Arbitration CAS 2020/A/7305 Clube Atlético Mineiro v. Club Atlético Rentistas, award of 24 March 2021

Panel: Mr Ernesto Gamboa Morales (Colombia), Sole Arbitrator

Football
Transfer
Pacta sunt servanda
Validty of an acceleration clause
Validty of a penalty clause
Determination of the excessiveness of a penalty clause

1. **In due application of the party autonomy principle, Parties are free to determine the terms that will regulate their relationship. By general principle, unless the terms of a contract are impossible, unlawful or immoral, Parties are bound to observe the clauses subscribed by them. This principle is also known as *pacta sunt servanda*.**

2. **Within transfers agreements where payments are scheduled in several instalments, it is very usual to include an acceleration clause according to which, if a party to the agreement fails to pay an instalment on the agreed date, the other party can accelerate all due instalments and request the totality of the amount.**

3. **According to Article 160 para. 2 of the Swiss Code of Obligations, *"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".* It is therefore perfectly legal to stipulate in a transfer agreement that, if a party fails to make the payments by the established dates, the other party can claim the performance of the transfer agreement and also claim the penalty.**

4. **Under Swiss law, the parties are free to determine the amount of the contractual penalty. However, the court may reduce penalties that it considers excessive at its discretion. The law does not state clearly what amounts to an excessive penalty, so that it is for the judge to establish, with regard to the merits of the case and all the relevant circumstances, whether the penalty is excessive. A penalty is deemed to be excessive when it is not reasonable and exceeds patently the amount that would seem just and equitable. Some criteria to assess the reasonableness of the penalty are the creditor's interest in the performance of the main obligation, the gravity of the debtor's fault and the parties' financial situation. The judge shall generally weight up the different interests at stake. In any case, the judge should not too readily reduce a penalty; the principle of contractual liberty, which is essential under Swiss law, is always to be given priority in case of doubt.**

I. PARTIES

1. Clube Atlético Mineiro (the "Appellant") is a Brazilian professional football club, affiliated member of the "Confederaçao Brasileira de Futbol", which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Club Atlético Rentistas (the "Respondent"), is a Uruguayan professional football club, affiliated member of the "Asociación Uruguaya de Fútbol", which in turn is affiliated to FIFA; The Appellant and the Respondent will be jointly referred as to the "Parties".

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions. References to additional facts and allegations found in the parties' written submissions and evidence will be made, where relevant, to the extent warranted for the purposes of the legal analysis that follows. While hence, the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, he refers in his award only to the legal arguments and factual evidence submitted that he deems necessary to explain his reasoning.

4. On 15 July 2018, the Parties entered into an agreement (the "Transfer Agreement") regarding the terms and conditions for the transfer of the player M. (the "Player").

5. According to clause 1 of the Transfer Agreement, the Respondent transferred the federative rights and 70% of the economic rights of the Player and the Appellant undertook in turn the obligation to pay a transfer fee of USD 1,600,000 as follows:

   5.1. 10 July 2018: USD 600,000.

   5.2. 20 December 2018: USD 250.000.

   5.3. 20 June 2019: USD 250,000.

   5.4. 20 December 2019: USD 250,000.

   5.5. 20 June 2020: USD 250,000.

6. Pursuant to Clause 1.3 of the Transfer Agreement, if the Appellant failed to pay in the agreed dates, the Respondent could accelerate all due instalments, with 20 days' prior notice. Also, according to Clause 8.2, in such event of failure, the Respondent would have the right to impose a 20% penalty on all upcoming instalments.

7. The above-mentioned rights were established in Spanish as follows:

   "1.3. Si ATLETICO MINEIRO no cumpliera en fecha con cualquiera de los pagos previstos en los numerals 1), 2), 3), 4) y 5) precedents, previa intimación por el plazo de veinte 20 días corridos, se producirá

la caducidad de pleno derecho de los vencimientos de los pagos no vencidos a esa fecha, pudiendo en este caso RENTISTAS reclamar la totalidad del capital que corresponda, más la cláusula penal prevista en el presente contrato (cláusula 8.2)

8.2. CLAUSULA PENAL. Para el caso que ATLÉTICO MINEIRO no cumpliera con los pagos en tiempo y forma previstos en el presente contrato, ATLÉTICO MINEIRO deberá abonar, además de las sumas adeudadas, previa intimación por el plazo de veinte (20) días corridos, un 20% (veinte por ciento) del monto adeudado en concepto de Cláusula penal, reconociendo ambas partes la plena validez de la misma".

8. The Appellant paid the Respondent the first two instalments of USD 600,000 and USD 250,000. On 20 June 2019, the Appellant paid only USD 60,00,00 out of the USD 250,000 that were established in the Transfer Agreement.

9. During the following months, the Parties exchanged messages to try to negotiate a payment plan.

10. On 8 October 2019, the Respondent put the Appellant in default for the unpaid part of the third instalment of the Transfer Agreement.

III. PROCEEDINGS BEFORE FIFA

11. On 14 November 2019, the Respondent filed a claim before FIFA against the Appellant requesting the payment of all the instalments of the Transfer Agreement in addition to the penalty of 20% of the whole outstanding amounts, as well as an amount of 10% for legal fees.

12. The Single Judge of the Players Status Committee of FIFA rendered a decision (the "Appealed Decision") on 25 May 2020 as follows:

"1. The claim of the Claimant, Atlético Rentistas, is partially accepted.

2. The Respondent, Clube Atletico Mineiro, has to pay the Claimant the amount of USD 828,000.

3. Any further claim lodged by the Claimant is rejected.

4. The Claimant is directed to inform the Respondent, immediately and directly, of the relevant bank account to which the Respondent must pay the amounts mentioned under point 2. Above.

5. The Respondent shall provide evidence of payment of the due amounts in accordance with point 2. to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amounts due in accordance with point 2. above are not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.

8. In the event that the aforementioned sum is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision

9. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by both parties as follows: (…)".

13. The grounds of the decision were communicated to the Parties on 9 July 2020. The grounds of the Appealed Decision can be summarized as follows:

- The Single Judge observed that it remained uncontested that the Respondent did not pay the full amount of the third instalment and that the Respondent put the Appellant in default by giving Atletico Mineiro a 20 days deadline to remedy its default.

- The Single Judge then acknowledged that art. 1.3 of the agreement was in fact an acceleration clause and that the Parties included a penalty clause in art. 8.2.

- Furthermore, the Single Judge deemed that a penalty fee in the amount of 20% of the outstanding amount is both proportionate and reasonable according to the jurisprudence of FIFA.

- As for the legal fees, the Single Judge considered the Claimant failed to provide any evidence for such costs.

- Finally, *"the Single Judge decided that, in accordance with the general legal principle of pacta sunt servanda, the Respondent is liable to pay to the Claimant a total amount of 828,000, corresponding to the residual value transfer fee, as well as the penalty fee in the amount of 20%".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 30 July 2020, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appellant in accordance with Article R48 of the Code of Sports (the "CAS Code") with respect to the Appealed Decision. With the Statement of Appeal, the Appellant requested the case to be submitted to a Sole Arbitrator.

15. On 3 August 2020, the Respondent agreed to submit the case to a sole arbitrator but rejected the arbitrator suggested by the Appellant. As for the language of the procedure, the Respondent suggested a bilingual procedure (Spanish / English) and the Appellant agreed to such suggestion.

16. On 21 August 2020, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code.

17. On 8 September 2020, the Respondent filed its Answer, in Accordance with Article R55 of the Code.

18. On 11 September 2020, the Deputy President of the CAS Appeals Arbitration Division appointed Mr. Ernesto Gamboa as Sole Arbitrator, in accordance with Article R54 of the Code.

19. On 23 September 2020, after having consulted the Parties, the Sole Arbitrator decided to hold a hearing, in accordance with Article R57 of the Code.

20. On 20 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, issued the Order of Procedure, which was duly signed by the Parties.

21. On 4 November 2020 the hearing scheduled by the Sole arbitrator took place by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection against the constitution of the Panel and the way in which the procedure had been conducted.

22. During the hearing the Panel listened to the witnesses of the Respondent, Mr. Ricardo Giovio and Mr. Eduardo Bebekian. The witness of the Appelant, Mr. Lucas Ottoni, did not attend the hearing and was therefore discarded.

23. At the end of the hearing, the Parties confirmed that their right to be heard had been fully respected.

V. SUBMISSIONS OF THE PARTIES

24. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

V.1. The Appellant's submissions

25. The Appellant argues that although the principle of party autonomy is recognized in the Swiss contract law as a fundamental principle, the legislation also recognizes the prohibition of abuse of right and the requirement to act in good faith.

26. In the present case, the Appellant states that Atletico Mineiro is being twice punished for the same contractual breach, notably, the alleged failure to pay part of the transfer fee at stake. In such, he considers the imposition of the penalty clause as a violation of the fundamental principle of law *ne bis in idem*.

27. The Appellant also stated that, since the Respondent drafted the Transfer Agreement and inserted the Penalty Clause, any eventual dispute regarding the meaning of the clauses have to be interpreted against Club Atlético Rentistas.

28. The Appellant considers that *"it becomes clear that the Respondent shall not be entitled to receive any amounts under the Penalty Clauses as they are clear breach of the fundamental principle of ne bis in idem (double jeopardy)"*.

29. In addition, the Appellant maintains that even if penalty clauses are valid, the penalty for default is clearly disproportionate, vague, arbitrary and clearly in violation of fundamental principles of law. Also, the Appellant claims that the Respondent acted in bad baith by not considering the alternatives presented by Mineiro as to make the payment of the remaining of the third instalment.

30. The Appellant then argues that *"the Single Judge of the FIFA PSC made a crucial mistake in awarding a penalty amounting to 20% on the total outstanding amount (which is inclusive on unmatured instalments) as it has no factual or legal basis whatsoever, in particular, if we consider the total outstanding amount is not higher than USD 190,000 (one hundred and ninety thousand US Dollars)"*.

31. With reference to Swiss law and CAS jurisprudence, Atletico Mineiro argues that the penalty amount ordered by the Single Judge is arbitrary and contrary to its fundamental rights, and therefore, should be drastically reduced taking into account the following criteria (i) the interest of the creditor, (ii) the severity of the default of breach, (iii) the intentional failure to breach the main obligation, (iv) the business experience of the parties, (v) the financial situation of the debtor.

32. Finally, the Appellant submits that *"only a payment of USD 190,000 was delayed and therefore it makes no sense whatsoever that a penalty of USD 138,000 is imposed on the Appellant. (…) A penalty at the of 70% is definitely excessive, unlawful, and immoral and/or contravene public policy or personal rights under Swiss law and obviously not valid"*.

33. The Appellant provided the following requests for relief:

> *"FIRST – To accept the present Appeal in full:*
>
> *SECOND – To confirm that the Appelant has to pay to the Respondent the amount of USD 690,000 (six hundred and ninety thousand US Dollars);*
>
> *THIRD – To dismiss any other penalty amount, percentage, mechanism of default interest, eventually set out in the Transfer Agreement and/or in the Appealed Decision;*
>
> *Alternatively, and only in the event the above is rejected:*
>
> *FOURTH – To confirm that the Appelant has to pay to the Respondent the amount of USD 690,000 (six hundred and ninety thousand US Dollars); and*
>
> *FIFTH – To confirm that the Appellant has to pay the Respondent only an amount of USD 19,000 (nineteen thousand US Dollars) due as penalty.*
>
> *At any rate:*

SIXTH – To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS (if any); AND

SEVENTH – To order the Respondent to pay to the Appelant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 10,000 (ten thousand Swiss Francs)".

V.2. The Respondent's submission

34. The Respondent argues that *"the appeal made by Clube Atlético Mineiro has no other purpose than to delay the payment and the penalty that was condemned by the FIFA Player Status Committee, by virtue of the fact that it lacks serious grounds for attempting to revoke it".*

35. According to the Respondent, the Appellant is a strong powerful party of the contractual relationship and imposed conditions to pay the price in installments, which was negotiated with Mr. Lucas Ottoni, the Club's internal lawyer, who speaks and reads Spanish perfectly.

36. Knowing that the Appellant had a bad credit history, the Respondent tried to protect its interests by including the acceleration clause and the Penalty Clause. Particularly, the acceleration clause was never conceived as a sanction but was a logical protection of the creditor when the payment is deferred in installments.

37. Also, the Respondent considers that the Appellant's allegations regarding the alleged bad faith of Atletico Rentistas are untrue considering the several exchanges of messages between the two clubs looking for a payment plan.

38. The Respondent then argues that the Penalty Clause is perfectly valid under Swiss law and CAS case law and was the result of the negotiation between the Parties. In such, there is no place for it to be disregarded.

39. Finally, the Respondent considers the *non bis in idem* principle is not violated because *"the parties agreed on a penalty clause for the case of non-compliance and at the same time agreed that the same event would cause the enforceability of the entire balance of the price owed that originally had to be paid in installments. Only once the dispute is resolved by final judgment may the principle of non bis in idem (res judicata) come into play, preventing the question under discussion from being raised again".*

40. Also, the Respondent considers that there is no provision that prevents the same act from general multiple negative consequences in the event of default by one of the parties and reminds that the Parties agreed on a Transfer Agreement to which they must obey, without there being any provision that could be considered invalid.

41. Considering all of the above, the Respondent requests:

1) The response to the Appeal filed by the opponent, is considered presented in time and form;

2) *The evidence is considered offered;*

3) *In the event that the Panel orders the holding of the hearing, it is carried out by any electronic means with easy access, taking into account the current global pandemic situation;*

4) *Ultimately, I request the Panel to reject the appeal filed by CLUBE ATLETICO MINEIRO in all its terms, applying the maximum procedural sanctions in merit of the background it has and the clear bad faith displayed in its appeal".*

VI. JURISDICTION

42. The jurisdiction of CAS derives from article R47 of the FIFA Statutes as it determines that *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes o 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".*

43. Accordingly, Article 58, par.1 and par 2. of the FIFA Statutes provides as follows:

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question. 2. Recourse may only be made to CAS after all other internal channels have been exhausted".

44. The jurisdiction of CAS is further confirmed by the Parties by signing the Order of Procedure.

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

VII. ADMISSIBILITY

46. The grounds of the decision were communicated to the Parties on 9 July 2020 and the Appeal was filed on 30 July 2020, that is, within the 21 days set by Article 58 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

47. The Appeal is then admissible.

VIII. APPLICABLE LAW

48. According to Article R58 of the CAS *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decisions".*

49. On the other hand, Article 57 par. 2 of the FIFA Statutes provides that *"2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally Swiss law"*.

50. Then, in accordance with all of the above, the Sole Arbitrator shall decide the dispute according to FIFA regulations and subsidiarily, Swiss law.

IX. MERITS

51. As a result of the above, the main issue to be resolved by the Sole Arbitrator is whether the Transfer Agreement contains abusive clauses which are null and void. In that matter, the Sole Arbitrator will revise the following aspects:

    a. The principle of party autonomy and principle of *pacta sunt servanda* under Swiss law.

    b. Limits of penalty clauses under CAS jurisprudence and Swiss law.

    c. Application of the double jeopardy principle.

52. According to Art. 19 of the Swiss Code of Obligations (CO), *"The terms of a contract may be freely determined within the limits of the law*". In turn, Art. 20 of the same code establishes that *"A contract is void if its terms are impossible, unlawful or immoral"*.

53. This means that, by general principle, unless the terms of a contract are impossible, unlawful or immoral, Parties are bound to observe the clauses subscribed by them. This principle is also known as *pacta sunt servanda* and serves as a fundamental basis of many judicial systems around the globe. This principle has been previously analyzed by the CAS jurisprudence in which the following was established:

    "The principle pacta sunt servanda lies at the basis of the football system, since it gives legal foundation to the stability of contractual relations, which would be severely jeopardized if the parties to employment contracts could all too easily get rid of the obligations undertaken thereunder (…)"[1].

54. As seen before, CAS jurisprudence confirms that parties are bound by the agreements they stipulate unless those agreements contravene the basic principles established by Swiss law. In the same sense, Swiss Civil Code provides that dispositions will be void when made in error or under threat or coercion, or in the event the disposition contains *"an obvious error with regard to persons or objects"* (Art. 469 of the Swiss Civil Code).

55. As for the case, the Sole Arbitrator observes that the Parties voluntarily agreed to enter into the Transfer Agreement on 15 July 2018. According to the documents provided by the Respondent, it becomes clear that the clauses of the agreement where discussed and agreed

[1] CAS 2015/A/4046 & 4047, award of 10 November 2015

upon by both clubs in normal circumstances[2], which in turn makes them binding for the Parties.

56. Regarding the clauses subject to controversy, the Panel finds that the acceleration clause is within the usual standards of these types of agreements. According to the Transfer Agreement, the relevant clause states the following:

"Si ATLETICO MINEIRO no cumpliera en fecha con cualquiera de los pagos previstos en los numerals 1), 2), 3), 4) y 5) precedents, previa intimación por el plazo de veinte (20) días corridos, se producirá la caducidad de pleno derecho de los vencimientos de los pagos no vencidos a esa fecha, pudiendo en este caso RENTISTAS reclamar la totalidad del capital que corresponda, más la clausula penal prevista en el presente contrato".

57. The Sole Arbitrator considers that within transfers agreements where payments are scheduled in several instalments, it is very usual to include an acceleration clause. All in all, in due application of the party autonomy principle it becomes clear that Parties are free to determine the terms that will regulate their relationship, which, in the present case, turns the acceleration clause a valid agreement that was freely entered into by Atlético Mineiro.

58. Regarding the penalty clause, according to the CO, the inclusion of these kinds of clauses for the event of non-performance is a valid agreement between parties. In this case, the Parties agreed upon the following:

"CLAUSULA PENAL. Para el caso que ATLETICO MINEIRO no cumpliera con los pagos en tiempo y forma previstos en el presente contrato, ATLETICO MINEIRO deberá abonar, además de las sumas adeudadas, previa intimación por el plazo de veinte días corridos, un 20% del monto adeudo en conepto de clausula penal, reconociendo ambas partes la plena validez de la misma".

59. This specific type of penalty clause is found in paragraph 2 of article 160 of the CO, according to which *"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".*

60. According to the abovementioned article, it was perfectly legal to stipulate that, if the Appellant failed to make the payments in the established dates, the Respondent could claim the performance of the Transfer Agreement and also claim the penalty.

61. On the other hand, article 163 par. 1 of the CO grants the parties the autonomy to determine the amount of the penalty by saying *"The parties are free to determine the amount of the contractual penalty".* Furthermore, the Sole Arbitrator has to reduce the penalty clause only in case such penalty clause is excessive, pursuant to Article 163 of the CO.

[2] Document containing an e-mail sent by Mr. Lucas Ottoni on June 14th 2018 in which he sends the transfer agreement with the following comment: *"Te envio el contrato revisado. Gracias!".*

62. As seen before, there is no specific limit set by Swiss law as to what can be considered an excessive penalty. In such, CAS jurisprudence has set some criteria to guide arbitrators on how to define what can be considered as an excessive clause. Specifically, in the award rendered in the CAS 2014/A/3858 proceeding, the Tribunal considered the following:

"According to the Swiss case law and legal doctrine, a penalty is deemed to be excessive when it is not reasonable and exceeds patently the amount that would seem just and equitable. Thus, the judge may reduce the penalty when it is unreasonable to an extent which cannot be justified. Some criteria to assess the reasonableness of the penalty are the creditor's interest in the performance of the main obligation, the gravity of the debtor's fault and the parties' financial situation. The judge shall generally weight up the different interests at stake with regard to the amount of the penalty".

63. Also, in the CAS 2014/A/3858 award, the Tribunal emphasized that in case of doubt of an excessive penalty, priority should always be given to the contractual liberty by respecting the party's autonomy:

"Under Swiss law, the parties are free to determine the amount of the contractual penalty. However, the court may reduce penalties that it considers excessive at its discretion. The law does not state clearly what amounts to an excessive penalty, so that it is for the judge to establish, with regard to the merits of the case and all the relevant circumstances, whether the penalty is excessive and, if so, to what extent it should be. In any case, it must be emphasized that the judge should not too readily reduce a penalty and that the principle of contractual liberty, which is essential under Swiss law, has always be given priority in case of doubt".

64. Now, the Sole Arbitrator finds that there are no specific or relevant circumstances that make the penalty clause excessive. The amount of the penalty clause is justified considering the seriousness of the Appellant's breach of the Transfer Agreement and the Appellant's expertise in Players' transfer agreements.

65. Specifically, the Sole Arbitrator considers that a penalty fee in the amount of 20% of the outstanding amount is both proportionate and reasonable according to the jurisprudence of CAS. Consequently, the Sole Arbitrator dismisses the argument presented by the Appellant by which he claims the penalty to be of 70%. It is clear that, given the default of the Appellant to pay the third instalment and its failure to comply with his duties within the 20 days deadline given by the Respondent, the outstanding amount was not only USD $190.000, but a total amount of USD 690,000. As a result, the USD 138,000 penalty amounts to a 20% of the complete debt and is therefore admissible.

66. Also, when entering into the Transfer Agreement, the Parties specifically recognized the validity of the clause, and there is no proof whatsoever that the Appellant stated that he considered it to be either abusive nor illegal. It was also demonstrated that the Appellant entered into the Transfer Agreement with the counseling of its in-house lawyer, Mr. Lucas Ottoni, who despite being called by the Appellant as a witness did not attend the hearing. On the contrary, Mr. Ricardo Giovio, who represented the Respondent during the conversations held with the Appelant regarding the payment and participated in the hearing as witness for

the Respondent, testified before the Panel that during his conversations with Lucas Ottoni, he never argued that the acceleration clause nor the penalty clause where illegal or abusive.

67. Considering the precedent background, defined by Swiss Law, and weighing all the relevant factors, the Sole Arbitrator finds that the Penalty Clause stipulated in clause 8.2 of the Transfer Agreement is not excessive and therefore, there is no room for reduction of such penalty clause.

68. Having determined that both the acceleration clause and the penalty clause are valid, the Sole Arbitrator will now analyze if the inclusion of both clauses violates the principle of *non bis in idem* as alleged by the Appellant.

69. In the Appeal Brief, the Appellant considers that the application of the acceleration clause and the penalty clause is a violation of the *ne bis in idem* principle since the club would be twice punished by the same offence: the default in the payment of the third installment.

70. Before entering into the discussion presented by the Appellant, the Sole Arbitrator will set a recount of previous CAS decisions regarding the *ne bis in idem* principle and its length of application. In the CAS 2018/A/5500 award, the Tribunal stated that:

"The basic legal principle of ne bis in idem generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled, three requirements need to be given: an identity of the parties, of the facts and of the object. The principle of ne bis in idem is also known as "double jeopardy" in common law countries. As an illustration of said principle, sports disciplinary bodies cannot try one person or one entity again for one offence in relation to which that person or entity has been acquitted already by a final decision of another body based on the same regulatory framework".

71. In the CAS 2011/A/2484 award the matter was similarly defined by establishing the following:

"The ne bis in idem principle means basically that no one shall be sanctioned twice because of the same offence".

72. As seen before, the principle of *ne bis in idem* applies when a same person is being held accountable for a single act before multiple judges in different decisions. The Sole Arbitrator notes that such principle applies to criminal and disciplinary matters only. In the present case, it is crystal clear that the principle of *ne bis in idem* is not applicable since the present case is not of disciplinary nature. Contrary, the dispute between the Parties concerns the application of the clauses freely agreed by them in the Transfer Agreement. Therefore, this argument is rejected.

73. Finally, regarding the argument of bad faith presented by the Appellant, this argument shall be also rejected. The Sole Arbitrator finds that when the Respondent decided to claim the acceleration clause and the penalty clause, he did so in accordance with its rights under the Transfer Agreement. Hence, this cannot be considered as an act of bad faith. Also, the Sole Arbitrator highlights that before filing any claim, the Respondent tried to negotiate with the Appellant as it was demonstrated by the conversations between Lucas Ottoni and Ricardo Giovio.

74. Consequently, the Sole Arbitrator rejects the appeal filed by the Appellant and confirms the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sports rules:

1. The Appeal filed by Club Atlético Mineiro against the decision issued by the Single Judge of the Players' Status Committee of FIFA on 25 May 2020 is dismissed.

2. The decision issued by the Single Judge of the Players' Status Committee of FIFA on 25 May 2020 is fully confirmed.

3. (…).

4. (…).

5. All further claims are dismissed.