Arbitration CAS 2015/A/4061 São Paulo Futebol Club v. Centro Esportivo Social Arturzinho, award of 26 November 2015

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

Football
Solidarity contribution under Brazilian law
National Solidarity Mechanism according to the Pele Law and player's transfer to another club
Aims of the FIFA solidarity mechanism and the National Solidarity Mechanism
Certification of the club as the training club and access to the National Solidarity Mechanism
Calculation of the National Solidarity Mechanism through the players' passport

1. **Article 29-A of the Pelé Law establishes a National Solidarity Mechanism in Brazil. Whereas the period during which a player undergoes his training and education is a determining factor in arriving at the amount of the National Solidarity Mechanism due to the training club, the cause of action that triggers or gives rise to the training club's right to claim National Solidarity Mechanism is the act of the player's transfer to another club. Whereas Article 29.3 of the Pelé Law makes reference to a training club's need for certification, this reference can only be understood related to the material aspects pertaining to certain specific sports labour matters for purposes and effects of the application of Article 29 of the Pelé Law or other provisions which particularly require a club to be certified as *"sports training entities"*.**

2. **Just as with the FIFA solidarity mechanism, the National Solidarity Mechanism in Brazilian law provides for the creation of a funding, compensation and promotion system for the benefit of those clubs that have made a real contribution to the training of players transferred within Brazil. The National Solidarity Mechanism therefore involves a philosophy of solidarity in football, via the redistribution of a small part of the funds generated by transfers within Brazil to the club or clubs that have provided the player's sports education. The only difference between the Brazilian provisions and the international arrangements is the player's age for the purpose of the triggering of the National Solidarity Mechanism with regard to transfers of players while their contracts are in force.**

3. **Certification of the club as a training club is an essential prerequisite of entitlement to training compensation, but is not however a *sine qua non* of access to the National Solidarity Mechanism, when applicable. The law does not make entitlement to pecuniary participation in the National Solidarity Mechanism subject to compliance with any legal requirements and proof that the club did in fact contribute to the training of the player suffices. There is no legal basis for the certification of the club as a prerequisite of financial entitlement pursuant to the application of the National Solidarity Mechanism, as Article 29-A of the Pelé Law covers all entities that *"have***

contributed" **in any way, to the training of the player.**

4. **Article 29-A.3 of the Pelé Law is clear that National Solidarity Mechanism is to be *"calculated in accordance with a certificate provided by the national administration of the sport"*, otherwise known as the players' passport as provided by the CBF.**

I. THE PARTIES

1. São Paulo Futebol Club (the "Appellant" or "São Paulo") is a Brazilian football with its registered office in Sao Paulo, Brazil. The Appellant is member of the Confederação Brasileira de Futebol (the "CBF"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Centro Esportivo Social Arturzinho (the "Respondent" or "Arturzinho") is a Brazilian sports entity with its registered office in Rio de Janeiro, Brazil.

II. THE FACTUAL BACKGROUND

3. This matter is related to an appeal filed by the São Paulo against the decision rendered by the CBF Dispute Resolution Chamber (the "CBF DRC") on 6 April 2015 (the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Parties on 8 April 2015.

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

a) The football history of the player B.

5. The Player B. (the "Player") is a Brazilian national born on 11 March 1987. According to the Player's player passport as sent by the CBF, the Player was registered with Arturzinho from 12 April 1999 to 11 May 2006 as an amateur, and thereafter from 12 May 2006 to 9 February 2010 as a professional. He thereafter joined other Brazilian football clubs before joining Botafogo de Futebol e Regatas ("Botafogo").

6. On 21 December 2011, Botafogo transferred the Player to São Paulo in exchange for R$5,400,000 Brazilian Reais (the "Transfer Fee").

b) The CBF Dispute Resolution Chamber Proceedings

7. On 5 June 2015, Arturzinho filed a claim before the CBF DRC asking that São Paulo be ordered to pay 5% of the Transfer Fee as payment due for National Solidarity Mechanism.

8. On 6 April 2015, the CBF DRC rendered the Appealed Decision and ordered São Paulo to pay Arturzinho 5% of the Transfer Fee. The Appealed Decision was based on the grounds that, in accordance with the Player's passport, the Player had undergone his training and education at Arturzinho between his 12th and 23rd birthdays (from 12 April 1999 to 9 February 2010) and that pursuant to Article 29-A of Lei nº 9.615/98 as amended on 16 March 2011 (the "Pelé Law"), Arturzinho was entitled to 5% of the Transfer fee as National Solidarity Mechanism.

9. The relevant parts of the Appealed Decision read as follows:

"The Claimant, as the new club should have retained 5% from the amount paid to Botafogo to be distributed to the training entities of the Player.

The Player had his training and education and was registered with the Claimant from 1999 until 2010, to wit, from his 12th until his 23rd birthday, during the entire period of training and education foreseen in article 29-A of Federal Law 9.615-98, being therefore entitled to collect the solidarity mechanism, according to his player passport issued by the CBF, which is clear evidence that his training and education was carried out by the Claimant.

In this respect, 5% of the amount paid by the Respondent to Botafogo for the Player's transfer must be distributed to the Claimant in concept of solidarity mechanism in the exact terms of article 29-A of Federal Law 9.615-98".

III. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

10. On 27 April 2015, the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2013) (the "CAS Code").

11. The Appellant requested within its Statement of Appeal for a Sole Arbitrator to be appointed by the President of the CAS Appeals Arbitration Division.

12. On 8 May 2015, the Appellant filed its Appeal Brief, pursuant to Article R51 of the CAS Code.

13. On 8 June 2015, the Respondent requested that the matter be submitted to a Panel of three arbitrators.

14. Following difficulties in tracing the Respondent's correct address, the CAS Court Office was only successful in notifying the Statement of Appeal and the Appeal Brief to the Respondent on 10 June 2015.

15. On 11 June 2015, the Respondent requested in line with Article R55 of the CAS Code that the time limit for the filing of its Answer be fixed after the payment by the Appellant of its share of the advance of costs, in accordance with Article R64.2 of the CAS Code.

16. On 12 June 2015, the CAS Court Office confirmed that the Respondent's time limit to file the answer would be fixed after the Appellant's payment of its share of the advance of costs.

17. On 15 June 2015, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division, taking into account the circumstances of the case, had decided to submit this matter to a Sole Arbitrator, pursuant to Article R50 of the CAS Code.

18. On 24 June 2015, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had appointed Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as Sole Arbitrator in this matter.

19. On 23 July 2015, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and granted the Respondent 20 days within which to file its Answer.

20. On 13 August 2015, the Respondent filed its Answer, pursuant to Article R55 of the CAS Code.

21. On 18 August 2015, the Respondent informed the CAS Court Office of its wish for a hearing.

22. On 24 August 2015, the Appellant informed the CAS Court Office of its preference to have this matter decided on the basis of the parties' written submissions. The Appellant also sought leave to reply to the Respondent's Answer and in particular, a legal opinion that had been annexed thereto.

23. On 25 August 2015, the CAS Court Office invited the Respondent to state whether it consented to the Appellant's request to reply to the Respondent's Answer.

24. On 25 August 2015, the Respondent objected to the Appellant's request, invoking Article R56 of the CAS Code.

25. On 2 September 2015, the CAS Court Office informed the parties that the Sole Arbitrator had rejected the Appellant's request to reply to the Answer. The parties were informed that the Appellant would be given an opportunity to comment on the legal opinion annexed to the Answer during the hearing.

26. On 3 September 2015, the CAS Court Office issued an Order of Procedure, which was duly signed by the parties.

27. On 1 October 2015, the hearing was held in Rio de Janeiro, Brazil. Present for the Appellant were Mr. Rafael Botelho and Mr. Renato Renatino. In attendance for the Respondent were Mr. Bichara Abidão Neto, Mr. Stefano Malvestio and Mr. Fernando Guitti.

28. The parties agreed to have the hearing conducted in Portuguese, and requested that this be put on record. At the conclusion of the hearing, the parties confirmed that they had no objection in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

IV. THE PARTIES' POSITION

29. In summary, the Parties submit the following in support of their respective positions.

IV.1 The Appellant's submissions

30. It is the Appellant's position that the Respondent cannot be considered as a training entity, as mentioned in Pelé Law. Even if the CAS considers the Respondent to be a training entity according to the Pelé Law, then the Respondent could not be entitled to the amount of National Solidarity Mechanism mentioned in the Appealed Decision. The CBF DRC did not take into consideration the date on which the Respondent was founded and the date on which the Respondent was registered with the CBF.

31. The Appellant's submissions can in essence be summarized as follows:

i. The Respondent should not be recognized as a training entity according to Pelé Law

32. The Appellant based its claim on the provisions of Pelé Law, particularly Article 29-A, which reads as follows:

> *"Sempre que ocorrer transferência nacional, definitiva ou temporária, de atleta profissional, até 5% (cinco por cento) do valor pago pela nova entidade de prática desportiva serão obrigatoriamente distribuídos entre as entidade de práticas desportivas que contribuíram para a formação do atleta, na proporção de:*
>
> *I – 1% (um por cento) para cada ano de formação do atleta, dos 14 (quatorze) aos 17 (dezassete) anos, inclusive; e*
>
> *II – 0,5% (meio por cento) para cada ano de formação, dos 18 (dezoito) aos 19 (dezanove) anos de idade, inclusive.*
>
> *(…)".*
>
> *"Whenever a professional player is transferred nationally, whether permanent or temporary, up to 5% (five per cent) of the amount paid by the new sports entity shall be necessarily distributed among the entities that have contributed to the players' training and education, in the proportion:*
>
> *I – 1% (one per cent) for each year of training and education, from 14 (fourteen) to 17 (seventeen) years of age, inclusive; and*

II – 0.5% (half per cent) for each year of training and education, from 18 (eighteen) to 19 (nineteen) years of age, inclusive.

(…)" (free translation submitted by the Appellant).

33. The CBF DRC, when applying Article 29-A above, failed to assess the concept of "training entities" – defined/determined by the same law -, which are those legally entitled to claim for training and education of players, hence entitled to claim the National Solidarity Mechanism.

34. Article 29.2 of Pelé Law defines the requisites of a training entity and reads as follows:

"It shall be considered a training entity the sporting entity that:

I – Provide the athletes with youth training and educational programs; and

II – Fulfil, cumulatively, the following requisites: (…)".

35. Article 29.3 of the Pelé Law states that:

"the national association of sports administration [the CBF in *casu*] *shall certify as "training entity", those sport entities that can evidence the fulfilment of the requisites provided in this law".*

36. Therefore, it is understood that the status of "training entity" is a pre-requisite to the entitlement of an entity to claim and collect National Solidarity Mechanism. The status of "training entity" is to be granted by the CBF to those entities that fulfil the conditions provided under paragraph 3 of article 29 of the Pelé Law. The cumulative requirements for an entity to claim National Solidarity Mechanism are the following: (i) the fulfilment of the requisites of Pelé Law; (ii) the certification of CBF; (iii) provides a player training and education; and (iv) claims the National Solidarity Mechanism in the event of a future transfer of a player.

37. According to the Appellant, the CBF did not certify the Respondent as a training entity – for lacking compliance with the pre-requisites -, and hold it ineligible to claim National Solidarity Mechanism according to the Pelé Law.

38. It is unlawful for the Respondent to claim any compensation in concept of National Solidarity Mechanism, since Arturzinho fails to fulfil the legal requisites established by Pelé Law.

ii. The calculation of the solidarity contribution in case the CAS considers the Respondent to be a "training entity"

39. In the unlikely event that the CAS considers the Respondent as a training entity and that the Respondent is eligible for claiming National Solidarity Mechanism, the CAS should consider the fact that the Respondent could not have trained the Player for the period claimed.

40. The Player was born on 11 March 1987, which means that his training period was fulfilled between 11 March 2001 (when he was 14 years old) and 10 March 2007 (right before he turned 20 years old).

41. The CBF DRC recognized the Respondent as responsible for the training and education of the Player from 12 April 1999 until 9 February 2010, although legally such period would be restrained to 11 March 2001 until 10 March 2007.

42. The Respondent was founded on 13 June 2000 and affiliated to the Rio de Janeiro Football Federation (the "FERJ") only on 15 May 2003. This leads to the fact that the Respondent could not train the Player before 13 June 2000 and cannot claim National Solidarity Mechanism before 15 May 2003. The affiliation to the FERJ is a necessary condition to be affiliated at the CBF. Prior to the affiliation to the FERJ/CBF, Arturzinho could not be considered a training entity and could not be part of the so-called "football family".

43. If the Respondent is accepted as a training entity – despite the unlawfulness of such consideration –, it could only claim for the training and education of the Player as of 15 May 2003, and its right to receive National Solidarity Mechanism would comprehend, to the maximum, the period from 15 May 2003 until 10 March 2007. This leads to the fact that the Respondent's share of National Solidarity Mechanism could only be, as a maximum, 2.82 % (two point eighty two per cent). This percentage is calculated as follows:

- 15 May 2003 to 13 March 2004 (302 days): 0.83%
- 14 March 2004 to 13 March 2005: 1%
- 14 March 2005 to 13 March 2006: 0.5%
- 14 March 2006 to 10 March 2007 (361 days): 0.49%

Total: 2.82%

iii. Request for relief

44. The Appellant concludes its submissions by requesting the CAS:

"(…) to pass a decision (…) overturning and setting aside the decision awarded by the DRC on 06 April 2015.

36. As an alternate request, if [CAS] *understands that the Respondent qualifies as a training entity – even though lacking legal recognition and the certification from the CBF -, the Appellant then requests the CAS to partially uphold this Appeal Brief and reform the decision passed by the DRC, limiting the Respondent's participation to 2.82% (two point eighty two percent) of the transfer fee agreed between SPFC and Botafogo.*

37. the Appellant kindly requests this honourable Court to condemn the Respondent to bear all the costs associated with the present procedure as well as to support the expenses incurred by the Respondent in connection herewith, in the amount of CHF 5'000".

IV.2 The Respondent's submissions

45. It is the Respondent's position that it is unnecessary to be certified by the CBF as a training entity to be entitled to receive the National Solidarity Mechanism. Besides, the amount of the National Solidarity Mechanism is calculated correctly by the CBF DRC.

46. The Respondent's submissions can in essence be summarized as follows:

i. The Respondent should be considered as a "training entity" according to Pelé Law

47. Article 29-A of the Pelé Law provides for the National Solidarity Mechanism in a national level whenever a player is transferred in the course of a contract between two clubs. The assignee/buyer club shall deduct 5% (five per cent) of the transfer fee to pay to the clubs that trained and educated the Player from his 14th to 19th birthday.

48. According to the Respondent, it is not a requirement to be certified by the CBF as a training entity to be entitled to receive the National Solidarity Mechanism.

49. The certificate issued by the CBF serves as a requirement for a club (i) to receive a compensation in case it is not able to sign the first employment contract with a player it trained and educated (article 29, para. 5 of the Pelé Law) and (ii) in order to secure the right of first refusal to renew such contract by such club (article 29, para. 7 of the Pelé Law).

50. It shall not be assumed that the National Solidarity Mechanism is also conditioned to the same certificate issued by the CBF. The purpose of National Solidarity Mechanism would be extremely jeopardized by formal requirements that go against its spirit.

51. In any case, in order to be considered as a training entity for the purpose of National Solidarity Mechanism, the club shall attest it complies with some requisites as provided by article 29, para. 2 of the Pelé Law.

52. Besides, the training entity of an athlete is only one entity, while the clubs that contributed to the education of the player can be several. Article 29-A of the Pelé Law establishes that all entities that contributed to the education and training of an athlete between 14 and 19 years old shall receive National Solidarity Mechanism.

ii. The period that should be taken into account while calculating the National Solidarity Mechanism

53. The National Solidarity Mechanism provided by the Pelé Law is based on the solidarity contribution established by the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), including the aims. The sole difference is the period considered for the calculation: 12-23 years old in the FIFA Regulations and 14-19 years old in the Pelé Law. This understanding is also supported by Professor Álvaro Melo Filho, who in his filed legal opinion says in summary:

a) "Likewise FIFA, the "national" solidarity contribution aims to compensate and foster the clubs that have contributed to the education of the Player in question. The philosophy of the institute is to be solidary and to distribute among those cubs a percentage of the transfer fee;

b) The only difference between FIFA Regulations and Pelé Law regarding the solidarity contribution is the period considered for the calculation;

c) The animus of article 29-A is not to condition club' right to receive the solidarity contribution to the issuance of the training entity's certificate by CBF. On the other hand, such condition of the Brazilian lex sportive is exclusive for the clubs that claims for the "Educational Compensation" (free translation of "Indenizacção por Formação"). This is the interpretation of Article 29, 3º and 5º, of the Pelé Law.

d) The certificate issued by CBF is a sine qua non condition for a cub claims Education Compensation pursuant article 29, 5º of the Pelé Law. However, article 29-A of the Pelé Law does not establish that such requisite is necessary for the distribution of the solidarity contribution but only the fact that the player had been registered with a club between the period from 14 until 19 years old.

e) Any other interpretation of the institute aims to distort the meaning of article 29-A".

54. Article 29 and 29-A of the Pelé Law were introduced by the Law 12.395/11, which amended the Pelé Law in 2011 in order to include such dispositions. The educational/training period in which the Player was registered with Respondent ended before the Law 12.395/11 was enacted and, as a consequence, the new law could not create effect to past facts since during the period in which the player was 14 until 19 years old (2001 – 2007) such legal disposition did not exist.

55. The Appellant states in its Appeal Brief that the Respondent would not be entitled to the National Solidarity Mechanism because during the training period the Respondent did not have the necessary certification. According to the Respondent, this is not possible since the Law 12.395/11 cannot produce retroactive effects in order to certify Respondent between 2001 and 2007.

56. Therefore, the two requisites for a club to be entitled to receive National Solidarity Mechanism are: (i) having registered an athlete between 14 and 19 years old and (ii) the player is transferred, upon a fee, between two clubs during the course of an employment contract. All other interpretations are, according to the Respondent, illegal and contrary to the legal hermeneutics.

57. Furthermore, the Respondent states that the Appellant's allegation that Respondent was not affiliated to the FERJ and the CBF is absurd. The player's passport issued by the CBF on 1 October 2012 and annexed to the first instance proceeding before CBF DRC attests that the Player was registered with the Respondent during the period from 1999 until 2010. In case the Respondent was not affiliated to the FERJ, it would not be attested in the Player's official passport issued by the CBF.

58. Since the Respondent trained the Player from his 14th until his 19th birthday, the Respondent is entitled to receive 5% of the compensation paid by the Appellant to Botafogo for the definite transfer of the Player: R$ 5,400,000 (five million four hundred thousand Brazilian Reais) x 5%

= R$ 270,000 (two hundred seventy thousand Brazilian Reais). This amount results from the following calculation:

14th Birthday	11.03.2001 until 10.03.2002	1%
15th Birthday	11.03.2002 until 10.03.2003	1%
16th Birthday	11.03.2003 until 10.03.2004	1%
17th Birthday	11.03.2004 until 10.03.2005	1%
18th Birthday	11.03.2005 until 10.03.2006	0,5%
19th Birthday	11.03.2006 until 10.03.2007	0,5%
	Total	5%

iii. Request for relief

59. The Respondent concludes its submissions by requesting the CAS:

"a) Dismiss all the allegations put forward by São Paulo Futebol Clube in its appeal brief;

b) Uphold in totum the decision rendered by the CBF Dispute Resolution Chamber on 06.04.2015; and

c) Order São Paulo Futebol Clube to bear any and all CS administrative and procedural costs, which have already been incurred or may eventually be incurred by the Respondent".

V. LEGAL ANALYSIS

V.1. Jurisdiction of the CAS

60. Article 33.1 of the CBF DRC rules states as follows:

"As decisões do CRL podem ser objeto, em última instancia, de recurso a tribunal arbitral reconhecido pela Confederação Brasileira de Futebol – CBF".

Free English translation:

"The decisions of the CRL may, in the final instance, be the subject of appeal to the arbitration tribunal recognised by the Confederação Brasileira de Futebol – CBF".

61. Pursuant to Article 75 of the CBF Statutes, the CBF recognises the CAS as an arbitral tribunal with power to render final and binding decisions, which is further corroborated by the parties' respectively signed Orders of Procedure.

62. It therefore follows that the CAS has jurisdiction to decide on this matter.

63. The Appellant alleged that CBF DRC failed to consider its lack of competence to decide the matter in dispute, but it does not challenge the competence of the CBF DRC to deal with the

matter. For this reason, the Sole Arbitrator will no appreciate such alleged and eventual non-competence of CBF DRC.

V.2. Admissibility

64. The CBF regulations are silent on the time limits for appealing a CBF DRC decision to the CAS.

65. Pursuant to Article R49 of the CAS Code, *"[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"*.

66. Article R51 of the CAS Code adds as follows: *"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely"*.

67. The grounds of the Appealed Decision were notified on 8 April 2015 and the Statement of Appeal was filed on 27 April 2015. This was within the required 21 days. The Appeal Brief was filed on 8 May 2015, which is within the required 10 days.

68. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondent".

V.3. Applicable Law

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

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

70. The appealed decision was issued by the CBF, a federation domiciled in Brazil and established under Brazilian laws. It therefore follows that, pursuant to Article R58 of the CAS Code, this dispute shall be decided in accordance with the CBF Regulations and, subsidiarily, Brazilian law.

V.4. Merits

A. The Main Issues

71. Given the facts, arguments and evidence adduced in these proceedings, the Sole Arbitrator has narrowed down on the following issues for adjudication in order to resolve this dispute:

i. Is Arturzinho entitled to National Solidarity Mechanism? And,

ii. If so, how much?

B. The Legal Analysis

i. Is Arturzinho entitled to National Solidarity Mechanism?

72. First and foremost the Sole Arbitrator considers it necessary to clarify the application of Article 29-A of the Pelé Law to the matter in question

73. Article 29-A of the Pelé Law – which establishes the National Solidarity Mechanism – was introduced on 16 March 2011 through the amended Law no. 12.395/11 of the Pele Law.

74. In this particular case, Arturzinho's right to claim the National Solidarity Mechanism arose and/or was triggered on 21 December 2011, when the Player was transferred to São Paulo. This happened at a time when the Pelé Law had already been amended to introduce Articles 29 and 29-A.

75. Whereas the period during which a player undergoes his training and education is a determining factor in arriving at the amount of the National Solidarity Mechanism due to the training club, the cause of action that triggers or gives rise to the training club's right to claim National Solidarity Mechanism is the act of the player's transfer to another club.

76. Having clarified the issues regarding the application of the Pelé Law, the Sole Arbitrator now proceeds to the issue as to whether Arturzinho is entitled to the National Solidarity Mechanism under Article 29-A of the Pelé Law.

77. In order to properly and soundly determine whether Arturzinho is entitled to National Solidarity Mechanism, the Sole Arbitrator considers that it necessary not only to confine himself to the wording of Article 29.3 of the Pelé Law, but also to read it together with other relevant provisions of Article 29 and 29-A of the Pelé Law in order to discern the full extent of its meaning, application and the spirit behind Article 29 of the Pelé Law in general.

78. The relevant provisions of Article 29 of the Pelé Law state as follows:

> *"Art. 29. A entidade de prática desportiva formadora do atleta terá o direito de assinar com ele, a partir de 16 (dezasseis) anos de idade, o primeiro contrato especial de trabalho desportivo, cujo prazo não poderá ser superior a 5 (cinco) anos".*
>
> *(…)*
>
> *§ 2º É considerada formadora de atleta a entidade de prática desportiva que:*
>
> *(…)*
>
> *§ 3º A entidade nacional de administração do desporto certificará como entidade de prática desportiva formadora aquela que comprovadamente preencha os requisitos estabelecidos nesta Lei.*

(…)" (emphasis added).

Sole Arbitrator's Free English translation.

"*Art. 29. Once an athlete is 16 (sixteen) years old his sports training entity shall be entitled to sign a first special sports employment contract with him, the term of which shall not exceed 5 (five) years".*

(…)

§ 2. An athlete's trainer is deemed to be the sports entity that:

(…)

§ 3 The national administration of the sport shall certify as sports training entities those entities that are proved to comply with the requirements provided in this Law. (As amended by Law no. 12.395, of 2011) (emphasis added).

79. The relevant provisions of Article 29-A of the Pelé Law state as follows:

"29-A. Sempre que ocorrer transferência nacional, definitiva ou temporária, de atleta profissional, até 5% (cinco por cento) do valor pago pela nova entidade de prática desportiva serão obrigatoriamente distribuídos entre as entidades de práticas desportivas que contribuíram para a formação do atleta, na proporção de:

I – 1% (um por cento) para cada ano de formação do atleta, dos 14 (quatorze) aos 17 (dezassete) anos, inclusive; e

II – 0,5% (meio por cento) para cada ano de formação, dos 18 (dezoito) aos 19 (dezanove) anos de idade, inclusive.

1º Caberá à entidade de prática desportiva cessionária do atleta reter o valor a ser pago à entidade de prática desportiva cedente 5% (cinco por cento) do valor acordado para a transferência, distribuindo-os às entidades de prática desportiva que contribuíram para a formação do atleta.

(…)

3º O percentual devido às entidades de prática desportiva formadora do atleta deverá ser calculado sempre de acordo com certidão a ser fornecida pela entidade nacional de administração do desporto, e os valores distribuídos proporcionalmente em até 30 (trinta) dias da efetiva transferência, cabendo-lhe exigir o cumprimento do que dispõe este parágrafo" (emphasis added).

Sole Arbitrator's Free English translation:

"Whenever a professional athlete is transferred on a definitive or temporary basis within Brazil, a maximum of 5% (five percent) of the amount paid by the new sports entity shall obligatorily be distributed between the sports entities that contributed to the training of the athlete, in the following proportions:

I – 1% (one percent) for each year of the athlete's training between the age of 14 (fourteen) and 17 (seventeen) inclusive; and

II – 0.5% (half of one percent) for each year of training between 18 (eighteen) and 19 (nineteen) years of age, inclusive.

1. The sports entity that transfers the athlete retains 5% (five percent) of the agreed transfer payment and distributes it to the sports entities that have contributed to the training of the athlete.

(…)

3. The percentage payable to the sports training entities that have trained the athlete shall always be calculated in accordance with a certificate provided by the national administration of the sport, and shall be distributed proportionally within 30 (thirty) days of the effective transfer date. The said administration shall also be responsible for requiring compliance with the provisions of this paragraph" (emphasis added).

80. First, it is apparent that Articles 29 and 29-A of the Pelé Law distinguish between an *"entidade de prática desportiva formadora" (art. 29.3),* otherwise known as a *"sports entity that trains and develops"* and an *"entidade de prática desportiva" (29-A),* otherwise known as *"a sports practicing entity".*

81. The word "*certificará*" or "certify" (in English) as contained in Article 29.3 of the Pelé Law requires a sports entity that acts as a "*formadora*" or "*training*" (in English) to be certified and to meet the requirements established thereunder.

82. Article 29-A of the Pelé Law specifically addresses the allocation and entitlement to National Solidarity Mechanism and does not include the word "*formadora*", but only refers "*entidade de prática desportiva*". In other words, an "*entidade de prática desportiva*" does not necessarily need to be a "*formadora*" (in the meaning of Article 29.3) in order to be entitled to the National Solidarity Mechanism.

83. Broadly speaking, the spirit behind Article 29-A of the Pelé Law is aimed at presuming that all "*entidades de pratica desportiva*" that have contributed to the "*formação*" of an athlete are entitled to the National Solidarity Mechanism, a presumption corroborated by Article 29-A's failure to set out any conditions precedent which "*entidades de pratica desportiva*" must meet in order to be entitled to the National Solidarity Mechanism.

84. The Sole Arbitrator thus finds that "*entidades de pratica desportiva*" such as Arturzinho need not be certified in order to be entitled to the National Solidarity Mechanism.

85. Secondly, Article 29-A is express that the 5% shall be distributed "*(…) between the sports entities that contributed to the training of the athlete (…)".* There is no reference to a **certified sports entity** or a **sports training entity**. The expression "**contributed**" covers all sports entities that played a role in training and developing the athlete - irrespective of whether or not the said entities had been certified or the level of training provided. Through the word "contributed", the drafters of Article 29-A of the Pelé Law intended to make access to National Solidarity Mechanism open to a wide range of sports entities as opposed to restricting access to the same. The rationale

behind Article 29-A is also in line with the spirit behind FIFA's regulations on solidarity mechanism.

86. Finally, it can also be discerned from a systematic reading of Article 29.3 of the Pelé Law that it relates or ought to relate to the material object of Article 29 of the Pelé Law and not to a training club's right to receive the National Solidarity Mechanism.

87. In other words, whereas Article 29.3 of the Pelé Law makes reference to a training club's need for certification, this reference can only be understood related to the material aspects pertaining to certain specific sports labour matters for purposes and effects of the application of Article 29 of the Pelé Law or other provisions which particularly require a club to be certified as an "*entidade de prática desportiva formadora*" or "*sports training entities*" (in English). The Sole Arbitrator concurs with the witness presented by the Respondent, Professor Alvaro Melo Filho, that certification is required for those **sports training entities** that (i) want to exercise the right to sign the first employment contract with the athlete, under Article 29 of the Pelé Law; (ii) want to exercise the right of first refusal in relation to the extension of the athlete's employment contract by one more year, under Article 29.7 of the Pele Law; or (iii) want to claim training compensation ("*indemnização de formação*"), under Article 29.5 of the Pele Law. These three acts can only be exercised by a certified sports training entity.

88. In fact, Article 29 of the Pelé Law makes no specific reference to National Solidarity Mechanism, and São Paulo's assertion that a **sports entity** must meet certain precedent conditions, *in casu* certification in order to be entitled to National Solidarity Mechanism, is purely based on an interpretation that seems to have no correspondence with the wording and the systematic insertion of art. 29 of the Pelé Law. Neither Article 29-A of the Pele Law, Article 57 of the CBF Regulations (which also addresses National Solidarity Mechanism) or even the FIFA RSTP, on whose spirit Article 29-A of the Pelé Law has been drafted, require the training club to be certified in order to be entitled to National Solidarity Mechanism.

89. The Sole Arbitrator concurs with the legal opinion given by Professor Álvaro Melo Filho on the following:

- Just as with the FIFA solidarity mechanism, the National Solidarity Mechanism in Brazilian law provides for the creation of a funding, compensation and promotion system for the benefit of those clubs that have made a real contribution to the training of players transferred within Brazil.

- The National Solidarity Mechanism therefore involves a philosophy of solidarity in football, via the redistribution of a small part of the funds generated by transfers within Brazil to the club or clubs that have provided the player's sports education.

- The only difference between the Brazilian provisions and the international arrangements is the player's age for the purpose of the triggering of the National Solidarity Mechanism with regard to transfers of players while their contracts are in force. In Brazil, the National Solidarity Mechanism involves and benefits those clubs that have contributed to the sports training of players aged between 14 and 19. Under the international arrangements, the

National Solidarity Mechanism, which benefits the clubs that have trained the players in question, is triggered by transfers of players aged between 21 and 23.

- The National Solidarity Mechanism is vital in terms of the sustainability of sports training, as training bodies are recompensed by those who acquire professional football players via transfers for money or money's worth and unjust enrichment in sport is prevented.

- It was never the legislator's intention to link or restrict entitlement to the National Solidarity Mechanism solely to clubs that have a training club certificate issued by the national football administration, i.e. the CBF.

- Certification is referred to only in the context of the provision regarding training compensation (Article 29. 5), and no direct, indirect, express or tacit reference is made to any limitation of access to National Solidarity Mechanism in Article 29-A of the Pelé Law.

- Certification of the club as a training club is an essential prerequisite of entitlement to training compensation, but is not however a *sine qua non* of access to the National Solidarity Mechanism, when applicable. The law does not make entitlement to pecuniary participation in the National Solidarity Mechanism subject to compliance with any legal requirements and proof that the club did in fact contribute to the training of the player suffices.

- There is no legal basis for the certification of the club as a prerequisite of financial entitlement pursuant to the application of the National Solidarity Mechanism, as Article 29-A of the Pelé Law covers all entities that *"have contributed"* in any way, to the training of the player.

- Any other interpretation or the drawing of any other conclusion involves recourse to an interpretation that distorts the meaning and scope of Article 29-A.

- The training club certificate issued by the CBF does not operate so as to exclude uncertified training clubs and does not apply retroactively to the training provided by a club before it obtained the said certificate. Accordingly, training clubs are beneficiaries of the National Solidarity Mechanism whether or not they are certified and whatever the date of the certificate".

90. It can therefore be concluded from the above opinion that whenever a player is transferred, the new club must pay 5% of the transfer fee in the form of National Solidarity Mechanism and distribute it to all *"entidades de pratica desportivas"* that contributed to his training and education between his 14th and 19th birthday regardless of whether or not they had been certified as *"entidade de prática desportiva formadora"* –. Arturzinho finds itself in this position.

91. In view of the foregoing, the Sole Arbitrator finds that Arturzinho is entitled to National Solidarity Mechanism.

ii. How much National Solidarity Mechanism is Arturzinho entitled to?

92. Having found Arturzinho entitled to National Solidarity Mechanism, the Sole Arbitrator now proceeds to establish whether the amount awarded by the CBF DRC (R$270,000) is correct.

93. São Paulo contends that if Arturzinho is entitled to National Solidarity Mechanism, then this amount should only be calculated with effect from 15 May 2003, the date when Arturzinho became an affiliate of the FERJ or, at least, not before 13 June 2000, date Arturzinho was registered at the Brazilian Tax department.

94. The Sole Arbitrator however disagrees with São Paulo.

95. Article 29-A.3 of the Pelé Law is clear that National Solidarity Mechanism is to be *"calculated in accordance with a certificate provided by the national administration of the sport",* otherwise known as the players' passport as provided by the CBF. The players' passport is thus the relevant document the law requires in order to calculate the amount due and the date Arturzinho allegedly became an affiliate of the FERJ is not the determinant factor in assessing the amount of National Solidarity Mechanism due as São Paulo suggests. The general rules of evidence therefore make it incumbent on São Paulo in this case to discharge its burden of refuting the contents and veracity of the Player's passport, which burden it has failed to discharge for the following reasons:

a) São Paulo did not challenge the contents of the Player's passport before the CBF DRC and has not adduced any other acceptable evidence that could prove that Arturzinho was only established on 13 June 2000. São Paulo could also have asked the CBF to state and/or provide the information / documentation on which the Player's passport has been produced, but has also not done so; and

b) The tax department document filed by São Paulo showing that Arturzinho was registered ("cadastrado") before the Brazilian Tax Department on 13 June 2003 is *per se* – at this stage – irrelevant. This document only proves the date Arturzinho was registered at the Tax Department and does not prove that Arturzinho was founded or incorporated as a legal entity on such date. São Paulo had an opportunity to obtain, file or request the production of Arturzinho's commercial certificate, a legal document that could prove the date Arturzinho was incorporated, but has not done so.

96. The Player's passport shows that he was registered with Arturzinho from 1999-2006 (*i.e.* from his 12th to 19th birthday) as an amateur; and from 2006 to 2010 as a professional (*i.e.* from his 19th to 23rd birthday). The Player was therefore trained and educated by Arturzinho in the period covering from his 14th to 19th birthday, which period falls under the National Solidarity Mechanism entitlements.

97. The Sole Arbitrator has carefully reviewed the calculation adduced by Arturzinho at paragraph 58 above and finds the same to be correct *vis-à-vis* (i) the applicable percentages resulting from para. I and II of Article 29-A of the Pelé Law and (ii) the Transfer Fee of R$ 5,400,000 Brazilian

Reais São Paulo paid Botafogo for the and finds that this amount leads to an amount of R$270,000 due as National Solidarity Mechanism.

C. Conclusion

98. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator:

    a. Dismisses the appeal

    b. Confirms the Appealed Decision and therefore orders São Paulo to pay Arturzinho the requested National Solidarity Mechanism in the total amount of R$270,000.

99. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by São Paulo Futebol Clube against the decision rendered by the Confederação Brasileira de Futebol Dispute Resolution Chamber on 6 April 2015 is dismissed.

2. The decision rendered by the Confederação Brasileira de Futebol Dispute Resolution Chamber on 6 April 2015 is upheld.

(…)

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