



Arbitration CAS 2018/A/5838 Clube Atlético Mineiro v. Huachipato SADP & Fédération Internationale de Football Association (FIFA), award of 30 April 2019

Panel: Mr José Juan Pinto (Spain), President; Mr Mark Hovell (United Kingdom); Mr Juan Pablo Arriagada (Chile)

Football

Overdue payables

Standing to be sued in disciplinary proceedings

Standing to be sued in proceedings deriving directly from a monetary decision

Possibility to impose a sanction subject to a probationary period

Intent of Article 12bis RSTP

Financial situation of the club

1. The only party with standing to be sued in appeals before the CAS derived from FIFA disciplinary proceedings is FIFA. Because the “opposing party” (i.e. a club or a player) did not take part in the FIFA disciplinary proceedings and the relevant decision was only directed to the sanctioned party, no other party other than FIFA should take part as a respondent in the relevant appeal against such disciplinary decision.
2. When the appeal does not derive from a disciplinary proceeding, but is directed directly against a monetary decision which grants a club’s request and accessorially foresees a disciplinary sanction against the opposing club in case of a future default on the payment, not only FIFA but also the club which was granted a measure of pressure to effectively obtain its credit and which would be affected by any potential annulment or modification of such measure as a result of the appeal has a “*disputed right at stake*” and holds standing to be sued in the arbitration proceedings.
3. A club that breached Article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) for the sixth time over a period of three years is indeed a “*repeated offender*”. Article 12bis para. (6) RSTP clearly foresees that “*a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty*”. Even the “*lex mitior*” doctrine and the possibility established in Article 12bis (7) RSTP to impose a sanction subject to a probationary period ranging from six months to two years cannot lead to the conclusion that the term “*repeated offender*” should not last for more than six months. The provision established in Article 12bis (7) RSTP is not related and cannot apply in that sense to the provision established in Article 12bis (6).
4. The kind of behavior, where one club takes a serious advantage over another club (or in other cases, over players) and trades at their expense, is undesirable in the world of football and results in FIFA bringing regulations such as Article 12bis RSTP.

5. Financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment.

I. PARTIES

1. Clube Atlético Mineiro (the “Appellant” or “CAM”) is a professional football club based in Belo Horizonte, Brazil. CAM is affiliated to the *Confederação Brasileira de Futebol* which in turn is a member of the *Fédération Internationale de Football Association*.
2. Huachipato SADP (the “First Respondent” or “Huachipato”) is a professional football club based in Vitacura, Chile. Huachipato is affiliated to the *Federación de Fútbol de Chile* which in turn is a member of *Fédération Internationale de Football Association*.
3. The *Fédération Internationale de Football Association* (the “Second Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at a global level and exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

4. Below is a summary of the most relevant facts and the background giving rise to the present dispute that will be developed based on the Parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings and at the hearing. Additional facts may be set out, where relevant, in connection with the legal analysis. In the present Award, the Panel refers only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments and evidence submitted by the Parties during the present proceedings.
5. On 20 July 2016, the professional football player R. (the “Player”) was temporarily transferred from Huachipato to CAM. The relevant agreement between the Parties included an option for the definitive transfer of the Player in favour of CAM (the “Agreement”).
6. On 31 March 2017, CAM exercised the option provided in the Agreement and agreed to pay Huachipato “a fixed transfer fee of EUR 800,000 net as follows: (i) EUR 400,000 net payable on 31 August 2017; and (ii) EUR 400,000 net payable on 31 January 2018” for the definitive transfer of the Player (the “Transfer Fee”).
7. On 28 August 2017, Huachipato sent an email to CAM in order to remind it that the first instalment of the Transfer Fee was about to become due on 31 August 2017.

8. On the same day, CAM responded to Huachipato stating “*we do not foresee making this payment within the next few days*” (in its original Spanish: “*No tenemos previsión para este pago en los próximos días*”).

9. During September and November 2017, Huachipato kept requesting the first instalment of the Transfer Fee without receiving a positive answer from CAM.

10. On 5 December 2017, CAM communicated the following to Huachipato:

“Nuestro año fue muy complicado de ingresos debido a nuestro rendimiento y salida temprana de los torneos que disputamos.

Tendremos la próxima semana elecciones para asumir un nuevo Presidente.

Después de esto pretendemos pasar una situación más firme para realizar este pago”.

Freely translated into English as follows:

“Our year was very complicated financially due to our performance and the early disqualification from the tournaments in which we competed.

We will hold elections next week to elect a new President.

After this stage, we aim to be in a stronger position to make this payment”.

11. On 31 January 2018, the second instalment of the Transfer Fee became due.

12. In February 2018, CAM made a payment of EUR 200,000 to Huachipato.

13. On 8 March 2018, Huachipato once again requested the remaining amount of the Transfer Fee from CAM in the following terms:

*“(…) Considering that from the total amount of EUR 800.000,00, CAM only paid EUR 200.000,00 so far, HSDA is still entitled to receive the total amount of **EUR 600.000,00 (six hundred thousand Euros)**.*

*Therefore, in the context of article 12bis of the Regulations on the Status and Transfer of Players of FIFA (edition 2016), we ask you to conclude the payment of **EUR 600.000,00 in the next ten days** and send the proof of payment until 19 March 2018. In case the payment is not received within this time limit, we will have no option, but to refer this case to FIFA in accordance with article 12bis of FIFA’s Regulations”.*

14. On 28 March 2018, after CAM’s default, Huachipato lodged a claim before FIFA against the Appellant, requesting the payment of EUR 600,000 plus interest and the imposition of sporting sanctions against the debtor club.

15. On 4 July 2018, the Bureau of the Players’ Status Committee rendered a decision with regard to Huachipato’s claims. The findings of such decision read as follows (the “Appealed Decision”):

- “1. *The claim of the Claimant, Huachipato SADP, is accepted.*
2. *The Respondent, Clube Atlético Mineiro, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of EUR 600,000 plus interest at the rate of 5% p.a.as follows:*
- a) *5% p.a. on EUR 200,000 as from 1 September 2017 until the date of effective payment; and*
- b) *5% p.a. on EUR 400,000 as from 1 February 2018 until the date of effective payment.*
3. *If the aforementioned amount plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee, for consideration and a formal decision.*
4. *The final amount of costs of the proceedings in the amount of CHF 20,000 is to be paid by the Respondent within 30 days as from the notification of the present decision, as follows:*
- a) *The amount of CHF 5,000 has to be paid to the Claimant.*
- b) *The amount of CHF 15,000 has to be paid to FIFA to the following bank account with reference to case nr. 18-00642/gra: (...)*
5. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points 2. and 4.a) are to be made and to notify the Bureau of every payment received.*
6. *In the event that the amount due to the Claimant as per point 2) above is not paid by the Respondent within 30 days as from the date of notification of his decision, the Respondent shall be banned from registering any new players, either nationally or internationally, for the next entire registration period following the notification of the present decision”.*
16. On 11 July 2018, the grounds of the Appealed Decision were notified to the Parties which can be summarized as follows:
- The Parties agreed a Transfer Fee of EUR 800,000 for the definitive transfer of the Player. CAM has only paid EUR 200,000.
 - On 8 March 2018, Huachipato formally put CAM in default of payment of the remaining amount of the Transfer Fee, setting a ten-day time limit in order to remedy the default. Therefore, Huachipato complied with the prerequisites established in Article 12bis (3) of the FIFA Regulations on the Status and Transfers of Players (“RSTP”).
 - CAM has acknowledged that it owes the amount of EUR 600,000 to Huachipato.
 - Based on the aforementioned and to the *pacta sunt servanda* principle, CAM shall pay Huachipato the amount of EUR 600,000 plus interest at the rate of 5% p.a. as from 1 September 2017 on EUR 200,000 and as from 1 February 2018 on EUR 400,000, until the date of effective payment.

- Moreover, according to Article 12bis (4) of the RSTP, FIFA has the power to impose sanctions on a club that has delayed a due payment for more than 30 days without a *prima facie* contractual basis.
- In particular, this is the sixth time that FIFA finds CAM delaying due payments for more than 30 days without a *prima facie* contractual basis or without providing valid reasons for non-payment. In view of this, FIFA will impose a ban from registering new players, either nationally or internationally, for the next registration period in the event that CAM does not pay the amount due to Huachipato within 30 days following the notification of the decision.

III. PROCEEDINGS BEFORE THE CAS

17. On 24 July 2018, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), CAM filed a Statement of Appeal before the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, requesting the following:

“Accordingly, the Appellant seeks the following relief:

Procedurally:

FIRST.- To confirm the automatic suspension of all effects of the Appealed Decision, in particular, the disciplinary sanction imposed on the Appellant, until there is the issuance of a proper Arbitral Award by the CAS regarding the matter at hand;

On the merits:

SECOND.- To dismiss in full the Appealed Decision;

THIRD.- To accept the present appeal;

At any rate:

FOURTH. - To order the Respondents 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; and

FIFTH.- To order the Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”.

18. On 20 August 2018, the Appellant filed its Appeal Brief before CAS, with the following requests for relief:

“FIRST.- To confirm that the sanction imposed by the Bureau of the FIFA Players’ Status Committee on the Appellant in the Appealed Decision is arbitrary and, consequently, shall be fully dismissed;

SECOND.-To revert the case back to FIFA to issue proportionate disciplinary measure on the Appellant; and

THIRD- To order the Second 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; and

FOURTH- To order the Second Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”.

19. On 10 September 2018, pursuant to 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 settle the present dispute would be composed of the following:
- President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain
- Arbitrators: Mr. Mark Andrew Hovell, Solicitor in Manchester, Great Britain (appointed by the Appellant)
- Mr. Juan Pablo Arriagada Aljaro, Attorney-at-law in Santiago, Chile (jointly appointed by the Respondents)
20. On 1 October 2018, the First Respondent filed its Answer to the Appellant’s appeal with the following requests for relief:
- “a) Confirm to that the First Respondent has no standing to be sued in the present case;*
- b) In any event, fully dismiss the appeal filed by Clube Atlético Mineiro against the FIFA’s decision passed on 04 July 2018;*
- c) Condemn Clube Atlético Mineiro to pay at least CHF 20,000 for the legal expenses of Huachipato SADP, as well as all the expenses incurred during this procedure, and finally, paying the totality of the costs of this procedure and the costs of the FIFA’s procedure”.*
21. On 12 October 2018, FIFA filed its Answer to the Appellant’s appeal with the following requests for relief:
- “1. That the CAS rejects the appeal at stake and confirms the presently challenged decision passed by the Bureau of the Players’ Status Committee (...) on 4 July 2018 in its entirety.*
- 2. That the CAS orders the Appellant to bear all the costs of the present procedure.*
- 3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand”.*
22. On 25 October 2018, the CAS Court Office informed the Parties that Mr. Roberto Nájera Reyes, attorney-at-law in Barcelona, Spain would assist the Panel as *ad hoc* Clerk.
23. On 31 October 2018, the CAS Court Office informed the Parties that the Panel, pursuant to Article R57 of the CAS Code, had decided to hold a hearing on the present matter.

24. On 21 December 2018, the CAS Court Office sent the Parties the Order of Procedure, which was returned duly signed on the same date by the Appellant, on 24 December 2018 by the First Respondent and on 26 December 2018 by the Second Respondent.
25. On 10 January 2019, the hearing of the present procedure took place in Buenos Aires, Argentina. The Appellant was represented by its counsel, Mr. André Oliveira de Meira Ribeiro. The First Respondent was represented by its counsels Mr. Javier Gasman and Mr. Eduardo Carlezzo. The Second Respondent was represented by its in-house lawyers, Messrs. Matthijs Withagen and Marco Amezcua who attended the hearing by videoconference. In addition, Mr. Daniele Boccucci, Counsel to the CAS, and Mr. Roberto Nájera Reyes, *ad hoc* Clerk, assisted the Panel at the hearing.
26. At the outset of the hearing, the Parties confirmed that they had no objection as to the composition of the Panel or to the jurisdiction of the CAS.
27. Following the respective opening statements, the Appellant examined its called witness, Mr. Carlos Fabel (CAM's Financial Director), with the translation assistance of Mr. Alejo Magariños. The witness was also cross-examined by the Respondents and likewise answered some questions raised by the Panel.
28. During the hearing, the Parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the Panel.
29. Finally, all the parties attending expressly declared that they did not have any objection with respect to the conduction of the procedure and their right to be heard had been duly respected.

IV. SUBMISSIONS OF THE PARTIES

30. 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, for the purposes of the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant (Clube Atletico Mineiro)

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

1. *The difficult financial situation of CAM*

32. It is indisputable that CAM owes EUR 600,000 to Huachipato and it is working hard to pay the outstanding amount.
33. The reason for the lack of payment is because, few years ago, the Brazilian tax authorities blocked the Appellant's bank accounts and confiscated its financial resources which,

combined with the biggest economic crisis in the history of Brazil, led the Appellant to a quasi-unmanageable scenario.

34. Notwithstanding this situation, the Appellant has been working extremely hard to change its position and to maintain its sporting competitiveness without ignoring its financial duties. In this regard, the Appellant has reached an agreement with the Brazilian authorities to comply with its tax obligations and has settled different debts with the members of the so-called “Football Family” (e.g. with VFL Wolfsburg, FC Dynamo Kiev, Al Gharafa SC, Udinese Calcio in two different disputes, Spartak Moscow and Boca Juniors).
35. The Appellant has always fulfilled its payment obligations and, in particular, it is only a matter of time until the payment towards Huachipato is made. Even on 16 August 2018, CAM proposed a payment plan to Huachipato but this was rejected by the latter. This is why CAM has not paid Huachipato because it has prioritized other payments with other clubs that have accepted payment plans.

2. *On the Appealed Decision and the imposed sanction*

36. According to Article 14 (4) (f) of FIFA’s Procedural Rules, the decisions must contain “*the reasons for the findings*”. In the present case, FIFA imposed the most severe sanction of those indicated in Article 12bis (4) of the RSTP based on the partial breach of the Agreement and because, supposedly, it is the sixth time that the Appellant has delayed payments for more than 30 days; however, these cases and when they occurred were not clarified. Such lack of clarification should be considered inadmissible and a clear violation of the procedural rules and principles. Therefore, the sporting sanction shall be set aside.
37. Even in the unlikely event that the Appellant had delayed payments on six occasions, it is important to note that neither Article 12bis nor any other article of the RSTP clarifies when a club should be considered a “*repeated offender*”. In this regard Article 12bis (6) of RSTP simply states that “*a repeated offense will be considered as an aggravating circumstance and lead to a more severe penalty*” but there is no explanation on how exactly or under which circumstances this article would apply. In other words, there is no clarity on how many occasions, during what period of time or under which circumstances a club should be considered a “*repeated offender*”. Therefore, by failing to provide clear and predicable rules for sanctions, the Appealed Decision violates the principle of legality and the so-called predictability test for sanctions (CAS 2007/A/1363 et al).
38. Even assuming, but not admitting, that “*repeated offenders*” shall receive harsher sanctions, such a “label” must not last forever. In this regard, Article 12bis (7) of RSTP establishes the possibility of imposing a sanction subject to a probationary period of between six months and two years. In other words, apparently after 6 months, FIFA simply cancels the effects of a sanction if the guilty club does not commit any further infraction. Therefore, it must be concluded, under the *lex mitior* doctrine, that a club shall not be considered a “*repeated offender*” for more than six months.

39. Additionally, it should be taken into account that the transfer of players is the most important asset of the clubs, especially in South America. By imposing a ban to register new players, FIFA is only aggravating the financial situation of the clubs which are facing economic difficulties. Thus, the prohibition for transfers should be very well analyzed before being imposed.

40. In this regard, the Appealed Decision violates the principle of proportionality, which, under the *Lex Sportiva*, includes three main components:

➤ Adequacy:

The measure is “adequate” if it is appropriate for achieving the goal pursued through the legitimate interest or, at least, contributing towards these goals.

The Appealed Decision is inadequate because FIFA did not take into account the consequences of banning CAM from making transfers at national and international level. There is no balance between punishing the Appellant and allowing it to pay its debts, moreover, when FIFA did not consider the Appellant’s plan to restructure its finances under which the transfers of players had a key role.

➤ Necessity:

The sanction is considered “necessary” if there is no lesser incisive measure that would be equally adequate to achieve the goal pursued.

FIFA could have decided on a lesser incisive measure than the imposed sanction, such as the same transfer ban but subject to a probationary period of between six months and two years.

This measure would not only be less incisive but more appropriate to the case at hand since CAM could benefit from the financial resources from the transfers and it would not represent any harm to the interests of Huachipato or FIFA, since in the event of default by CAM within the probationary period, the stipulated sanction would be applied.

➤ Proportionality *stricto sensu*:

The imposed measure should not go beyond what is strictly required to achieve the goal in the specific situation at stake; the measure must strike a reasonable balance with the interests of the person affected.

The Appealed Decision failed to take into account all of the circumstances of the case such as the fact that (i) CAM tried to comply with its financial obligations towards Huachipato; (ii) it partially paid to Huachipato; (iii) CAM committed to pay the remaining amount as soon as possible; (iv) it has paid significant debts to other clubs.

Thus, it should be concluded that the imposed sanction failed to comply with all three elements of proportionality.

41. Due to all of the aforementioned, the sanction, being the most severe possible, must be considered arbitrary and disproportionate and, therefore, the CAS must refer the case back to FIFA for the imposition of an appropriate sanction.

B. The First Respondent Huachipato SADP

42. The First Respondent's submissions, in essence, may be summarized as follows:
43. It is evident that the present appeal has the sole purpose of postponing CAM's payment obligation as much as possible and the arguments that had been put forward by the Appellant are mere desperate attempts to avoid the consequences of its constant breaches.

1. Lack of standing to be sued

44. It should be noted that the Appellant has not challenged the amount owed to Huachipato and has even acknowledged that it must pay it. The present appeal is only related to the future and eventual sanction stipulated in the Appealed Decision.
45. Therefore, Huachipato does not have standing to be sued in the present matter since the Appellant only seeks to reduce the sporting sanction imposed by FIFA, as it can be verified in the requests for relief of its appeal brief.

2. The Appealed Decision is adequate and proportionate

46. The Appealed Decision is adequate and proportionate for the following reasons:
- It is not the first time that the Appellant has failed to comply with its financial obligations; in fact, CAM is known as a "bad payer" club. In this regard, the Appealed Decision stated that CAM has breached its obligations more than six times and the Appellant itself has confessed in its appeal brief to eight different cases where it has failed to pay other clubs.
 - Article 12bis (6) of the RSTP is very clear and leaves no room for doubt: "*A repeated offense will be considered as an aggravating circumstance and lead to a severe penalty*". As the Appellant has breached Article 12bis on at least eight different occasions, this should lead to a more severe penalty.
 - FIFA did not apply the most severe penalty and could have imposed the prohibition for registration of players for two periods, instead of one; it could have also imposed a fine in addition to the registration ban. However, FIFA did not do this.
 - It is worth mentioning that the sanction will not be imposed if CAM pays Huachipato within the grace period established by FIFA.
47. Considering the aforementioned, it seems that the Appellant is only "buying" time to postpone the payment and is using its available legal resources in bad faith.

48. Furthermore, it is worth mentioning that CAM recently loaned the Player for the amount of EUR 5,000,000 to Al-Wahda Club with an option to permanently transfer him for more than EUR 5,000,000. In other words, the Appellant is financially benefitting itself at the expense of Huachipato, which should not and cannot be tolerated.
49. Thus, it shall be confirmed that Huachipato does not have standing to be sued and, in any case, the appeal filed by the Appellant should be rejected.

C. The Second Respondent (FIFA)

50. The Second Respondent's submissions, in essence, may be summarized as follows:
51. CAM has justified the lack of payment due to problems with the Brazilian tax authorities in combination with the most severe economic crisis in Brazil; however, the CAS jurisprudence has already confirmed that the financial difficulties of a club are not a valid excuse for a payment default.

In addition, the justifications alleged by the Appellant occurred in 2013-2014, while the Agreement with Huachipato was entered into in 2016. Therefore, the Appellant must have taken into account, in accordance with the principle *pacta sunt servanda*, the consequences deriving from the loan of the Player and analyzed from its financial position whether it was a wise decision to enter into the Agreement with Huachipato. By not doing so, it shall face the consequences for the default on its obligations.

52. Article 12bis of the RSTP was drafted aiming to establish a stronger system to ensure that clubs properly comply with their financial contractual obligations. A club is in violation of this article if the following conditions are met: (i) the club must have delayed the payment for more than 30 days without a *prima facie* contractual basis and (ii) the creditor must have put the debtor club in default in writing (iii) granting a deadline of at least 10 days in order to remedy the default. It is undisputed that these conditions are met in the present case.
53. Article 12bis (6) of the RSTP could not be clearer and does not need any further explanation: a "*repeated offence*" is simply an offence that is happening repeatedly, again and again. The imposition of more severe sanctions on repeated offenders has been confirmed by the CAS on several occasions (e.g. *CAS 2016/A/4675* and *CAS 2016/A/4719*). Thus, it goes without saying that each additional offence by the same club is equally considered a "*repeated offence*", and a more severe penalty may be imposed compared to the previous offence, always taking into consideration the specific circumstances of the case.
54. In light of the above, the sanction imposed by FIFA finds a clear legal basis in Article 12bis of the RSTP thus satisfying the "principle of legality". Moreover, according to CAS jurisprudence (e.g. *CAS 2014/A/3765*), the sanction resulting from the repeated failure of the Appellant was equally predictable since this is established in the RSTP and there is a clear connection between the incriminated conduct and the imposed sanction.

55. Bearing in mind that the Appellant has been involved in numerous proceedings related to overdue payables, in which several sanctions have already been imposed, the Appellant's argument with respect to the meaning of "repeated offender" is far from credible.
56. The Appellant claims that the Appealed Decision is not properly grounded. However, the Appealed Decision explained very clear reasons for imposing a sanction on the Appellant: the debtor is a "*repeated offender*" and this fact will lead to a heavier sanction in accordance with Article 12bis (6) of the RSTP.
57. If the Panel finds that the Appealed Decision does not contain sufficient reasons (*quod non*), it can review the facts and the law *de novo* but it must take into account that a warning, a reprimand, a fine, a ban for one registration period (which never became effective) and a ban for one registration period in addition to a fine have already been imposed on the Appellant.

The sanction is proportional and adequate

58. FIFA has taken into account all the circumstances of the case for the imposition of the sanction against the Appellant; i.e. the amount owed to Huachipato, the importance of the infringement and whether the sanctioned party has previously been found responsible for having overdue payables.
59. The sanction is adequate to force the debtor to comply with its payment obligations in the future. The foreseen measure will prevent the Appellant from taking reckless decisions to engage players against payment when it does not have a healthy financial position to comply with its payment obligations. Furthermore, the sanction is adequate once it is well-known that a club that is banned from making transfers is not prevented from releasing players against payment in order to obtain income, to improve its economic balance and, at the same time, to give more opportunities to young and promising players of the club's squad.
60. The imposed measure will also be deemed necessary once it has been proven that "*lighter sanctions*" previously imposed on the Appellant have not resulted in complying with its financial contractual obligations.
61. Lastly, the sanction is also proportional *stricto sensu* once it is known that the Appellant never intended to comply with its financial obligations.
62. CAM also argued that FIFA could have imposed the registration ban subject to a probationary period as an alternative sanction. However, FIFA understood that the proposed measure is even more severe, because the prohibition is effectively imposed and its execution is only suspended, while in the case at stake the ban will only be imposed in the event that the Appellant does not comply with its payment obligation.
63. It should be highlighted that on May 2018, CAM loaned the Player for EUR 4,650,000, meaning that it has more than enough money to pay Huachipato. This shows the Appellant's bad faith and the frustrating position of Huachipato as it has only received 25% of its credit while the Appellant has obtained a considerable profit.

64. For all the above mentioned, the Appealed Decision shall be confirmed.

V. JURISDICTION

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

“An appeal against the 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 it prior to the appeal, in accordance with the statutes or regulations of that body”.

66. The jurisdiction of the CAS, which has not been disputed by the Parties, arises out of Articles 57 and 58 of the FIFA Statutes in connection with the abovementioned Article R47 of the CAS Code and is also confirmed in the Order of Procedure which was duly signed by the Parties.

67. Therefore, the Panel holds that the CAS has jurisdiction to rule on this case.

VI. ADMISSIBILITY

68. Pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

69. The grounds of the Appealed Decision were communicated to the Appellant by facsimile on 11 June 2018, and the Statement of Appeal was filed on 24 July 2018, i.e. within the time limit required both by the FIFA Statutes and Article R49 of the CAS Code. The Appeal Brief was also filed within the time limit stipulated by Article R51 of the CAS Code.

70. Consequently, the Appeal filed by the Appellant is admissible.

VII. APPLICABLE LAW

71. Article R58 of the CAS Code reads as follows:

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

72. In addition, Article 57, paragraph 2 of the FIFA Statutes establishes the following:

“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”.

73. Therefore, the Panel considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations and, subsidiarily, based on Swiss Law.

VIII. MERITS

a) The Parties to the present proceedings

74. As a preliminary issue, the Panel notes that Huachipato has requested the CAS to declare its lack of standing to be sued in the present appeal once the Appellant (i) has acknowledged the debt, (ii) the latter is only objecting the sporting sanction imposed by FIFA and (iii) its requests for relief are not directed to Huachipato.
75. The Panel notes that the CAS jurisprudence has repeatedly established that a party has standing to be sued (*“légitimation passive”*) in CAS proceedings if it is personally obliged by the “disputed right” at stake. In other words, if it has some stake in the dispute because something is sought against it (CAS 2008/A/1620, para. 4.1; CAS 2007/1367, para. 37; and, CAS 2012/A/3032 para. 42).
76. Furthermore, the Panel is well-aware that the CAS jurisprudence has likewise established that the only party with standing to be sued in appeals before the CAS derived from FIFA disciplinary proceedings is FIFA (e.g. CAS 2007/A/1329-1330; CAS 2007/A/1367, para. 14; CAS 2012/A/3032, para. 43) and that no other party other than FIFA (i.e. a club or a player) should take part as a respondent in the relevant appeal against such disciplinary decision. Such conclusions were reached, *inter alia*, because the “opposing party” did not take part in the FIFA disciplinary proceedings and the relevant decision was only directed to the sanctioned party.
77. However, the Panel considers that such jurisprudence is not applicable to the case in hand and that Huachipato indeed holds *“standing to be sued”* in the present matter for the following reasons:
- (i) Contrary to the cited cases in paragraph 76 above, the present matter does not derive from a disciplinary proceeding followed before FIFA. In fact, the present appeal derives directly from a monetary decision which accessorily foresees a disciplinary sanction against CAM in case of a future default on the payment. Naturally, this decision was issued by the FIFA Players’ Status Committee and not by the FIFA Disciplinary Committee.
 - (ii) FIFA, under its legal powers, granted Huachipato’s request and provided a future sanction in case CAM does not comply with the payment within a certain deadline. In this potential default scenario, Huachipato would be entitled to inform FIFA that CAM has not paid the relevant amount and FIFA will have to address the issue of the sanction against CAM. In the Panel’s view, Huachipato has obtained a measure of pressure to effectively obtain its credit and any potential annulment or modification of such measure by a CAS decision would indeed affect Huachipato.

- (iii) The Panel indeed finds that, despite objecting its standing to be sued, Huachipato has an opposing interest (i.e. maintaining the provided sanction) to that of CAM's (i.e. set aside the sanction and refer the case back to FIFA). This is confirmed because the First Respondent has filed several arguments to maintain in full the Appealed Decision.
- (iv) Lastly, the Appellant initially requested in its Statement of Appeal “to dismiss in full the *Appealed Decision*”. This means that the Appellant was initially looking to challenge both the monetary and the disciplinary outcomes foreseen in the Appealed Decision. Thus, the Panel considers that the appeal was correctly directed to both Huachipato and FIFA.
78. For the reasons set out above, the Panel finds that Huachipato indeed has a “*disputed right at stake*” and that it holds standing to be sued in the present arbitration proceedings.

b) The substance of the dispute

79. The Panel notes that the Appellant has essentially requested to dismiss the sanction foreseen in the Appealed Decision and to refer the case back to FIFA to issue a proportionate disciplinary measure. In particular, the Appellant grounds its request arguing that (i) the Appealed Decision was not duly reasoned as FIFA did not identify the previous cases in which CAM was considered a “*repeated offender*”; (ii) that Article 12bis of the RSTP does not clearly explain how or under which circumstances a club should be considered a “*repeated offender*” – thus, violating the principle of legality and the predictability test –; and (iii) the sanction, in view of the Appellant, is disproportionate.
80. It is worth mentioning that the Appellant neither disputed that it owes the amount granted in the Appealed Decision (in fact, it has repeatedly acknowledged that it has to pay the outstanding amount to Huachipato) nor the prerequisites stipulated in Article 12bis of the RSTP.
81. After revising the Parties’ statements and the evidence brought to these proceedings, the Panel shall reject the arguments of the Appellant and dismiss its appeal for the reasons set out below.
82. The Panel considers that the Appealed Decision is in line with Article (4) (f) of the FIFA Procedural Rules as it established sufficient reasons for the reached findings. In this regard, the case CAS 2015/A/3879 held that a decision of a sports organization “(...) *requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association court*”. The Panel notes that the Bureau of the Player’s Status Committee clearly stated that the Appellant was sanctioned because the debt with Huachipato was the sixth time where CAM had failed to comply with its obligations.
83. The Panel shall reject the alleged CAM’s lack of knowledge with respect to the five previous cases considered by FIFA to deem the Appellant a “*repeated offender*”, all the more so, when it was the own Appellant who has brought at least eight cases to these proceedings where it has delayed payments for more than 30 days without a *prima facie* contractual basis. Only for the sake of completeness, the Panel wants to state that FIFA provided evidence in these CAS proceedings of the five precedent cases that were taken into account for the outcome of the Appealed Decision:

- Decision of the Single Judge of the PSC of 2 February 2016; Wolfsburg v. Atlético Mineiro.
 - Decision of the Single Judge of the PSC of 14 March 2016; Udinese Calcio v. Atlético Mineiro.
 - Decision of the Single Judge of the PSC of 13 June 2016; Udinese Calcio v. Atlético Mineiro.
 - Decision of the Bureau of the PSC of 12 May 2017; Udinese Calcio v. Atlético Mineiro.
 - Decision of the Bureau of the PSC of 28 August 2017; Udinese Calcio v. Atlético Mineiro.
84. Therefore, the Panel finds that FIFA provided a well-reasoned statement that the debt with Huachipato was the sixth time that CAM had breached Article 12bis of the RSTP.
85. The Panel also rejects the arguments of the Appellant referring to any violation of the principle of legality or to the so-called predictability test. In this regard, the Panel considers that Article 12bis para. (6) of the RSTP clearly foresees – and FIFA members are duly warned – that *“a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty”*.
86. The Panel deems that the Appellant shall not have any reason to doubt that it is a *“repeated offender”*, especially, when in case CAS 2016/A/4719 issued on 31 March 2017 was considered as such:
- “the Appellant [i.e. the same Clube Atlético Mineiro] in bad faith has neglected to meet its financial obligations more than three times; each with a significant amount. In the Panel’s view, the Appellant is indeed a “repeated offender”, which is considered as an aggravating circumstance according to article 12bis, par. 6, of the RSTP”*.
87. The Panel wants to highlight that, after this cited award, the present case is, at least, the third time in which CAM has been found in breach of Article 12bis of the RSTP.
88. The Panel thus finds that there is no room for doubt that the Appellant is indeed a *“repeated offender”* and that there is no breach of the principles of legality or predictability.
89. Furthermore, the Panel rejects the Appellant’s allegation that, based on the *“lex mitior”* doctrine and in light of the possibility established in Article 12bis (7) of the RSTP to impose a sanction subject to a probationary period ranging from six months to two years, the term *“repeated offender”* should not last for more than six months. The Panel is not convinced that the provision established in Article 12bis (7) of the RSTP is related or can apply in that sense to the provision established in Article 12bis (6) related to *“repeated offences”*.
90. Regarding the proportionality of the sanction, the consistent jurisprudence of CAS has stated that CAS panels shall give a degree of deference to decisions of sports governing bodies in respect of the proportionality of sanctions and shall only review the decision if it is considered evidently and grossly disproportionate to the committed offence (e.g. CAS 2016/A/4595, CAS 2009/A/1817 & 1844). Contrary to the Appellant’s allegations, the Panel deems that the

potential ban from registering players for one registration period is proper and it is not grossly or evidently disproportionate.

91. In particular, the Panel firstly notes that FIFA has not imposed the most severe sanction (as the Appellant has alleged) since the foreseen prohibition was set for a single transfer period and subject to the event that the Appellant does not comply with its payment obligation in 30 days. According to the RSTP, FIFA could have imposed a registration ban for two transfer periods or even cumulative sanctions (e.g. a fine and a transfer ban).
92. Furthermore, the Panel endorses the arguments of FIFA regarding the adequacy and necessity of the provided sanction once it has become evident that the sanctions imposed on the Appellant in previous FIFA decisions have not prevented it from registering new players and agreeing new payments which it cannot comply with in due time. This is perfectly exemplified in the case at hand since CAM exercised, on 31 March 2017, the option for the permanent transfer of the Player (i.e. promising the payment of EUR 800,000) when it was already sentenced at least three times by FIFA in the previous year for overdue payments.
93. All the more so, it has been proven that in May 2018, CAM loaned the Player for EUR 4,650,000 to a third club and, despite obtaining this benefit, CAM has not cleared the debt with Huachipato. During the hearing, the Panel explicitly asked Mr. Carlos Fabel (CAM's Financial Director) the reason of this conduct and he stated that, with the money obtained from that operation, CAM had prioritized the payments of other debts. The Panel considers that this kind of behavior, where one club takes a serious advantage over another club (or in other cases, over players) and trades at their expense, is undesirable in the world of football and results in FIFA bringing regulations such as Article 12bis of the RSTP (cf. CAS 2016/A/4387).
94. Indeed the sanctions imposed by FIFA serve to protect an essential interest of FIFA and FIFA's members (i.e. full compliance with the contractual obligations entered into between clubs and/or between clubs and players) and the Panel finds that the provided sanction in the Appealed Decision will prevent the continuation of CAM's behaviour. Therefore, the Panel is convinced that the sanction provided in the Appealed Decision is appropriate and proportionate to the circumstances of the case.
95. Lastly, the Appellant has also argued that it has not paid due to its financial problems and that the sanction of the Appealed Decision will only aggravate its economic situation. The Panel dismisses these arguments based on the well-known principle that financial difficulties to satisfy an obligation of payment does not excuse the failure to make the required payment (cf. CAS 2016/A/4402, para 40; CAS 2006/A/1008, para. 19).
96. Moreover, it is worth mentioning that the sporting sanction would only be effectively imposed if CAM does not pay within the relevant deadline. In other words, the Appellant can avoid the sanction provided in the Appealed Decision if it clears the debt with Huachipato.
97. As a conclusion and in light of the reasoning set above, the Panel dismisses the appeal filed by CAM and confirms the Appealed Decision in full.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Clube Atlético Mineiro against the Decision rendered by the Bureau of the FIFA Players' Status Committee on 4 July 2018 is dismissed.
2. The Decision rendered by the Bureau of the FIFA Players' Status Committee on 4 July 2018 is confirmed.
3. (...).
4. (...).
5. All other or further motions or prayers for relief are dismissed.