Arbitration CAS 2016/A/4428 Udinese Calcio S.p.A v. Santos Futebol Clube & Fédération Internationale de Football Association (FIFA), award of 24 January 2017

Panel: Mr Mark Hovell (United Kingdom), President; Prof. Petros Mavroidis (Greece); Mr Markus Bösiger (Switzerland)

Football
Training compensation
New argument at the hearing
Timely payment of advance of costs
Statute of limitations
Reduction of interests owed for late payment
Reduction of procedural costs

1. **A panel may accept that one appellant develops during a hearing a specific argument inferred by its general request for relief that the challenged decision be set aside, especially if said party had referred to such issue in its appeal brief and requested to be provided with a copy of the file pertaining to the case so it could formally state its position in this respect at the hearing.**

2. **Pursuant to Swiss law and article 78 paragraph 1 of the Swiss Code of Obligations, where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday, the time of performance or the last day of a time limit is deemed to be the next working day. Accordingly, a payment of advance of costs made on the next banking day or working day following the expiry of a granted time limit meeting the aforementioned criteria shall be deemed valid.**

3. **In order to assess whether a training compensation-related claim is barred by the statute of limitations of two years following the occurrence of the event having given birth to the dispute, the relevant 2-year period commences as from the date the payment of training compensation was overdue from, i.e. thirty days plus one day after the player's registration date with the relevant club.**

4. **Although neither specifically provided for in the FIFA Regulations on the Status and Transfer of Players nor in the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, a consistent practice by FIFA and CAS founded on article 104 of the Swiss Code of Obligations as a subsidiary basis was established to award interest on late payments of such sums as training compensation, usually consisting of a rate of 5% p.a. and calculated as from the due date until the date of actual payment. In the absence of any proof submitted by one appellant that within the framework of alleged delayed proceedings, the amount of interest resulting of the application of the aforementioned standard dates allegedly**

caused it a considerable loss, no revision of the amount of interest owed to the respondent as per the challenged decision shall be implemented.

5. It is not, in principle, for the CAS, absent of extraordinary circumstances, to recalculate the procedural costs of the first instance proceedings.

I. PARTIES

1. Udinese Calcio S.p.A ("Udinese" or the "Appellant") is a football club with its registered office in Udine, Italy. Udinese is currently competing in Serie A. It is a member of the Federazione Italiana Giuoco Calcio (the "FIGC"), which in turn is affiliated to Fédération Internationale de Football Association.

2. Santos Futebol Clube ("Santos" or the "First Respondent") is a football club with its registered office in Santos, Brazil. Santos is currently competing in the Campeonato Brasileiro and the Campeonato Paulista. It is a member of the Confederação Brasileira de Futebol (the "CBF"), which in turn is affiliated to Fédération Internationale de Football Association.

3. Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the governing body of world football and has its registered office in Zurich, Switzerland.

II. FACTUAL BACKGROUND

A. Facts of the case

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

5. On 23 June 2003, in the season of his 14th birthday, J. (the "Player") was registered for Santos.

6. On 28 July 2006, the Player entered into a two-year professional employment contract with Santos, to expire on 27 July 2008.

7. On 29 July 2007, the Player, together with his mother (the Player was a minor at the time), entered into a new one-year contract with Santos, also to expire on 27 July 2008 (the "First Contract").

8. Concurrently, on 29 July 2007, the Player was allegedly forced, against his will, to sign a further employment contract with Santos, which was to become effective on 28 July 2008 and to expire on 27 July 2011 (the "Second Contract").

9. On 17 September 2007, the Player signed a pre-contract with Serie A club, Torino FC ("Torino"). Torino and the Player agreed to enter into a five-year employment contract from 31 March 2008.

10. In September 2007, the Player brought a claim before the 7th Labour Court of Santos (the "Brazilian Court") against Santos in relation to the First Contract. Santos also lodged a counterclaim against the Player.

11. On 21 November 2007, the Brazilian Court rendered a decision on the merits of both the Player's claim against Santos and Santos' counterclaim against the Player. The Brazilian Court dismissed both claims as having no legal basis.

12. At some stage in early 2008, the Player brought another claim before the Brazilian Court against Santos complaining about the Second Contract he had allegedly been forced to sign.

13. On 27 July 2008, the Player's First Contract with Santos expired.

14. On 4 August 2008, the Brazilian Court granted the Player the *"desired protective measure"*, releasing him from the Second Contract signed between the Player and Santos to commence on 28 July 2008 and expire on 27 July 2011. The Brazilian Court also declared that the Player was free to *"sign a contract with another employer"*, but also highlighted that the Second Contract was *"suspended, pending a final decision"*.

15. On 13 May 2009, the Player signed a five-year employment contract with Udinese, to commence on 1 July 2009 and expire on 30 June 2014.

16. On 27 July 2009, the CBF issued the international transfer certificate (the "ITC") for the Player to the FIGC.

17. On 28 July 2009, the Player was registered with Udinese.

18. On 1 January 2010, the Player and Santos settled all claims in the Brazilian Court arising out of their contractual dispute in relation to the Second Contract.

19. On 1 July 2010, the Player left Udinese and was transferred to the Italian Serie B club, Vincenza Calcio for EUR 400,000.

B. Proceedings before FIFA

20. On 21 December 2007, Santos filed a claim before FIFA against Torino and the Player requesting compensation for what Santos alleged was a premature breach of the Player's

employment contract with Santos. This matter was assigned the FIFA reference *"08-00102/boa"*.

21. During the investigation phase of the proceedings, it was found that the individual acting on behalf of Torino with regards to the Player's contract with Torino was not authorised to do so by Torino. Further, Torino was not aware of the actions taken by this individual with respect to the Player. As such, any contract entered into by this individual purportedly on behalf of Torino could not be legally binding upon it.

22. On 5 November 2010, Santos wrote to FIFA requesting to drop its case against Torino and instead made the same claims against Udinese.

23. On 16 November 2010, FIFA wrote to Santos instructing them to amend their claim.

24. On 26 November 2010, Santos filed a new Statement of Claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting that the Player and Udinese be ordered to pay compensation for breach of contract without just cause and that Udinese be ordered to pay training compensation for the Player and to impose disciplinary sanctions against Udinese. This maintained the FIFA reference *"08-00102/boa"*.

25. On 30 November 2010, FIFA sent Santos' correspondence to Udinese.

26. On 4 August 2011, FIFA wrote to Santos informing them of the requirements under Article 9(1) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") and in particular of the need to separate out the breach of contract claims from the training compensation claim. FIFA informed Santos that should it not receive the required documents by 18 August 2011, that it would assume that its intervention was no longer needed and close the file. FIFA used a new reference for this correspondence *"mil 11–01743"*.

27. On 18 August 2011, Santos wrote to FIFA asking for an exceptional extension, citing unforeseen circumstances with its ability to produce the required documents.

28. On 19 August 2011, FIFA wrote to Santos granting them an exceptional extension until 29 August 2011.

29. On 29 August 2011, Santos filed another new Statement of Claim before the FIFA DRC requesting that Udinese be ordered to pay training compensation in the amount of EUR 466,604.75 plus interest of 5% *p.a.* as from the day on which the payment was effectively due. As directed to by FIFA, Santos used the new FIFA reference *"mil 11-01743"* for this claim.

30. On 31 August 2011, FIFA wrote to Santos requesting that they make the relevant procedural payment in accordance with Article 9(1)(h) and Article 17 of the FIFA Procedural Rules within 10 days.

31. On 13 September 2011, Santos wrote to FIFA informing them that the relevant payment had been made.

32. Over the next three years, Santos wrote to FIFA at least twice a year requesting that FIFA *"carry on with the present file and inform us about the next steps to be taken"*.

33. On 20 August 2014, the FIFA DRC decided on the separate breach of contract dispute brought by Santos against Udinese and the Player. The FIFA DRC determined that it was not competent to hear the case and dismissed Santos' claim. This decision used the FIFA reference *"08-00102/boa"*.

34. On 30 October 2014, FIFA wrote to Udinese, through the FIGC, informing them of Santos' training compensation claim against Udinese. FIFA invited Udinese to either proceed with the remittance of the alleged training compensation due to Santos, or respond to the claim made by Santos by 19 November 2014. This correspondence used the new FIFA reference *"11-01743/boa"*.

35. On 19 November 2014, Udinese submitted its written response to FIFA.

36. On 28 April 2015, the decision relating to the breach of contract related dispute before the FIFA DRC was communicated to the Parties.

37. On 12 June 2015, FIFA wrote to Udinese, through the FIGC, acknowledging receipt of Udinese's 19 November 2014 submission.

38. On 3 September 2015, the FIFA DRC rendered a decision (the "Appealed Decision") as follows:

> *"1. The claim of the Claimant, Santos Futebol Clube, is admissible.*
>
> *2. The claim of the Claimant is partially accepted.*
>
> *3. The Respondent, Udinese Calcio, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 345,000 plus 5% interest p.a. as of 28 August 2009 until the date of effective payment.*
>
> *4. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.*
>
> *5. Any further claim lodged by the Claimant is rejected.*
>
> *6. The final amount of 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:*
>
> *6.1. CHF 15,000 by the Respondent to FIFA to the following bank account (…).*
>
> *6.2. CHF 5,000 by the Respondent to the Claimant (…).*

7. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points 2. and 6.2. are to be made and to notify the Dispute Resolution Chamber of every payment received".

39. On 14 January 2016, FIFA wrote to Santos and Udinese, through the FIGC, notifying them of the Appealed Decision.

III. PROCEEDINGS BEFORE THE CAS

40. On 3 February 2016, pursuant to Article R47 and Article R48 of the Code of Sports-related Arbitration (the "CAS Code"9, Udinese filed a Statement of Appeal against Santos and FIFA at the Court of Arbitration for Sport (the "CAS"). The Statement of Appeal contained the following requests for relief:

"1. To accept the present appeal against the challenged decision;

2. To set aside the challenged decision;

3. To establish that the Claim of the First Respondent regarding the training compensation for the player J. was time-barred;

4. In the event the request set out in point 3 above is not accepted, to establish that the Second Respondent decided ultra petita and/or extra petita;

5. To establish that the Appellant shall not pay any training compensation to the First Respondent;

6. In the event, the Panel should decide that the Appellant should pay training compensation to the First Respondent, to establish that:

i. the training period of the player J. with the First Respondent finished on 17 September 2007 and the training compensation shall only be awarded until this moment;

ii. the Appellant shall not pay any interests to the First Respondent for the period between the registration of the player J. for the Appellant and 30 October 2014;

7. To establish that the Appellant shall not pay any costs of the FIFA proceedings to the First Respondent;

8. To establish that the Appellant shall not pay any costs of the FIFA proceedings to the Second Respondent;

9. To condemn the Respondents to the payment in favour of the Appellant of the legal expenses incurred;

10. To establish that the costs of the present arbitral proceedings shall be borne by the Respondents".

41. On 9 February 2016, Udinese wrote to the CAS Court Office requesting a five-day extension of the time limit to file its Appeal Brief.

42. On 10 February 2016, the CAS Court Office granted Udinese a five-day extension to file its Appeal Brief.

43. On 18 February 2016, pursuant to Article R51 of the CAS Code, Udinese filed its Appeal Brief with the CAS Court Office with the same requests for relief, save for the following modification:

> *"6. In the event, the Panel should decide that the Appellant should pay training compensation to the First Respondent, to establish that:*
>
> *i. the training period of the Player with the First Respondent finished on 17 September 2007 and the training compensation shall only be awarded until this moment;*
>
> *ii. the maximum amount due to the First Respondent as training compensation is EUR 255,000;*
>
> *iii. the Appellant shall not pay any interests to the First Respondent;*
>
> *iv. in the event the Appellant should be condemned to pay interests, then no interest shall be due to the First Respondent for the period between the registration of the Player for the Appellant on 27 July 2009 and 30 October 2014".*

44. On 23 February 2016, FIFA wrote to the CAS Court Office requesting that the time limit for filing its Answer be fixed after the payment of advance costs by Udinese.

45. On 24 February 2016, the CAS Court Office wrote to the Parties confirming that FIFA's time limit for filing its Answer would be fixed upon Udinese's payment of its share of the advance costs.

46. On 3 March 2016, Santos wrote to the CAS Court Office enquiring as to whether the extension of the time limit for filing an Answer applied to Santos as well as FIFA.

47. On 4 March 2016, the CAS Court Office wrote to the Parties informing them that the extension of the time limit for filing an Answer applied only to FIFA, as it was the only Party that filed the relevant request pursuant to Article R55 of the CAS Code. The CAS Court Office advised Santos that should it wish to benefit from a new time limit, it should file a request.

48. On 7 March 2016, the CAS Court Office wrote to the Parties informing them that Udinese had paid its share of advance costs.

49. On 8 March 2016, the CAS Court Office wrote to the Parties informing them that it had received a fax from Santos on 7 March 2016 (dated 4 March 2016) requesting that the time limit be modified and fixed after the payment of advance costs by Udinese. As the CAS Court Office had notified the Parties that Udinese had paid its share of advance costs prior to Santos filing its request, the original time limit would remain in place for Santos.

50. On 10 March 2016, FIFA requested another extension of the time limit to file its Answer until 8 April 2016.

51. On 10 March 2016, the CAS Court Office wrote to the Parties, inviting Udinese and Santos to state whether they agreed with FIFA's request for another extension.

52. On 10 March 2016, Santos wrote to the CAS Court Office stating that it agreed with FIFA's request for another extension.

53. On 14 March 2016, Udinese wrote to the CAS Court Office stating that it did not object to FIFA's request for another extension.

54. On 15 March 2016, the CAS Court Office wrote to the Parties informing them that FIFA had been granted another extension, and the time limit to file its Answer would be on 8 April 2016.

55. On 16 March 2016, pursuant to Article R55 of the CAS Code, Santos filed its Answer containing the following requests for relief:

"1. The Appeal filed by Udinese Calcio S.p.A. is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber on 3 September 2015 is confirmed.

3. Udinese Calcio S.p.A. shall bear all the costs of this arbitration.

4. Udinese Calcio S.p.A. shall compensate Santos Futebol Clube for the legal and other costs incurred in connection with this arbitration, in an amount to be decided at the discretion of the panel".

56. On 5 April 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

- President: Mr Mark A. Hovell, Solicitor, Manchester, England
- Arbitrators: Mr Petros C. Mavroidis, Professor, Commugny, Switzerland
  Dr Markus Bösiger, Attorney-at-law, Zurich, Switzerland

57. On 8 April 2016, pursuant to Article R55 of the CAS Code, FIFA filed its Answer containing the following requests for relief:

"1.1. In conclusion of all of the above, we request that the CAS rejects the present appeal and confirms the decision passed by the Dispute Resolution Chamber on 3 September 2015 in its entirety.

1.2. Furthermore, we ask that the CAS orders the Appellant to bear all the costs incurred with the present procedure, and to cover all legal expenses of FIFA related to the proceedings at hand".

58. On 18 April 2016, the CAS Court office wrote to the Parties informing them that the Panel had requested that FIFA send the FIFA DRC case file on this matter to the CAS Court Office.

59. On 3 May 2016, FIFA sent the FIFA DRC case file to the CAS Court Office.

60. On 18 May 2016, the CAS Court Office wrote to the Parties informing them of the Panel's decision that a hearing would be held on this matter.

61. On 26 May 2016, the CAS Court Office wrote to the Parties informing them that the Panel had convened a hearing for this matter for 13 July 2016.

62. On 29 June 2016, the CAS Court Office sent the Order of Procedure to the Parties.

63. On 30 June 2016, the CAS Court Office informed the Parties that Santos had duly signed the Order of Procedure.

64. On 1 July 2016, the CAS Court Office informed the Parties that Udinese and FIFA had duly signed the Order of Procedure.

65. A hearing was held on 13 July 2016 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the composition of the Panel. The Panel was assisted by Mr. Daniele Boccucci, CAS Counsel. The following persons attended the hearing:

i.	For Udinese:	Mr Gianpaolo Monteneri and Ms. Anna Smirnova – external counsel;
ii.	For Santos:	Messrs Cristiano Caús and Raphael Paço Barbieri – external counsel; and
iii.	For FIFA:	Mr Antoine Bonnet – internal counsel.

66. There were no witnesses present at the hearing. The Panel heard from the Parties with regards to the admissibility of certain evidence (the translations of the decisions of the Brazilian Court) and new arguments from the Appellant regarding the payment of the FIFA DRC advance of costs by the First Respondent. The Panel determined to allow such arguments and evidence on the basis that the arguments could not have been made in its Appeal Brief, as they related solely to information gleaned recently from the FIFA file (which the Appellant had not seen before) and the Appellant had raised some questions regarding the payment of the advance of costs in its Appeal Brief (see par. 70 ff. below). Additionally, the translations were crucial for the Panel to fully understand some of the issues at stake.

67. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. After the Parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to this written Award.

68. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

IV. THE PARTIES' SUBMISSIONS

69. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel however, has carefully considered all the submissions made and evidence advanced by the Parties, even if no explicit reference is made in what immediately follows.

A. Udinese's Submissions

70. In summary, Udinese submitted the following in support of its Appeal.

i. The advance of payments before the FIFA DRC was late and the case should have been dismissed

71. In order to be considered validly made, Santos' claim must have accompanied the advance of costs made by it to FIFA, and if the payment was not made within the relevant timeframe, then the Panel should find that Santos' claim was invalid and that the FIFA DRC erred in declaring the claim admissible. To this end, Udinese requested that Santos and FIFA produce evidence regarding the effective and correct payment of the advance of costs by Santos and the receipt of the payment by FIFA. The Panel had ordered that FIFA produce the FIFA DRC file to the Parties.

72. At the hearing, Udinese submitted that within the scope of its 2nd and 5th prayers for relief, as set out in its Appeal Brief (see above), the Panel should dismiss Santos' claim as the payment was indeed made late.

73. It was only when it received the FIFA file, during the course of the procedure in hand before the CAS, that Udinese noted that it had not received copies of some of the direct correspondence between FIFA and Santos. In particular, it referred to the letter of 31 August 2011 that FIFA had sent to Santos, in which Santos was given 10 days to pay its advance of costs (in the sum of CHF 5,000) to FIFA, warning that *"failure to pay the relevant advance within the previously mentioned time limit will result in the claim not being heard"*.

74. The FIFA file also revealed that the payment was received in FIFA's bank account on 13 September 2011, i.e. 2 days late. In accordance with Article 17(5) of the FIFA Procedural Rules and the warning in this letter, FIFA should have closed the case and sent the late payment back:

> *"If a party fails to pay the advance of costs when submitting a claim or counter-claim, the FIFA administration shall allow the party concerned ten days to pay the relevant advance and advise that failure to do so will result in the claim or counter-claim not being heard".*

75. Udinese submitted at the hearing that Swiss law was not relevant to this issue, as the FIFA Statutes confirmed that Swiss law was only applicable to FIFA DRC disputes on a subsidiary basis, and here the FIFA Procedural Rules were clear, if payments were not made within the time limits, then the case should not be heard.

76. Much as the Panel has the ability to hear this dispute de novo, this does not cure all defects made during the process at first instance. The Panel could only put itself in the position of the FIFA DRC and apply the Procedural Rules. The payment was not made in time, so the case should have been dismissed.

ii. Santos' claim for training compensation is time-barred

77. Santos made its first and only claim for training compensation allegedly due for the Player on 29 August 2011. This claim was made after the limitation periods for which a party can make a claim had expired, under both the FIFA Procedural Rules and the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

78. Article 25.5 of the FIFA RSTP states:

> *"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be)* ***shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute****. Application of this time limit shall be examined ex officio in each individual case* [emphasis added by Udinese]*".*

79. As the event that gave rise to the dispute – namely, Udinese registering the Player on 27 July 2009 – occurred more than two years before Santos filed its claim for training compensation on 29 August 2011, the claim had expired and Santos was time-barred from bringing it. As a result, the FIFA DRC erred in deciding that Santos' claim was admissible.

80. The submissions that Santos made on 5 November 2010 and 26 November 2010 ("the November Submissions") were mere correspondence to FIFA and did not constitute a valid claim.

81. In support of this, Udinese referred to the 4 August 2011 letter sent by FIFA to Santos, in which FIFA stated:

> *"We acknowledge receipt of your correspondences dated 5 November 2010 as well as 26 November 2010, and have taken due note that you intend to lodge a complaint regarding training compensation in connection with the registration of the player J. with the club Udinese Calcio".*

82. Udinese highlighted the fact that FIFA referred to the November Submissions as mere *"correspondences"* rather than a *"claim"* or *"petition"*. Udinese also drew attention to the fact that FIFA stated that it recognised Santos' mere intent to lodge a claim in the future, and *"obviously, the* ***intention*** *to act somehow cannot be considered as if such action has already been performed".*

83. Further, the November Submissions did not conform to the requirements of the FIFA Procedural Rules, and therefore could not be considered as valid petitions for the purpose of procedures regarding training compensation.

84. Udinese again referred to the 4 August 2011 letter sent by FIFA, which informed Santos that, under Article 9(1) of the FIFA Procedural Rules, certain criteria needed to be fulfilled in order

for a claim to be valid. FIFA set a deadline of 18 August 2011 for Santos to comply with such criteria and produce the required documents in a proper form. That FIFA set a deadline for Santos to comply with Article 9(1) of the FIFA Procedural Rules was clear evidence that the November Submissions did not conform to the requirements of the FIFA Procedural Rules, and therefore could not be considered as valid petitions.

85. As the 29 August 2011 submission was the first time Santos complied with the requirements of Article 9(1) of the FIFA Procedural Rules, this was the first and only submission that could be considered as a valid claim for training compensation. By 29 August 2011, however, the two-year limitation period had already expired.

86. In the Appealed Decision, the FIFA DRC incorrectly determined that the "*event giving rise to the dispute is non-payment of the training compensation allegedly due to [Santos] within thirty days having followed the player's registration with the FIGC on 28 July 2009*". Udinese asserted that the event giving rise to the dispute was the Player's registration, not the expiration of the thirty-day time limit to pay training compensation. Even Santos in its Answer agreed with Udinese here. In further support of this point, Udinese cited *CAS 2013/A/3082*, in which the Sole Arbitrator determined as follows:

"E. The time-limit for a claim for training compensation

77. (…) The Sole Arbitrator ***considers the event giving rise to the present dispute to be the Player's registration with Appellant on 26 February 2010.*** *(…)"* [emphasis added by Udinese].

87. Udinese also cited a FIFA DRC decision passed on 6 November 2014 regarding training compensation in connection with the Player E, in which the FIFA DRC held that the event giving rise to the dispute for training compensation was the player's registration with the relevant club having occurred.

88. Considering the Player was registered on 27 July 2009 and Santos made its first and only claim for training compensation on 29 August 2011, FIFA erred by not rejecting the case, as it was time-barred from doing so under the two-year limit.

89. Additionally, Santos referred to the following case in the November Submissions: *"Santos Futebol Clube, Brazil / Player J., Brazil and Torino Football Club SpA, Italy – Ref. Nr. 08-00102/boa,"* when in fact, that case number referred to an entirely different dispute between Santos, the Player and, originally, Torino (this dispute was subsequently amended to replace Torino with Udinese, and the FIFA DRC dismissed Santos' claim).

90. As there were two separate disputes – one employment-related breach of contract claim, and one relating to training compensation – Udinese submitted that the separation of the two claims was essential. In the event that one and the same document contained claims on multiple disputes that it is customary for FIFA to advise on the obligation for a claimant to lodge two different claims pertaining to two different matters. As the November Submissions related to the employment-related dispute, they could not be considered to constitute claims in the present

training compensation case. Udinese submitted that "*only from the moment [FIFA] had received two separate claims, it was in the position to consider the claim as being effectively submitted and the matter to be pending*".

91. Accordingly, for all the reasons above, Udinese stated that the FIFA DRC erred in asserting in the Appealed Decision that Santos' claim was filed on 5 November 2010 and complemented on 29 August 2011. Only the 29 August 2011 document could be considered as a claim by Santos' and the Appealed Decision should be set aside as the claim was made after the expiration of the two-year time limit.

iii. FIFA disregarded the principle of res judicata

92. By the time FIFA opened proceedings in the present case, the Brazilian Court had already rendered its decisions of 21 November 2007 and 26 August 2008. Under the principle of *res judicata*, a matter may not be re-litigated once it has been judged on the merits by a competent decision-making body.

93. The principle of *res judicata* is fundamental to Swiss public policy, and Udinese specifically referred to Article 59 of the Swiss Civil Procedure Code, which stated the procedural requirements that must be satisfied in order for a court to consider an action or application. Udinese particularly noted the following procedural requirements:

"– the case is not the subject of pending arbitration elsewhere;

– the case is not already the subject of a legally binding decision".

94. In the present case, the Brazilian Court had already decided upon the same subject matter involving the same parties, and therefore, the requirements for the application of *res judicata* were met.

95. As the matter had already been decided upon by the Brazilian Court well before Santos submitted this matter to FIFA, FIFA was not entitled to hear the dispute. Furthermore, FIFA should have immediately rejected Santos' petition in accordance with Article 9(2) of the FIFA Procedural Rules, which states that "*Petitions with improper or inadmissible content will be rejected immediately*".

96. Udinese submitted that FIFA should have rejected Santos' November Submissions under the principle of *res judicata* with respect to the employment-related dispute, as the matter had already been decided by the Brazilian Court. Had FIFA correctly rejected the November Submissions, then any subsequent request for training compensation based on the November Submissions would have been disregarded as well.

97. Santos' claim before FIFA amounted to "forum shopping", and therefore violated the principle of good faith.

iv. The FIFA DRC ruled ultra and/or extra petita

98. Udinese submitted that in rendering the Appealed Decision, the FIFA DRC ruled *ultra* and/or *extra petita* – that is, that the FIFA DRC granted more than what Santos requested in its prayers for relief and/or granted Santos a remedy that it did not request in its prayers for relief.

99. Udinese referred to the second of Santos' November Submissions (the submission dated 26 November 2010), in which Santos made the following request relating to training compensation:

> *"(v) Consider that Training Compensation is due to Santos F.C. by the respective clubs which signed the player until now, all in line with Annex 4 of the FIFA RSTP (player's passport to be provided in due course)";*

100. Santos failed to specify against whom the request was effectively addressed, and Udinese submitted that *"the respective clubs which signed the player until now"* was not a valid way to address a party. Udinese also submitted that only one club may be responsible for the payment of training compensation and not a set of clubs.

101. Santos also failed to specify the amount in dispute. Pursuant to Article 9(1)(g) of the FIFA Procedural Rules, petitions must contain the amount in dispute.

102. Even in its 29 August 2011 submission, Santos again failed to specify the amount in dispute. Santos requested the following:

> *"In the view of the above, we revert to Article 5 (4), annex 4 of FIFA RSTP, according to which, it falls within the purview of the Dispute Resolution Chamber to review disputes concerning the distribution of the Training Compensation, to respectfully request this governing body the implementation of its own statutes, determining therefore the immediate payment of the compensation claimed by the Brazilian Club Santos F.C., plus default interest payment of 5% p.a. from the day on which the payment was effectively due".*

103. Santos never requested Udinese to be condemned to pay a specific amount, and rather simply requested that FIFA implement *"its own statutes, determining the immediate payment of the compensation claimed"*. The amount owed in training compensation cases are the result of a mathematic equation – years of training multiplied by the indicative amounts – and it is for Santos to do the equation and state an amount in dispute.

104. As Santos failed to state an amount in dispute, the FIFA DRC ruled *ultra* and/or *extra petita* when it awarded Santos an amount of training compensation when Santos never stated an amount in dispute.

105. In support of its argument, Udinese cited *CAS 2010/A/2104*, in which that panel held:

> *"The Panel notes here it* ***cannot directly condemn the ACF to the payment of this amount to the extent that the appellants ask to find on the establishment of the right and not to find on the condemnation*** *in its appeal brief"* [emphasis added, and translation from the original French to English made by Udinese].

106. Additionally at the hearing, Udinese referred to Article 58(1) of the Swiss Civil Code which limits a judging body not to award more than it has been requested and that if a sum of money is requested, then the amount must be specified. Further, Udinese relied upon a decision of the Swiss Federal Tribunal that supported this, under reference 5A_663/2011.

107. Accordingly, for all of the reasons above, Udinese requested that the Panel overturn the Appealed Decision.

v. Calculation of the training compensation

108. In the alternative, Udinese submitted that should the Panel decide that it should pay training compensation to Santos, the FIFA DRC erred when calculating training compensation and requested that the Panel modify the amount accordingly. The Player's training period ended on 17 September 2007, rather than, as the FIFA DRC held, on 28 August 2008.

109. Santos recognised that the Player and Torino entered into an employment agreement on 17 September 2007, thereby prematurely ending the Player's employment relationship with Santos. As a result, Santos could not have played any part in training the Player after 17 September 2007. Udinese submitted that "*the basic principle and purpose of training compensation is to financially compensate those clubs that have effectively contributed to the development of a player through training and education. The training clubs should however only be compensated for the period they effectively trained young players*".

110. An additional argument was advanced at the hearing in relation to the 17 September date. As from that time, as the Player and Santos were in dispute, Santos would have stopped investing in (and training) the Player from that time.

111. Udinese referred to Article 3 Annex 4 of the FIFA RSTP and CAS jurisprudence in support of its argument that "*the period to be considered when establishing training compensation owed is the time during which a player was effectively trained by a club*" [emphasis added by Udinese].

112. Udinese provided its own calculation of training compensation, which showed that the amount owed, if any, is EUR 255,000.

vi. Reduction of interest

113. The FIFA DRC acted *ultra* and/or *extra petita* by establishing a specific date from which interest would begin accruing. In its prayers for relief, Santos failed to specify a date, and the FIFA DRC went beyond the scope of its remit in taking it upon itself to establish a date.

114. Udinese only received the relevant files on 30 October 2014, i.e. over three years after the first correspondence in this matter between Santos and FIFA. FIFA caused an unacceptable delay in this matter, and Udinese should not suffer financially because of this. At the hearing, Udinese claimed that the delays had caused it EUR 100,000 of damage.

115. Accordingly, for all of the reasons above, Udinese requested that, should the Panel award Santos training compensation, that no interest should be paid.

vii. Costs of the proceedings

116. Udinese submitted that the costs ordered by the FIFA DRC were disproportionate. It noted that the CAS Panel in *CAS 2014/A/3620* determined to review the procedural costs as a result of the unreasonable delays caused by FIFA in that matter.

B. Santos' Submissions

117. In summary, Santos submitted the following in support of its defence.

i. The advance of payments before the FIFA DRC was late and the case should have been dismissed

118. At the hearing, after listening to the submissions made by Udinese, Santos simply submitted that the 10 days expired on a Saturday, so the payment was made on the very next banking day i.e. 12 September 2011, which fully respected the time limit set by FIFA.

ii. Santos' claim for training compensation is time-barred

119. Santos submitted that the Player was registered with Udinese on 28 July 2009, so it had until 29 July 2011 to bring its claim for training compensation. The FIFA DRC had correctly acknowledged that Santos' initial claim had been brought on 5 November 2010 and was completed on 29 August 2011. As such, Santos had filed its claim 8 months before any deadline expired.

120. Santos noted that it took FIFA until 4 August 2011 to acknowledge the claim, but that delay does not "contaminate" its claim.

121. Article 9(1) of the FIFA Procedural Rules expressly envisaged that not all initial claims may be made exactly in accordance with the FIFA Procedural Rules. In the event that they were not, a claimant is given time to rectify this. This is what happened with Santos and it respected all time limits set by FIFA.

122. Santos' claim was lodged in time, Udinese's right of defence has not been jeopardised, so the Panel should dismiss its arguments that the claim is time barred.

iii. FIFA disregarded the principle of res judicata

123. The subjects, the requests, the applicable law, the matter, the jurisdiction and the parties were completely different in the Brazilian Courts from the matter before the Panel.

124. Udinese had also only provided the Panel with half of the truth with regards to the Brazilian Court rulings. These hearings concerned the employment-related disputes between Santos and the Player in relation to his First Contract and the Second Contract he signed. Neither had anything to do with Santos' training compensation claim.

125. The Player's first claim was dismissed by the Brazilian Court and he saw out the term of his First Contract with Santos. He was not able to claim that he ended the First Contract with just cause.

126. The second claim filed by the Player related to the Second Contract that he had signed with Santos. At that time he was induced by an agent to walk out on Santos and to join Torino. The decision from the Brazilian Court that he could leave was granted by a first instance judge and the dispute was eventually settled by agreement between the Player and Santos. This was simply a declaration that the Player did not want to work for Santos and the Brazilian Court would allow him to be free, but the case would then continue to look at the merits and to determine if one party was to blame and what consequences, such as compensation, should flow from that.

127. Santos noted that Udinese claimed that these decisions somehow demonstrated that Santos terminated the contract of the Player without just cause and so, pursuant to Article 2.2 of Annex 4 of the FIFA RSTP Santos would lose its right to training compensation and that the FIFA DRC could not dispute that, as the Brazilian Court had already decided this issue. For the reasons set out above, Santos disputed Udinese's submissions. The *res judicata* arguments must be dismissed.

128. In summary, the Player had signed the Second Contract, but he pressured Santos to let him go to Italy. Santos relented. If he didn't want to play for Santos, then he could go, but that did not affect the 5 years of training he had received from Santos.

iv. The FIFA DRC ruled ultra and/or extra petita

129. Udinese's arguments here were that in the initial claim made by Santos, neither the amount of money claimed was set out, nor were the details of who would be responsible for the payment, so for the FIFA DRC to award monies from Udinese it went *ultra* and/or *extra petita*. However, as mentioned above, the FIFA Procedural Rules allowed claims to be amended or clarified, as happened in the case at hand.

130. In Santos' submission of 29 August 2011, it clearly set out the amount of money it was seeking and a worksheet, along with the name of Udinese, from which it was claiming the training compensation.

131. The arguments of Udinese were *"ultra formalistic"*. The choice of verbs are not important, all that matters was that FIFA were aware of the claim and had been aware since 2010. Santos relied upon the CAS jurisprudence in *CAS 2006/A/1177*.

v. Calculation of the training compensation

132. Udinese attached a copy of the Player's employment contract with Torino to give the Panel the impression that the Player started his employment with that club on 17 September 2007, and so he was no longer with Santos from that date. However, both the Player's passport and the Brazilian Court documents demonstrated that the Player remained with Santos until the end of his initial contract, on 27 July 2008. In fact, he remained with Santos until 29 August 2008, awaiting the second decision from the Brazilian Court.

133. Santos further noted that before the FIFA DRC, Udinese claimed the amount of training compensation should be EUR 344,522.

134. In any event, Santos requested the Panel to follow the calculation and award of the FIFA DRC in this matter.

vi. Reduction of interest

135. Santos submitted that the Panel should uphold the Appealed Decision and award interest to Santos on the training compensation due. It cited *CAS 2013/A/3082* as an example of where the CAS has awarded interest on late payments of training compensation, where sums had not been paid within 30 days of the registration the player, interest at 5% p.a. should from 31 days after the date of registration, pursuant to Article 104 of the Swiss Code of Obligations.

136. Santos noted that Udinese complained about the length of time the process before FIFA took, but the one that was affected by such a delay was Santos.

C. FIFA's Submissions

137. In summary, FIFA submitted the following in support of its defence.

i. The advance of payments before the FIFA DRC was late and the case should have been dismissed

138. FIFA firstly questioned whether Udinese's prayers for relief before the CAS were wide enough to allow the Panel to consider this new argument, raised only at the hearing, without the Panel falling foul of the *extra* and/or *ultra petita* arguments that Udinese had raised against the FIFA DRC.

139. In addition, FIFA answered the Panel's questions regarding the practice of FIFA with regard to time limits set for the advance of costs. FIFA submitted that in 2011 the procedures might not have been as strict as perhaps now and that, whilst unable to speak for the case handler that dealt with the matter at that time, it might not have been surprised if she accepted a payment that might appear to be a day or so late, but was received on the first banking date after the time limit expired. To do otherwise might be "overly harsh or formalistic".

ii. The admissibility of Santos' claim for training compensation

140. FIFA referred to the FIFA DRC's decision that Santos' claim for training compensation was admissible and valid, and should therefore be confirmed by the Panel. FIFA addressed the issues relating to admissibility as follows:

a) The reported existence of an ultra/extra petita decision

141. FIFA submitted that its *"reaction upon receipt of the First Respondent's claim for training compensation fully matched the applicable rules and is deprived of any wrongdoing"*.

142. FIFA referred to Article 9(2) of the FIFA Procedural Rules, which states the following:

"Petitions submitted by parties that do not satisfy the [requirements of par. 1] will be returned for redress along with a warning that the petition will not be dealt with in the event of non-compliance. Petitions with improper or admissible content will be rejected immediately" [emphasis added by FIFA].

143. FIFA was in full compliance with Article 9(2) of the FIFA Procedural Rules when it reverted to Santos asking it not to limit itself to change the name of the respondent club from Torino to Udinese, but to properly amend its statements of claims related to both the employment-related dispute and the training compensation claim.

144. FIFA noted that in Santos' 5 November 2010 submission, Santos clearly claimed that Udinese has to pay training compensation to Santos in relation to the Player on the basis of Article 20 and Annex 4 of the FIFA RSTP.

145. Regarding Santos' 26 November 2010 submission, FIFA submits that despite the formal irregularity – presenting its employment-related claim and training compensation claim in one and the same letter – Santos clearly claimed that training compensation was due from Udinese and explicitly inserted such specific claim in its final requests.

146. The FIFA DRC did not rule *ultra* and/or *extra petita*, as Santos clearly stated all of the claims for which the FIFA DRC ruled. Furthermore, FIFA argued that had the FIFA DRC *"not followed up on the training compensation claim, it would have unjustifiably ignored a specific request of [Santos] for over formalistic reasons. Such stance would have to be qualified as a denial of justice"*.

147. Santos made out its claim to FIFA. It specified that it was claiming EUR 445,000; from the *"new club"* (which could only be Udinese); and requested the FIFA DRC to follow its Regulations.

b) The alleged prescription of Santos' claim for training compensation

148. FIFA referred to Article 20, Article 25.5 and Annex 4 of the FIFA RSTP in support of its argument that the two-year time limit for the prescription of an action consisting of training compensation *"only starts running as from the expiry of the 30 days the club registering the player was given to proactively proceed to the relevant payment(s)"*.

149. It is undisputed that the Player was registered with Udinese on 28 July 2009, and the starting point of the calculation of the two-year statute of limitation was 28 August 2009.

150. Udinese's restrictive approach that only a complete claim lodged within the two-year time limit may be deemed admissible appeared to conflict with Swiss Law. Article 135 of the Swiss Code of Obligations states the following:

"the prescription is interrupted: 1. (…); 2. when the creditor seeks the enforcement of his rights by initiating legal action, by lodging a claim or upholding a legal exception in front of a court or an arbitrator, by entering into insolvency proceedings or by initiating mediation".

151. The submission of an incomplete claim interrupts the passage of time, and accordingly, each amended statement of claim Santos submitted consequently reinstated a new two-year time limit.

152. FIFA also referred to Article 63 of the Swiss Code of Civil Procedures in support of its argument that should a claim not meet the relevant procedural requirements, the claimant shall be given a one month deadline to amend the claim. Should the claim be correctly amended and completed, it will be considered submitted on the date of the first submission of the formerly irregular claim.

153. While the FIFA Procedural Rules do not allow the FIFA DRC to grant a 30-day deadline to a claimant to amend and complete its claim, Santos always complied with the time limits the FIFA DRC set for which to complete its claim. The time limits were always shorter than 30 days.

154. As the FIFA DRC found, Santos' submission of 5 November 2010 interrupted the course of prescription and therefore Santos' finalised claim, i.e. the 29 August 2011 submission and its payment of the relevant advance of costs, was seen to have been lodged on 5 November 2010. As the claim was seen to have been lodged on 5 November 2010, it was well within the two-year time limit provided for under Article 25.5 of the FIFA RSTP.

c) The alleged existence of a res judicata situation

155. FIFA could not see that there is a *res judicata* situation flowing from the decisions of the Brazilian Court. Those deal with employment-related disputes between Santos and the Player. The issue at hand is to do with training compensation and is a dispute between Udinese and Santos. At the very least the equality of the parties is missing.

156. FIFA noted the link between whether Santos breached the Player's contract without just cause and Article 2.2 of Annex 4 of the FIFA RSTP, as this could cause the loss of Santos' ability to claim training compensation. However, the first decision of the Brazilian Court was that Santos' disrespect of its contractual obligations were not sufficient to allow the Player to terminate his contract with just cause. Additionally, FIFA doubted that Udinese could have come to the conclusion from the second decision of the Brazilian Court that Santos had breached the Second Contract without just cause. If there was any doubt, Udinese could have asked the CBF.

157. Such decision failed to trigger the application of *res judicata*.

158. FIFA therefore requested the Panel to agree with the FIFA DRC in that Santos is entitled to a payment of training compensation from Udinese.

iii. Udinese's arguments questioning the financial aspects of the Appealed Decision

159. FIFA noted that the Torino contract is of no relevance. The Player did not fulfil its terms and was never registered with Torino. Rather, the Player remained with Santos until 28 August 2008, having first joined Santos on 23 June 2003.

160. FIFA supported the calculation of training compensation made by the FIFA DRC, as set out in the Appealed Decision.

a) The calculation of interest payable

161. The calculation of interest payable by the FIFA DRC was fully justified.

162. FIFA rejected Udinese's argument that the FIFA DRC ruled *ultra petita* in determining the rate of 5% p.a. and the date from which interest would begin accruing. It is clear that Santos, in its first claim, did request 5% p.a. from the day on which payment was effectively due. Following the FIFA RSTP, this is unambiguously the day after the 30 days after the registration of the Player by Udinese.

163. FIFA noted that Udinese alleged that Santos failed to show enough interest in its claim, so was responsible for the length of time that elapsed. However, Santos did regularly correspond with FIFA enquiring on the progress of its claim.

164. Finally, there was no provision at the FIFA DRC to suspend interest running on a claim, during the process at FIFA.

b) The costs of the proceedings

165. Following the Annex to the FIFA Procedural Rules, the maximum amount of procedural costs that the FIFA DRC could have levied were CHF 25,000, yet it ordered Udinese to pay CHF 20,000, CHF 5,000 of which were to reimburse Santos for the advance it had made.

166. This amount was legally justified, fair and reasonable.

V. JURISDICTION OF THE CAS

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

> *"An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement*

and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body".

168. The jurisdiction of the CAS, which is anyway not disputed by the parties, derives from Article 67(1) of the FIFA Statutes (2015 edition) as it determines that:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

169. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

170. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

171. The Statement of Appeal, which was filed on 3 February 2016, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

172. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

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

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

174. The Panel notes that the parties agreed that the various Statutes and Regulations of FIFA should be applied, with Swiss law on a subsidiary basis. In particular, the 2008 editions of the FIFA Procedural Rules and of the FIFA RSTP.

175. Accordingly the Panel rules that the various FIFA Statutes and those Regulations apply, with Swiss law applying to fill in any gaps or *lacuna*, when appropriate.

VIII. LEGAL DISCUSSION

A. Merits

176. The Panel observes that the main issues to be resolved are:

a) Was the advance of payments before the FIFA DRC late, so that the complaint should have been dismissed?

b) Did Santos commence its claim for training compensation within the 2 year period?

c) Was the form of such claim sufficient?

d) Did FIFA disregard the principle of *res judicata*?

e) Did the FIFA DRC rule *ultra* and/or *extra petita* in the Appealed Decision?

f) If training compensation is due, then how much should it be?

g) What interest should accrue on such sums?

h) Are the FIFA DRC procedural costs reasonable?

a) The advance of payments

177. The Panel notes that FIFA faxed its letter requesting the advance of costs for the FIFA DRC on 31 August 2011. The letter contained a 10-day time limit to pay the advance of costs, failing which the claim would be dismissed.

178. The Panel also notes the wording of Article 17(5) of the FIFA Procedural Rules:

> *"If a party fails to pay the advance of costs when submitting a claim or counter-claim, the FIFA administration shall allow the party concerned ten days to pay the relevant advance and advise that failure to do so will result in the claim or counter-claim not being heard".*

179. As such, a deadline was imposed that would commence on 1 September and expire on 11 September 2011, i.e. 10 days later. The Panel further notes that UBS AG acknowledged that on 12 September the money was credited to FIFA's bank account ("Val." value date) and that on 13 September 2011 the amount was ultimately booked ("Buchungsdatum", booking date).

180. Udinese submitted that this means the deadline was missed and FIFA should have dismissed the case before hearing it. The Panel, even using *de novo* powers pursuant to Article R57 of the CAS Code, could do no more than sit in the shoes of the FIFA DRC and consider whether the time limit had been respected or not and then apply Article 17(5) of the FIFA Procedural Rules and dismiss the case. Santos stated that it made the payment on the first banking day after the 11th, so respected the time limit; FIFA agreed and submitted that its practice at that time may not have been so strict – if it could see this was the first banking day after the 10 days and that the money was effectively *"in the system"*, then it would accept the payment when it arrived.

181. FIFA submitted that the Panel could not entertain this challenge from Udinese, as its prayers for relief did not contemplate this argument and it had only been introduced at the hearing. The Panel determines that Udinese's prayer *"2. To set aside the challenged decision"* could be seen as

broad enough, especially as within its Appeal Brief, that it had already raised this issue and requested the FIFA file so it could formally state its position at the hearing.

182. The Panel determines that the real issue at hand is what happens if a FIFA time limit expires on a weekend or on a non-banking day? The Panel notes that the replacement rule of Article 17(5) is now Article 16(3) of the latest FIFA Procedural Rules, which requires *"(…) payments must (…) have been paid at a recognised branch of a bank (…) no later than the final day of the set period"*. According Art. 78 para. 1 of the Swiss Code of Obligations which subsidiarily applies in the present case the time of performance or the last day of a time limit is deemed to be the next working day where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday.

183. From these provisions, it is clear to the Panel that the time limit to effectuate the payment was extended to the next banking or working day, i.e. Monday, 12 September 2011. Further, the Panel notes that pursuant to the FIFA Procedural Rules, Santos paid the relevant advance in due time as it was credited to the FIFA's bank account with value date of 12 September 2011.

184. In summary, the payment of the advance was not late and would not result in FIFA, the FIFA DRC or now the Panel dismissing Santos' claim for training compensation for this reason.

b) The two year period

185. The Panel notes that Udinese's position here was that neither of the November Submissions represented "claims". Rather, only the letter from Santos to FIFA on 29 August 2011 contains its claim for training compensation. As such, the 2-year deadline to bring such a claim under the FIFA RSTP had elapsed.

186. The Panel also notes that both Respondents were of the opinion that the November Submissions contained the initial claim of Santos against Udinese. As such, the Panel sets out the relevant paragraphs from the 3 letters from Santos to FIFA:

187. The 5 November 2010 letter stated:

"Lastly, in accordance to Article 20 and Annexe 4 of the same FIFA RSTP, we also request Udinese Calcio S.p.A. to immediately pay Santos F.C. the respective training compensation related to the Respondent player".

188. The 26 November 2010 letter stated:

" (v) Consider that Training Compensation is due to Santos F.C. by the respective clubs which signed the player until now, all in line with Annex 4 of the FIFA RSTP (player's passport to be provided in due course)";

189. The 29 August 2011 letter stated:

"(…) it is undisputed that the total amount of EUR 466.604,75 (four hundred and sixty six thousand six hundred and four Euros and seventy five cents) shall be apportioned by Club Udinese Calcio to Santos F.C. as FIFA Training Compensation".

190. The Panel agrees with FIFA's interpretation of Article 20, Article 25.5 and Annex 4 of the FIFA RSTP, in that the 2-year period commences from the date the training compensation was overdue from, i.e. 30 days +1 after the registration of the Player with Udinese being 28 August 2009. As such, the November Submissions must be treated as a claim to fall within the 2-year rule.

191. While the 26 November 2010 letter does not refer to Udinese in the main text of the letter, it does list Udinese as a "respondent" and the earlier letter contains a claim that is clearly addressed at Udinese. The fact that the November Submissions use the FIFA reference that was eventually assigned to the employment-related dispute and the 29 August letter utilised a new FIFA reference has no bearing on the Panel's determination that Santos clearly brought a claim for training compensation from Udinese relating to the Player before FIFA in November 2010, well before the 2-year limitation period elapsed.

c) The form of the claim for training compensation

192. The Panel notes that Udinese contest the form of the claim in a number of ways: any claim needs to ask for something specific; the amount was not specified; and it was not clear against who the claim was made.

193. As determined above, the Panel is of the view that the claim was initiated on 5 November 2010. It is clear that this was directed at Udinese. While the continuation of the claim (on 26 November 2010) was less clear, Udinese could have no doubt that the claim was directed at it, as a club that signed the Player. However, it was only in August 2011 that Santos provided FIFA with a detailed calculation of the training compensation it was seeking.

194. The Panel takes the view that Article 9(2) of the FIFA Procedural Rules anticipates that claimants may not get the form and substance of their claims right at the outset and allows some flexibility for such claimants to amend their claims, often with the assistance and direction of FIFA. Each revision does not start a new claim. Rather, the initial claim is amended and/or improved by each revision.

195. By the time Santos' claim was considered by the FIFA DRC, it had been put into a format that complied with Article 9(1) of the FIFA Procedural Rules and Udinese had been given the opportunity to defend itself against such claim. There is no reason for the Panel to dismiss the claims of Santos before it on any such procedural ground.

196. When considering these first 3 issues, the Panel notes that the use of different FIFA references and the significant amount of time taken to administer these cases at FIFA have not assisted the Parties. That said, the Panel also notes the position taken by numerous CAS panels in the past, that the main task is to ensure that clubs that train young players are rewarded for doing so by other clubs that enjoy the fruits of such training and education, without taking an over formalistic approach. This is best put by the panel in *CAS 2009/A/1757*, which stated:

> *"(…) that the rationale for the provisions in the FIFA Regulations regarding training compensation is that clubs should be encouraged to train players and those clubs that carry out the training process successfully should*

be rewarded for their training efforts. By the same token, those other clubs which enjoy the fruits of that training process should be obliged to pay something in compensation for the training efforts engaged in by others.

(…)

(…) having regard to the fundamental principle of fair play and bearing in mind the spirit of the Olympic Charter on which the CAS itself is based, the aims of sporting justice would not be served if [the Hungarian training club] *were to be denied training compensation in this case".*

d) Res judicata

197. The Panel were left with the impression that Udinese somewhat overplayed this argument. Its initial position was that an objective reading of the Brazilian Court's rulings were that the Court had entered into the merits of the dispute at hand. As such, Santos could not bring its claim to FIFA as it involved the same parties, the same dispute and had already been ruled upon. However, as both Santos and FIFA pointed out, the parties were not the same (as Udinese was not a party to the proceedings in Brazil) and the subject matter was not the same (as the matter at hand before this Panel and before the FIFA DRC concerned training compensation, not the breach of contract, employment-related dispute).

198. That noted, the Panel can, as FIFA did, see the relevance of a Court ruling on whether Santos had breached its contract with the Player without just cause (or, indeed, if the Player had terminated such contract with just cause, flowing from a breach by Santos) as this would invoke Article 2.2 of Annex 4 of the FIFA RSTP and end Santos' entitlement for training compensation. If the Brazilian Court had definitively ruled on this issue, then Udinese's argument was that the FIFA DRC would be bound by that decision and then it should apply its own FIFA RSTP and have dismissed Santos' claim.

199. As such, the Panel must examine the Brazilian Court's rulings to see if they deal with this issue and then may have *res judicata* effect. The first of such rulings was dated September 2007 and dealt with the First Contract. The Panel notes the Brazilian Court dismissed the claims of Santos and the Player and that the First Contract ultimately ran its course and was respected by both parties.

200. The second of such rulings was dated November 2007 and the Brazilian Court granted the Player the *"desired protective measure"*, releasing him from the Second Contract signed between the Player and Santos to commence on 28 July 2008 and expire on 27 July 2011. The Brazilian Court also declared that the Player was free to *"sign a contract with another employer"*, but also highlighted that the Second Contract was *"suspended, pending a final decision"*.

201. The Panel heard that this was only an interim decision, which allowed the Player to work for another club, but that the merits of the dispute were to be heard in full at a later date. It may have been that the Brazilian Court would have eventually ruled that Santos was in breach of the Second Contract, however, it was shown to the Panel that the Brazilian Court never came to such a conclusion, as the dispute was settled by Santos and the Player prior to any such ruling. The Panel further notes that despite this settlement, Santos maintained its contractual claim before FIFA, but the FIFA DRC ruled that it was not competent to hear the case and dismissed

Santos' claim. That decision has not been appealed to the CAS. Instead, the matter at hand relates solely to training compensation and the principle of *res judicata* has no relevance here.

e) Ultra and/or extra petita

202. At the hearing, Udinese was asked by the Panel whether it considered calculating and paying training compensation within 30 days of registering the Player, as Article 3(1) of Annex 4 of the FIFA RSTP envisaged. If it had done so, then no claim would have been necessary by Santos.

203. In response, Udinese submitted that after a review of the second decision of the Brazilian Court, it was *"obvious to any reasonable observer of this decision that Santos had breached the contract with the Player without just cause"*, so it would not be entitled to any training compensation pursuant to Article 2.2 of Annex 4 of the FIFA RSTP.

204. This view was not shared by the Respondents, nor indeed by the Panel (see above). The Panel is left with the impression that Udinese was content with leaving Santos to raise a claim, rather than to follow the intention and direction of the FIFA RSTP.

205. Once the claim was made, Udinese has since sought to analyse it and to challenge it in many ways, including whether the claim contained the prayers for relief that the FIFA DRC ultimately based the Appealed Decision on, or whether the FIFA DRC had gone beyond its remit.

206. However, the Panel is content to treat the 5 November 2010 letter from Santos as the commencement of its claim and the letters that followed as amendments of the original claim. As such, the clear and specific wording in the 29 August 2011 letter provides a clear request to the FIFA DRC to award it EUR 466,604.75 as training compensation from Udinese.

207. The Panel did not rely on extracts from the claims and correspondence from Santos, as Udinese did in its Appeal Brief, but reviewed the entire documentation, where it was able to find the clear requests made by Santos, which were then considered by the FIFA DRC. The Panel finds no merit in Udinese's contention that the FIFA DRC acted *ultra* or *extra petita*.

208. In conclusion, there are no reasons why Udinese should not have paid Santos training compensation and it is ordered to do so by this Panel.

f) Calculation of training compensation

209. The only challenge raised by Udinese as to the calculation of training compensation by the FIFA DRC is whether the Player's training with Santos finished on 17 September 2007, when he signed a contract with Torino, or on 28 August 2008, when he had the leave of the Brazilian Court to walk away.

210. Udinese provided absolutely no proof or evidence offered that Santos stopped educating and training the Player once he signed a contract with Torino. Udinese submitted that this was the *"only reasonable explanation"* that it was then in dispute with the Player, so would stop training him. However, the Panel prefers evidence and proof to speculation. Santos admitted that the

Player saw out the First Contract and then only remained with the club until he received the interim Brazilian Court ruling on 28 August 2008, which enabled him to leave there and then, and to find a new employer.

211. The Panel is content to accept 28 August 2008 as the date that the Player left Santos and the training period concluded. This is exactly as the FIFA DRC has determined and, as such, the Panel respects its calculation of the amount of training compensation due and confirms that Udinese should pay EUR 345,000 to Santos.

g) Interest

212. The Panel notes the consistent practice of the FIFA DRC and the CAS to award interest on late payments of such sums as training compensation. Whilst there may be no specific provision in the FIFA RSTP, previous judging bodies have used Swiss law, and specifically Article 104 of the Swiss Code of Obligations to fill such lacuna. The Panel also notes the standard practice is to apply a rate of 5% p.a. from the due date until the date of eventual payment.

213. Against this, Udinese claimed that the delay in the FIFA DRC rendering its decision was considerable and that this had caused it a considerable amount of loss. However, the Panel would have thought that Udinese would have benefited from having the money in its bank account, as opposed to having paid it out. Further, the Panel was not provided with any proof at all to substantiate Udinese's claim that the delayed procedure at FIFA had cost it EUR 100,000.

214. Finally, Udinese raised further *ultra* and /or *extra petita* arguments, submitting that Santos had not claimed interest, so it should not have been awarded. However, the Panel noted that Santos did indeed request interest at 5% p.a. in its claim of 29 August 2011.

215. As such, the Panel upholds the award of interest as determined by the FIFA DRC entirely.

h) FIFA's procedural costs

216. The Panel notes that Udinese complained that the process before FIFA had taken too long and cited *CAS 2014/A/3620*, in which that CAS panel had used a 4 year delay as a reason to reduce the procedural costs at first instance from CHF 15,000 to CHF 3,000.

217. The Panel notes that the Appealed Decision was dated some 6 years after the Player was registered with Udinese. That said, the procedure was not helped by the confusion created by various events such as there were two issues for FIFA to consider, which were not separated out initially and the fact that Court proceedings had been initiated in the Brazilian Courts.

218. The Panel is also aware of other CAS jurisprudence, such as *CAS 2013/A/3054* (followed recently in *CAS 2016/A/4387*) where the panel held that *"it is not for the CAS to reallocate the costs of the proceedings before previous instances, and that therefore the appeal shall be dismissed in this respect"*.

219. It is not, in principle, for the CAS, absent of extraordinary circumstances similar to those encountered in *CAS 2014/A/3620*, to recalculate the procedural costs of the first instance proceedings.

B. Conclusion

220. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds that:

- The Appeal of Udinese must be dismissed entirely; and
- The Appealed Decision must be confirmed.

221. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Udinese Calcio S.p.A on 3 February 2016 against the Decision of the FIFA Dispute Resolution Chamber of 3 September 2015 is rejected.

2. The Decision of the FIFA Dispute Resolution Chamber of 3 September 2015 is confirmed.

3. (…).

4. (…).

5. (…).

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