Arbitration CAS 2022/A/8671 Al Ahli Saudi Football Club v. Alexandru Mitrita, award of 14 November 2022

Panel: Mr João Nogueira da Rocha (Portugal), Sole Arbitrator

Football
Contractual dispute – termination agreement
Penalty clause
Covid-19 pandemic
Mitigation under article 17 of the FIFA RSTP

1. **In accordance with Swiss law, the parties may agree upon a contractual penalty (*Konventionalstrafe*) that is triggered in case the debtor is in breach of a specific contractual obligation. The obligation of paying the penalty arises regardless of whether or not the creditor demonstrates the damages suffered by the default of the debtor. However, grossly excessive contractual penalties shall be reduced to an adequate amount at the discretion of the judge. Whether a contractual penalty is excessive depends on the circumstances of the individual case at the time of the non-performance/breach of the main obligation.**

2. **FIFA did not declare through the FIFA Circular Covid-19 Football Regulatory issues & its FAQ that COVID-19 situation was a force majeure case situation, or that any contract or agreement between players and clubs were directly impacted for such situation. Following article 8 of the Swiss Civil Code, the party alleging financial difficulties bears the burden of proof in establishing those. In general, it has been found that a difficult financial situation is no valid reason for a club to fail to pay the debts it has.**

3. **Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP) only applies to compensation to be paid in case of breach of an employment contract without just cause. Therefore, the mitigation provided in article 17 of the FIFA RSTP does not apply to the payment of a penalty clause inserted in a termination agreement.**

I. PARTIES

1. Al Ahli Saudi Football Club (the "Appellant", "Al Ahli" or the "Club") is a football club based in Jeddah, Saudi Arabia. Al Ahli is registered with the Saudi Arabian Football Association (the "SAFA").

2. Mr Alexandru Mitrita (the "Respondent" or the "Player") is a Romanian Citizen. He is a professional football player.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in the award only to the submissions and evidence he considers necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

A. Background Facts

4. On 7 October 2020, the parties concluded an employment contract valid as from 5 October 2020 until 31 January 2022.

5. According to Clause 5 of the employment contract, the Player was entitled to receive a monthly salary of USD 140,625 net and bonuses of USD 3,000 net.

6. On 17 August 2021, the Club and the Player entered into a termination agreement (the "Termination Agreement") by way of which the Parties agreed to early terminate the employment contract.

7. Clause 2 of the Termination Agreement, stipulates that the Player was entitled to receive the amount of USD 1,265,625, corresponding to salaries of May 2021 until January 2022 and a compensation for the early termination. Furthermore, the Claimant was entitled to bonuses of USD 27,000.

8. The Parties agreed upon the following payment schedule of the total amount of USD 1,292,625:

   – USD 210,938 net on or before 1 September 2021;

   – USD 27,000 net on or before 1 September 2021;

   – USD 210,937 net on or before 1 October 2021;

   – USD 421,875 net on or before 1 November 2021;

   – USD 421,875 net on or before 1 December 2021.

9. Clause 3 of the Termination Agreement stipulates as follows:

   "In case any of the deadlines stipulated in Clause 2 are not met or respected by the Club, then the entire outstanding amount as on that date shall become immediately due to the Player along with a penalty of 10% to be calculated on the total amount of this agreement including the bonus. The Parties duly counselled confirm that they would not have signed this termination agreement but for this clause".

10. On 2 September 2021, the Respondent put the Claimant in default for the payment of the total amount due, providing at a 10 days deadline to remedy its default.

B. The Decision of the FIFA Dispute Resolution Chamber

11. On 17 September 2021, the Player lodged a claim before FIFA. The Player requested the payment of USD 1,421,888 corresponding to the outstanding amount as well as a penalty of 10% based on the Termination Agreement's clause 3 and also 5% interest over said amount *"starting from 2 September until the date of effective payment"*.

12. On 16 December 2021, the Dispute Resolution Chamber of FIFA rendered the following decision (the "DRC Decision" or the "Appealed Decision"):

1. The claim of the Claimant, Alexandru Mitrita, is partially accepted.

2. The Respondent, Al Ahli FC, has to pay to the Claimant, the following amount:

- *USD 1,292,625 as outstanding remuneration plus 5% interest as from 2 September 2021 until the date of effective payment;*
- *USD 129,262.5 as contractual penalty;*

3. Any further claims of the Claimant are rejected.

13. On 24 January 2022, the grounds of the DRC Decision were notified to the Parties.

14. The relevant points of the DRC Decision read as follows:

"[…]

23. *The Chamber recalled that the Respondent did not contest that the claimed amount remained outstanding, nonetheless, it argued COVID-19 had a serious financial impact and, consequently, it requested additional time to make the payment of the outstanding amount.*

24. *In this context, the Chamber highlighted that FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, it was also outlined that on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.*

25. *Analysing the concept of a situation of force majeure, the Chamber also stressed that, based on the contents of the FIFA COVID-19 Guidelines and the FIFA COVID19 FAQ, FIFA did not declare that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. In other words, in*

any given dispute, it is for a party invoking force majeure to establish the existence of said event under the applicable law/rules as well as the consequences that derive in connection thereto. The analysis of whether a situation of force majeure existed has to be considered on a case-by-case basis, taking into account all the relevant circumstances.

26. *In light of the above, the Chamber concluded that the Respondent failed to demonstrate, through substantial evidence that the situation faced was to be legally considered a situation of force majeure. Based on the foregoing, the Chamber rejected Respondent's argument concerning the requested additional time to make the payment of the outstanding amount based on the alleged impact of COVID-19 and decided that, consequently, no reasonable justification was presented by the Respondent for not having complied with the terms of the Termination Agreement.*

[…]

28. *The Chamber noted that the total claimed amount shall correspond to the overall outstanding amount of USD 1,292,625 as stipulated in Clause 2 of the Transfer Agreement and the penalty of 10% "to be calculated on the total amount of [the Transfer Agreement] including the bonus", i.e. USD 129,262.5 as stipulated in Clause 3 of the Transfer Agreement.*

29. *In view of the foregoing and bearing in mind the basic legal principle of pact sunt servanda, which in essence means that agreements must be respected by the parties in good faith, the Chamber ruled that the Respondent shall be held liable to pay the Claimant the outstanding amounts deriving from the Transfer Agreements concluded between the Parties, namely as follows:*

   – *USD 1,292,625 as outstanding remuneration;*

   – *USD 129,262.5 as contractual penalty.*

30. *Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said outstanding remuneration of USD 1,292,625 at the rate of 5% as from 2 September 2021 until the date of effective payment.*

31. *With regard to the requested interest over the contractual penalty of USD 129,262.5, the Chamber recalled its long-standing jurisprudence establishing that no interest is due over penalty fees. In light of the above, the DRC rejected the said request of the Claimant".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), the Appellant filed its Statement of Appeal on 14 February 2022. With its Statement of Appeal, the Appellant requested to submit this matter to a Sole Arbitrator and the Respondent agreed to such request.

16. In accordance with Article R51 of the Code, Al Ahli filed its Appeal Brief on 14 March 2022.

17. On 3 May 2022_, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

    Sole Arbitrator: Mr João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal

18. On 9 May 2022, the Respondent filed its Answer, in accordance with Article R55 of the Code.

19. On 24 May 2022, after having consulted the Parties, the CAS Court Office informed them that pursuant to Article 57 of the Code, the Sole Arbitrator considered necessary to hold a hearing in this matter.

20. On 8 June 2022, the CAS Court Office, on behalf of the Sole Arbitrator, issued the Order of Procedure, which was duly signed by the Respondent only.

21. On 7 July 2022 a hearing was held by video-conference. At the beginning of the hearing the Appellant presented a power of attorney in favour of Mr Chagtmi Mustapha.

22. The following persons attended the hearing, in addition to the Sole Arbitrator, Ms Lia Yokomizo, Counsel to the CAS:

    a) For the Appellant:

        1) Mr Chagtmi Mustapha, attorney-at-law;

    b) For the Respondent:

        1) Mr Alexandru Mitrita, the Respondent;

        2) Mr Josep F. Vandellos, attorney-at-law.

23. The Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the Sole Arbitrator. Before the hearing was concluded, all the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been fully respected.

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

IV. SUBMISSIONS OF THE PARTIES

25. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including

allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant's Submissions

26. In its Appeal Brief, Al Ahli seeks the following relief:

– *Admit the present Appeal;*

– *Cancel partially the appealed decision:*

Dismiss the request of 10% penalty and considerer that is clearly excessive, unreasonable and disproportionate and should be revised.

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

- *The club is still in a very critical financial situation characterized by a total absence of incoming amounts because of the persistence of the effects of COVID19 Pandemic and consequently a net decrease of incoming amounts from sponsors and a total absence of incoming amounts from ticketing.*

<u>*Regarding the penalty of 10%:*</u>

- *Penalty clauses in principle, may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. In this respect, in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstance of the relevant case brought before the deciding body shall also be taken into consideration.*

- *Clause 3 of the Termination Agreement the alleged penalty clause, corresponding to 10% of the whole amount of 1.292.625 USD which in turn would correspond (for the period from 02.09.2021 until today 18.10.2021, 52 days) to an interest rate of 71% per year, and especially in the presence of another penalty of 5% interest per year mentioned in Clause 3 of the Termination agreement. (71% per year + 5% per year = 76% per year).*

- *As a result, such penalty is clearly excessive and disproportionate as per Swiss Law taking into account that the player signed an employment agreement with club PAOK Thessaloniki on 31 August 2021.*

- *Accordingly, we demand a rejection of the penalty of 10% due to its injustice, unreasonable and excessive and we ask Dispute Resolution Committee* [sic] *to revise the penalty under the powers vested in him by Swiss Law.*

28. In its answer, the Respondent seeks the following relief:

a) Dismiss the appeal in full.

b) To uphold the FIFA decision FPSD-3714, in full.

c) In all events, to condemn the Appellant to the payment of all costs related to the present arbitration proceedings.

d) In all events, to fix a sum of CHF 10,000 NET (ten thousand Swiss francs) to be paid by the Appellant to the Respondent in order to pay all legal fees and costs of any nature incurred by the Respondent as a consequence of these proceedings.

29. The answer of the Respondent, in essence, may be summarised as follows:

A. <u>What is the total amount due under the Termination Agreement?</u>

- *The Agreement is fundamentally clear in establishing the amounts that the Appellant had to pay the Respondent along with the deadlines. Given that the Appellant failed to make the payment of the first instalment and bonus on 1 September 2021 the Appellant breached the Agreement.*
- *In case of breach of the Agreement by the Appellant, the consequences were governed vide last paragraph of Clause 3 which is an acceleration clause.*
- *Thus, the Appellant is required to pay the Respondent all the four instalments and the bonus totalling up to USD 1,292,625 NET along with an interest of 5% as per Article 104 of the Swiss Code of Obligations ("CO").*
- *Additionally, the penalty amount of 10% is due on USD 1,292,265 NET. Thus, the penalty amount is USD 129,262.5 NET.*
- *The Respondent is not claiming interest on the penalty amount but is claiming the interest only on the principal amount of the Agreement.*

B. <u>Penalty amount of 10% is reasonable and proportionate</u>

- *There is significant jurisprudence of FIFA and CAS upholding penalty amount of 10% indicating that it meets all requirements of Swiss law and does not require annulment nor a reduction under Article 163 of the CO.*
- *The conclusion in the appealed decision that a penalty amount of 10% is reasonable and proportionate is a well-established and a long-standing practice of the FIFA Legal Bodies wherein the primary objective is to enforce penalty clauses freely agreed and inserted into contracts and/or agreements as long as such amounts do not exceed 50% of the original amount.*
- *Similarly, in another decision rendered by the FIFA DRC on 14 September 2018, a five-member panel came to a conclusion that penalty clauses may be freely agreed to between the Parties and only when it is significantly disproportionate, then it requires a reduction. In this case, where a dispute arose out of a settlement agreement, a penalty clause of 25% was held to be reasonable and proportionate and thus, was made applicable.*

- *There has been no deviation in the appealed decision whilst concluding that a penalty amount of 10% freely negotiated and agreed between two parties is reasonable, proportionate and therefore, applicable.*

- *A similar practice has evolved through CAS jurisprudence wherein a penalty up to 25% is considered reasonable when freely agreed to between the parties. In this case, the penalty amount is a meagre 10% inserted due to the persistent breach of the Appellant.*

- *Further, in accordance with the general principle of freedom of contract, Article 163(1) allows the parties to freely determine the amount of penalty. Thus, the Appellant and the Respondent have freely agreed to the penalty amount in this case which is reasonable and proportionate and not liable for any reduction.*

- *Emphasis is required to be given to the last statement of the penalty clauses which states: "The Parties duly counselled confirm that they would not have signed this termination agreement but for this clause".*

- *Further, the penalty clause meets all criteria under Swiss law to be fair and proportionate.*

- *Finally, the Appellant mixes and confuses penalty with interest in its Appeal Brief. The calculation of 76% does not bear any relevance and is wrong. The Respondent is only asking for the principal amount with interest of 5% per annum and penalty of 10% on the principal amount.*

- *The Appellant incorrectly adds up penalty and interest and calculates it based on days which do not have any legal or factual basis. Hence, the calculation of the Appellant is liable to be rejected.*

C. Financial difficulty is not a valid reason for not fulfilling contractual obligations

- *It is a long-standing jurisprudence of CAS that a party cannot invoke financial difficulty as an exception to respect the principle of* pacta sunt servanda. *Moreover, any alleged financial difficulty cannot absolve the Appellant from its contractual obligations that it has towards the Respondent.*

- *As a general rule, the payment of a player's salaries/remuneration is the main obligation of clubs. The reason that the Parties signed the Termination Agreement was due to the persistent default of the Appellant in paying monthly salaries of the Player. The Club cannot use financial difficulty as an excuse for non-compliance of the contractual obligation.*

- *Since COVID-19 is not a force majeure situation, the Club cannot use the same as an excuse. More so, it has to be considered that the deadlines under the Agreement had been negotiated between the Parties and fixed accordingly.*

- *As such, the Respondent is of the opinion that the Appellant is using these proceedings as a delaying tactic to comply with its payments.*

D. No grounds exist to mitigate the penalty

- *The Appellant is under a mistaken belief that the penalty clause should be annulled or reduced because the Respondent was able to sign a new employment contract with another Club.*

- *The document at the basis of this dispute is the Agreement and not the Contract. The Agreement does not provide for a situation of mitigation of the penalty and the Sole Arbitrator is not tasked with the analysis of whether there is a just cause or not.*

- *The Agreement lists down the penalty amount that the Appellant is required to pay the* Respondent *as a consequence of breach of the Agreement and does not provide for reduction of penalty amount in any situation. Thus, the argument of the Appellant on this ground is liable to be rejected as the same is not provided for in the Agreement.*

V. JURISDICTION

30. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

31. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes that provides as follows:

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

32. Furthermore, the jurisdiction of CAS has not been contested by the Parties. It therefore follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

33. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

34. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal also complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

35. It follows that the appeal is admissible.

VII. APPLICABLE LAW

36. Article R58 of the Code provides 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.

37. Separately, Article 57 para. 2 of the FIFA Statutes provides the following:

The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.

38. In view of the abovementioned provisions, the Sole Arbitrator holds that the present dispute shall be decided according to the FIFA Regulations, Swiss law applying subsidiarily.

VIII. MERITS

39. Bearing in mind the Appellant's prayers for relief, the only issue to be resolved by the Sole Arbitrator is:

- The 10% penalty clause stipulated in clause 3 of the termination agreement should be considered *"clearly excessive, unreasonable and disproportionate and should be revised"*?

40. According to Swiss law, the parties may agree upon a contractual penalty (*Konventionalstrafe*) that is triggered in case the debtor is in breach of a specific contractual obligation, e.g. in case of non performance, delay, etc.

41. The statutory provisions governing the contractual penalty are contained in articles 160 to 163 of the Swiss Code of Obligations (the "SCO").

42. According to CAS 2019/A/6508, *"Article 161 of the SCO rules the contractual penalty, the rights of the creditor and the relation between penalty and damage, and states that the penalty is payable even if the creditor has not suffered any damage. The obligation of paying the penalty therefore arises regardless of whether or not the creditor demonstrates the damages suffered by the default of the debtor".*

43. That is, if the agreed conditions (non-performance or breach of the main obligation) are fulfilled, the contractual penalty becomes immediately due.

44. In particular, in the absence of an agreement to the contrary, the creditor is not required to prove any actual damage incurred for the enforcement of the contractual penalty.

45. However, upon request by the creditor, grossly excessive contractual penalties shall be reduced

to an adequate amount at the discretion of the judge (art. 163 para. 3, SCO).

46. The term "excessive" is not defined by Swiss statutory law. Whether a contractual penalty is excessive depends on the circumstances of the individual case at the time of the non performance/breach of the main obligation.

47. Nevertheless, *"the reduction of a penalty is reserved only for exceptional cases when the penalty is grossly unfair. Since the possibility of a reduction affects the contractual freedom of the parties, it may only be applied with reservation"* (CAS 2018/A/5857).

48. *Inter alia*, the contractual penalty is excessive if there is an obvious disproportion between the amount agreed and the creditor's interest in performance of the main obligation.

49. As the Appellant / Debtor requests the penalty clause reduction, it bears the burden to prove that the penalty is excessive.

50. In order to ground this allegation, the Appellant plead the following reasons:

    A. The Club's very critical financial situation due to the COVID-19 situation;

    B. The 10% penalty clause, taking into account the non-compliance period, corresponds to an interest rate of 71% *p.a.*;

    C. On 31 August 2021, the player signed an employment contract with the Club PAOK Thessaloniki.

A. The Club's very critical financial situation due to the COVID-19 situation

51. In view of the pandemic situation resulting from COVID-19, on 7 April 2020, the Bureau of the FIFA Council, as the world football governing body published the Circular Letter no. 1714 – "Covid-19 Football Regulatory issues" in order to mitigate the consequences of the Covid-19 outbreak. On 11 June 2020, FIFA clarified certain points of the above document by issuing the FIFA FAQs.

52. FIFA did not declare through the above-mentioned publications that COVID-19 situation was a force majeure case situation, or that any contract or agreement between players and clubs were directly impacted for such situation.

53. The Sole Arbitrator fully agreed with paragraphs 25 and 26 of the Appealed Decision.

    "It is for a party invoking force majeure to establish the existence of said event under the applicable law/rules as well the consequences that derive in connection thereto. The analysis of whether a situation of force majeure existed has to be considered on a case-by-case basis, taking into account all the relevant circumstances".

54. The Sole Arbitrator also wishes to refer to Article 8 of the SCC, according to wish *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".*

55. Regarding the Appellant's alleged financial difficulties given by the Club as a justification for the non-compliance of the termination agreement, the Sole Arbitrator strongly believes that the Club to comply with this parameter is required to show more than a general economic difficulty in abstract terms. In fact, in addition to the allegation made in general terms, the Appellant failed to attach any document or substantiate the allegation in any law or regulation.

56. In any event, even if such financial difficulties are proven by the Appellant, *quod non*, such financial difficulties are not, in general, a valid reason for a club to fail to perform its contractual obligations.

57. In this respect, the Sole Arbitrator considers pertinent to refer to the CAS award 2021/A/7937, which relevant part reads as follows: *"the Sole Arbitrator must also disregard the Club's alleged potentially precarious financial situation. In fact despite alluding to being in a difficult financial situation, the Sole Arbitrator emphasises that the Club did not submit a single piece of evidence to support this assertion. Following article 8 SCC, as quoted above, the Club bears the burden of proof in establishing its allegedly difficult financial situation – and the Sole Arbitrator considers that the Club clearly failed to meet this burden. The Sole Arbitrator find that in the absence of any evidence to support its position, the Club's claims regarding its financial position must be disregarded, In any event however, CAS jurisprudence (see, for example, CAS 2013/A/3358, CAS 2018/A/5779 and the SFT decision of 5 January 2007, 4P.540/2006) is also clear on this matter that, in general, a difficult financial situation is no valid reason for a club to fail to pay the debts it has"* (CAS 2021/A/7937).

B. The 10% penalty clause, taking into account the non-compliance period, corresponds to an interest rate of 76% *p.a.* and it is, therefore excessive

58. The calculation made by the Appellant is inaccurate and inapplicable to the case at hand.

59. Penalty clause is due under clause 3 of the termination agreement and interest is not applicable to this amount. The date when the non-compliance occurs or the time elapsed until the payment of the main obligation is irrelevant for its applicability.

60. Being two different concepts, it is impossible to compare or evaluate a penalty clause with any interest rate.

61. In fact, according to the long standing and well-established jurisprudence of CAS in similar cases, a penalty for late payment cannot be requested together with default interest as both requests aim at compensating the creditor for late payment. In line with the considerations made above in subchapter A., the Sole Arbitrator notes that the penalty clause included in the Termination Agreement shall be considered as valid and applicable under Swiss law.

62. It shall also be taken into account that the Parties freely and voluntarily decided to include said penalty clause in the Termination Agreement and therefore the Appellant was fully aware of its inclusion when it signed the above-mentioned agreement. In addition, and pursuant to the principle of contractual freedom, it shall also be concluded that the Parties were free to determine the amount of the penalty clause.

63. The calculations made by the Appellant are meaningless. The penalty clause has a fixed amount on which no interest is levied and has no relation whatsoever with the non-compliance period. In any event, the Sole Arbitrator considers that a penalty of 10% of the principal amount is not excessive.

C. On 31 August 2021, the player signed an employment contract with the Club PAOK Thessaloniki.

64. The above allegation is made by the Appellant in a single sentence without any grounds or evidence to substantiate it.

65. Art. 17.1 (ii) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP) reads as follows:

> *(ii) In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation").* […]

66. According to the FIFA commentary on the RSTP, *"the wording of article 17 confirms the established jurisprudence of the DRC, that the compensation due to the player should be calculated based on the residual value that was terminated early, minus the value of any new contract* […]*".*

67. However, once again the Appellant confuses different concepts. The above mentioned article is applicable to compensation to be paid in case of breach of an employment contract without just cause and not to the payment of a penalty clause inserted in a Termination Agreement.

68. As a consequence of all the above, the Sole Arbitrator finds that the Appellant has not brought forward any convincing reasons or evidence allowing the Sole Arbitrator to reduce the penalty clause and therefore the Appealed Decision is upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Ahli Saudi Football Club against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 16 December 2021 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 16 December 2021 is confirmed.

3. (…).

4. (…).

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