentation exclusively on the literal interpretation of Article 2.1, last para., of the Transfer Agreement. In particular, it did not give any explanation as to a) the purpose of the said invoices, b) why it needed an invoice per instalment, or c) why there is a link between the penalty clause and the issuance of a specific invoice.

76. At the hearing before the CAS, the Respondent submitted for the first time that, as provided under Article 91 CO, it was impossible for it to carry out its contractual obligations as long as the Appellant failed to send a specific invoice. This statement was not substantiated or supported by any evidence. In addition, the Respondent failed to establish that it actually did everything in its power to carry out its contractual obligations (LOERTSCHER D., in THÉVENOZ/WERRO, Commentaire romand, Bâle, 2012, ad. Article 91, n 14, p. 699 and references). On the contrary, the facts of the case clearly demonstrate that the Respondent showed a rather passive attitude during its contractual relationship with the Appellant (*e.g.* it did not react to the Appellant's reminders) or even during the present proceedings. Finally, the Respondent's position is inconsistent with the fact that none of its previous payments was made on the basis of a specific invoice:

- On 15 July 2013, the Respondent paid the first instalment. This was 5 days before the first instalment fell due and 14 days before the issuance of the only invoice sent by the Appellant.
- On 7 January 2014, the Respondent paid the second instalment, in spite of the fact that it did not receive a corresponding invoice.
- On 5 September 2014, the Respondent paid to the Appellant an additional EUR 150,000, in spite of the fact that it did not receive a corresponding invoice.

77. In contrast with the Respondent's position, it may be inferred from the circumstances of the case that the Parties' intention was for the Appellant to issue just one invoice and/or that the issuance of one or several invoices was actually of futile importance for the Respondent:

- The wording of Article 2.1, last para., of the Transfer Agreement does not exclude the possibility that the Appellant had to issue just one invoice.
- Nowhere in the Transfer Agreement is it stipulated that the actual payment of each instalment falls due only after the prior issuance of a specific invoice.
- As exposed above, the Respondent made all of its payments without any specific invoice.
- On 29 July 2013, the Appellant sent one invoice of EUR 2,7500,00. The letter and its attachment clearly suggest that no other invoice would be issued. At the receipt of this document, the Respondent did not make any comment or requested a specific invoice for the payment of the subsequent instalments.

- On 2, 7 and 11 July 2014, the Appellant sent reminders to the Respondent, urging the latter to pay the remaining amount of the transfer fee. On that occasion, the Respondent not only did not request a specific invoice but also did not answer to the Appellant.
- It is only before the FIFA Single Judge that the Respondent claimed for the first time that its payment was conditional upon the receipt of a specific invoice. It claimed that the Appellant *"must provide respondent with invoice of last batch after deducting the amount of solidarity contribution in order to let the claimant to meet the payment of the amount"* (see Appealed Decision, para. 7, page 3). Nevertheless, the Respondent paid EUR 150,000 to the Appellant; *i.e.* retaining 70% of the outstanding amount owed, without any explanation. The Respondent's representative expressly chose to abandon this line of defence at the CAS hearing.

78. Based on the foregoing, on the wording of the litigious articles of the Transfer Agreement, on the principle of good faith, on the context as well as under the overall circumstances, the Panel considers the Respondent's interpretation of Article 2.1, last para. of the Transfer Agreement, untenable.

79. As a result, the Panel finds that the Appellant properly performed all of its contractual obligations arising from the Transfer Agreement, save the fact that the invoice of 29 July 2013 was sent after the first instalment fell due, violating thereby section b) of Article 2.1, last para., of the Transfer Agreement. However, this aspect is irrelevant with respect to the payment of the third instalment of the transfer fee.

80. In light of the foregoing consideration, the Panel concludes that the Appellant had no obligation to issue a specific invoice prior to the payment of the third instalment, and, consequently, the Respondent was under the obligation to honour the payment of the third instalment, due on 30 June 2014. By its failure to make a timely payment of the last instalment of the transfer fee, the Respondent triggered the Appellant's right to request the payment of the penalty provided under Article 2.3 of the Transfer Agreement.

C. How is the penalty clause to be applied?

81. It is undisputed that the Respondent failed to pay the last instalment on 30 June 2014. For the reasons exposed above, it has been established that the requirements of Article 2.3 of the Transfer Agreement were met.

82. Hence, the issue to be determined is whether a claim can be brought by the Appellant against the Respondent for the payment of the amount stipulated under Article 2.3 of the Transfer Agreement.

83. The Panel notes - and it is not disputed by the Parties - that the penalty clause contained in the said provision qualifies as a contractual penalty under Swiss law (Articles 160 *et seq.* CO). Indeed, Article 2.3 of the Transfer Agreement contains all the necessary elements required for such purpose: a) the parties bound thereby are mentioned, b) the kind of penalty has been

determined, c) the conditions triggering the obligation to pay it are set, and d) its measure is identified (COUCHEPIN G., La clause pénale, Zürich, 2008, para. 462).

84. Under Swiss law, the relevant provisions are the following:

> *Article 160 CO: Contractual penalty – I. Rights of the creditor - 1. Relation between penalty and contractual performance*
>
> *1. Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.*
>
> *2. Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation.*
>
> *3. The foregoing does not apply if the debtor can prove that he has the right to withdraw from the contract by paying the penalty.*
>
> *Article 161 CO: 2. Relation between penalty and damage*
>
> *1. The penalty is payable even if the creditor has not suffered any loss or damage.*
>
> *2. Where the loss or damage suffered exceeds the penalty amount, the creditor may claim further compensation only if he can prove that the debtor was at fault.*
>
> *Article 163 CO: II. Amount, nullity and reduction of the penalty*
>
> *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".*

85. In light of the above provisions, the Panel must resolve the following issues:

- Is the penalty payable even if the Appellant has not suffered any loss or damage?
- Is the penalty clause *"exclusive"* or *"cumulative"*?
- Is the penalty clause excessive?
- If the penalty clause is excessive, how should it be reduced?

i) Is the penalty payable even if the Appellant has not suffered any loss or damage?

86. At the hearing before the CAS, the Respondent submitted that the Appellant was not entitled to the payment of any penalty as it did not suffer any damage.

87. In light of Article 161 para. 1 CO, this allegation can be dismissed without further consideration.

ii) Is the penalty clause "exclusive" or "cumulative"?

88. Under Swiss law, which the Parties have confirmed should apply to supplement the FIFA Regulations (see supra at para. 52 and 53), a penalty can be agreed for the event of non-performance or defective performance of a contract (Article 160 para. 1 CO). In such situation, the penalty clause must be considered *"exclusive"*; *i.e.* the creditor must choose between compelling the performance and claiming the penalty. At the same time, a penalty can be set for the event of failure to comply with the stipulated time or place of performance (Article 160 para. 2 CO). In such situation, the penalty is *"cumulative"*: this means that the creditor might claim the penalty in addition to performance, provided he has not expressly waived such right or accepted performance without reservation. In such case, the creditor might as well ask for the default interest (Article 104 CO) (COUCHEPIN G., op. cit., para. 1182 *et seq.*). When the parties have not expressly specified the kind of clause they intended to stipulate, the nature of the penalty depends on the nature and meaning of the main obligation that is guaranteed. The burden of proof of the *"cumulative"* nature of the clause falls upon the creditor (Article 8 CC) (MOSER M., in THÉVENOZ/WERRO, Commentaire romand, Bâle, 2012, ad. Article 160, n 13, p. 1155).

89. In view of the clear wording of Article 2.3 para. 1 of the Transfer Agreement, the Panel has no difficulty to find that the agreed penalty is *"cumulative"*.

iii) Is the penalty clause excessive?

90. The Respondent considers that the amount of the penalty is excessively high and should be subject to reduction by the Panel pursuant to Article 163 para. 3 CO, according to which *"the court may reduce penalties that it considers excessive"*.

91. Swiss laws and case law do not regulate specific cases where an imbalance between the parties' obligations must be considered as usurious. Some criteria have been developed, and it is for the judge to decide on a case by case basis. Disproportion must significantly exceed the limits of what appears to be normal in light of all circumstances for a practice to be considered usurious (Decision of the Swiss Federal Tribunal 6B_27/2009; dated 29 September 2009, consid. 1.2).

92. As such, a reduction of the penalty by the judge is justified when there is a significant disproportion (*"disproportion crasse"*) between the agreed amount and the interest of the creditor to maintain his entire claim, measured concretely at the moment that the contractual violation took place. To evaluate the excessive character of the contractual penalty, one must not decide in an abstract manner, but, on the contrary, take into consideration all the circumstances of the case at hand. The Swiss Supreme Court holds that various criteria can play a determining role, such as the nature and duration of the contract, the degree of fault and of the contractual

violation, the economic situation of the parties, as well as the potential subordination of the debtor (ATF 133 III 201, consid. 5.2; see also CAS 2010/A/2202 para. 28).

93. Between 1 July 2014 (date on which the last instalment fell due) and 2 September 2015 (date of the CAS hearing) 428 days elapsed. At the day of the CAS hearing, should Article 2.3 of the Transfer Agreement be applied without restriction, the Appellant would be entitled to the payment of EUR 4,280,000, which represents:

- 1.55 times the whole transfer compensation;
- 8.55 times the last instalment due (EUR 500,000);
- 12.22 times the outstanding amount due (EUR 350,000);
- An annual interest rate of 717% (EUR 500,000 x 717,397 = approx EUR 3,6 mio).
- An annual interest rate of 1,027,953% (EUR 350,000 x 1,027.953% = approx EUR 3,6 mio).

94. In view of the above, the Panel finds that the penalty foreseen under Article 2.3 of the Transfer Agreement is excessive, and, consequently, must be reduced, although the Appellant declared at the hearing such clauses and such amounts were standard practice in similar agreements it has entered into.

iv) If the penalty clause is excessive, how should it be reduced?

In general

95. According to Swiss scholars and jurisprudence, the reduction of a penalty clause must meet some material as well as formal conditions.

96. As regards to the material conditions (COUCHEPIN G., op. cit.; para. 918 to 920):

- The penalty clause needs to be valid, failing which the Judge will declare it void and will not need to address the reduction issue.
- The main obligation needs to be valid for the creditor to be able to make an application to enforce the penalty clause. If the main obligation is void (Article 20 CO), the creditor cannot derive any right from the penalty clause.
- The debt fell due. Prior to that time, the Judge cannot reduce the penalty.
- The contractually agreed penalty must be excessive.

97. In the present case, it has been established that the above material conditions are satisfied: a) the Parties have freely and validly agreed to the terms of the Transfer Agreement, b) they have

accepted that the terms set out in Article 2.3 of the Transfer Agreement qualify as a contractual penalty under Swiss law (Articles 160 *et seq.* CO), c) the Appellant has complied with all of its contractual obligations towards the Respondent, the debt of which has fallen due, and d) the penalty clause has been found to be excessive.

98. As to the formal conditions, the *"non ultra petita"* principle applies: the Judge may not award a party anything more than or different from what it has requested, nor less than what the opposing party has acknowledged.

99. The Swiss Supreme Court held that Article 163 CO is part of public order and that, as a consequence, the Judge must apply it even if the debtor has not expressly requested a reduction. Nevertheless, the Judge must observe a degree of deference as the parties are free to determine the amount of the contractual penalty (see Article 163 para. 1 CO) and as the principle of freedom of contract commands that the judge abides by the parties' agreement. The judge must intervene only when the stipulated amount is so high that it unreasonably and flagrantly exceeds the amount admissible with regard to the sense of justice and equity (ATF 133 III 201, consid. 5.2; see also CAS 2010/A/2202 para. 28; Decision of the Swiss Federal Tribunal 4C.5/2003, dated 11 March 2003, consid. 2.3.1; ATF 114 II 264 consid 1a).

100. The Judge must assess all the elements, which are objectively relevant and look for an adequate solution regarding the concrete circumstances of the matter before him or her (ATF 101 Ia 545 cons. 1b). He or she will primarily seek to enforce the parties' intention and make sure not to substitute his or her own views for that of the parties' (ATF 133 III 201 consid. 5.2 and 5.4). In other words, should the Judge hold that the penalty clause is excessive, he or she must refrain from doing anything else but reduce it so that it is not excessive anymore. In particular, the Judge cannot reduce the penalty to an amount that *he* or *she* deems fair (ATF 133 III 201, consid. 5.2 and 5.5 and references).

101. In a very recent decision (regarding the penalty applied to the late payment of a player's transfer fee), the Swiss Federal Tribunal had to decide whether the CAS did not sufficiently reduce a contractually agreed penalty. In the case at hand, the CAS awarded the claimant a penalty of EUR 1,680,000, corresponding to a quarter of the remaining payment of the transfer fee (i.e. EUR 6,720,000). Before this instance, it was claimed that the penalty exceeded the maximum default interest of 15% per annum provided by the then applicable Consumer Credit Act, with the consequence that it was usurious. According to the appellant who brought the case before the Swiss Federal Tribunal, the agreed penalty clause was exclusively there to compensate a late payment, to which the ordinary late interest of 5% must be applied. The Swiss Federal Tribunal insisted on the fact that, with regard to mandatory rules such as Article 163 al. 3 CO, it is not for it to review the arbitral award as if it were an appellate court but only to sanction the violation of the prohibition of discriminatory or confiscatory measures ordered by the arbitral tribunal. The Swiss Tribunal Federal dismissed the Appellant's appeal as it failed to explain that the awarded penalty constituted a confiscatory measure, which was an inadmissible impediment to its financial future (Decision of the Swiss Federal Tribunal, 4A_634/2014, dated 21 May 2015, consid. 5.2.1 and 5.2.2).

In particular

102. It is not for the creditor to establish that the penalty is appropriate but it is for the debtor to present and establish the facts, which should lead to a reduction (ATF 133 III 43 consid. 4.1).

103. In the present case, the Respondent confined itself to claiming that the penalty was excessive. It notably did not explain a) the reasons why it refused to pay the outstanding amount, b) if the late payment was due to its financial situation, c) why it did not react to the Appellant's reminders, d) if the penalty clause had been freely negotiated or imposed by the Appellant, or e) why the Player was transferred for free to Clube Desportivo Nacional, etc.

104. The Panel has very few objective criteria at its disposal to assess the reduction of the penalty:

- The penalty clause itself.

- At the hearing, it has been argued (and not challenged) that the penalty clause was a substitute for a bank guarantee that the Respondent was unable to provide before the Transfer Agreement entered into force. The Respondent was seemingly in such a haste to sign the Player that the Parties agreed on a penalty clause. The guarantee aspect of the penalty is also reflected in para. 2 of this provision (*"The aforementioned daily fine foreseen in the present clause is mutually agreed and was negotiated and reached upon the parties' sole responsibility and free conscious, being considered as fair and proportionate, also taking into consideration the fact that the PLAYER's ITC shall be issued before any payment being made"* – emphasis added).

- The Respondent transferred for free the Player to Clube Desportivo Nacional before the payment of the last instalment of the transfer compensation. No evidence was offered to the Panel to either explain the reasons of such a transfer or to suggest that the Respondent was for some reason not satisfied with the Player's performances.

105. The Panel has determined that the inactions of the Respondent entitled the Appellant to claim the payment of a penalty. The Appellant attempted several times to warn the Respondent of the consequences of a late payment and even accepted to submit the present matter to CAS Mediation in order to settle the dispute amicably. The Respondent never replied to any of these measures taken by the Appellant. At the hearing before the CAS, the Respondent's representative confirmed that he received instructions from his client not to conciliate. It is only when the Appellant filed a claim before FIFA that the Respondent finally reacted and made a partial payment of the last instalment. In spite of the fact that the Respondent does not dispute the fact that the outstanding amount of EUR 350,000 is due, it has not paid it to date.

106. The Panel considers that the Parties were obviously aware of the excessiveness of the penalty clause. The Appellant has never seriously tried to argue the opposite. A EUR 10,000 fine per day of delay, regardless of the amount due (whether it is EUR 1 or EUR 500,000) goes obviously too far in matters related to players' transfer, in particular when the player in question is not among the most popular or valuable athletes.

107. Bearing in mind that:

- the contractually agreed penalty clause *"was negotiated and reached upon the parties' sole responsibility and free conscious, being considered as fair and proportionate"* (see Article 2.3 of the Transfer Agreement);

- the Parties agreed upon a penalty of a fixed amount per day of delay;

- between 1 July 2014 (date on which the last instalment fell due) and 2 September 2015 (date of the CAS hearing) 428 days have elapsed;

- in any case, the Judge must only reduce an excessive penalty so that its excessive character disappears and he must not substitute his own appreciation to the Parties' will;

108. the Panel holds that:

- the reduced penalty follows the same calculation method foreseen by the Parties, i.e. a penalty of a fixed amount per day of delay;

- the amount of the reduced fine moves closer to the amount foreseen by the Parties.

109. At the day of the CAS hearing, if the penalty clause was to be applied as it has been incorporated by the Parties into the Transfer Agreement, the Appellant would be entitled to the payment of EUR 4,280,000, which is excessive for the reasons developed in para. 92 above.

110. Therefore, in light of the above considerations and considering the criteria applicable to the reduction of an excessive penalty clause under Article 163 para. 3 CO, in particular a) the Appellant's interest, b) the severity of the breach, c) the intentional failure by the Respondent to execute the timely payment of the last instalment, and d) the Respondent's overall attitude, the Panel reduces the penalty clause to an amount corresponding to a penalty of EUR 500 per day of delay, which, under the circumstances of the case, is reasonable and does not exceed the amount admissible with regard to the sense of justice and equity. As a matter of fact, with such a penalty, at the day of the CAS hearing, the Appellant would be entitled to the payment of EUR 214,000; *i.e.* more than half of the outstanding amount of EUR 350,000. Such a penalty does not constitute a confiscatory measure, which could be seen as an inadmissible impediment to the Respondent's financial future.

111. Article 104 CO foresees that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum. Where a deadline for performance of the obligation has been set by agreement, a notice is not necessary (see Article 102 CO; THÉVENOZ L., in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, 2ème edition, 2012, ad Article 102 CO, N. 26).

112. It must be observed that in its request for relief, the Appellant requested the Panel to *"Establish that the Respondent is liable to pay to it default interest at the rate of 5 p.a. over the outstanding amount of € 350.000,00 (three hundred and fifty thousand Euros) as from 30 June 2014 until the date of its entire and*

effective payment". In other words, the Appellant did not claim for the payment of a 5% interest on EUR 500,000 *p.a.* starting on 1 July 2014 until 4 September 2014. In spite of the fact that the Appellant would be entitled to such an amount, and under the *ultra petita* principle, the Panel must refrain from going beyond the Appellant's request for relief.

113. Regarding the dies a quo for the interest, the Parties to the Transfer Agreement agreed that the last instalment was due on 30 June 2014.

114. With regard the last instalment, the Respondent paid EUR 150,000 on 5 September 2014.

115. As a consequence, the Appellant is entitled to the following payments:

a) EUR 350,000 (EUR 500,000 – EUR 150,000) plus interest of 5% *p.a.* starting on 1 July 2014 until the effective date of payment;

b) an amount of EUR 500 per day as from 1 July 2014 until the effective date of payment of the sum mentioned under litt. a) above (including the late interest).

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 May 2015 by Maritimo da Madeira Futebol SAD against the decision of the FIFA Single Judge of the Players' Status Committee dated 20 November 2014 is partially upheld.

2. The decision of the FIFA Single Judge of the Players' Status Committee dated 20 November 2014 is partially modified as follows:

a) Al-Ahli Sports Club is ordered to pay to Maritimo da Madeira Futebol SAD EUR 350,000 plus interest of 5% *p.a.* starting on 1 July 2014 until the effective date of payment;

b) Al-Ahli Sports Club is ordered to pay to Maritimo da Madeira Futebol SAD, an amount of EUR 500 per day as from 1 July 2014 until the effective date of payment of the above mentioned amount (2.a).

(…)

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