

WAIVER OF REMUNERATION BY AN EMPLOYEE UNDER ARTICLE 341(1) OF THE SWISS CODE OF OBLIGATIONS

by Siddharth Gosain*

ABSTRACT: On The termination of an employment relationship and the settlement of associated financial claims involve various legal facets and mandatory protections under Swiss Law. This article analyses Article 341(1) of the Swiss Code of Obligations in the context of football employment disputes. It evaluates the jurisprudence of the Swiss Federal Tribunal, FIFA Football Tribunal, and the Court of Arbitration for Sport, focusing on waivers, reciprocal concessions, settlement, and termination agreements.

La cessazione del rapporto di lavoro e la definizione delle relative pretese economiche coinvolgono diversi profili giuridici e sono soggette alle tutele inderogabili previste dal diritto svizzero. Il presente contributo analizza l'articolo 341, paragrafo 1, del Codice delle obbligazioni svizzero nel contesto delle controversie di lavoro nel calcio professionistico. In particolare, vengono esaminati gli orientamenti giurisprudenziali del Tribunale federale svizzero, del Tribunale del Calcio della FIFA e del Tribunale Arbitrale dello Sport (CAS), con particolare attenzione alla rinuncia ai diritti, alle reciproche concessioni, agli accordi transattivi e agli accordi di risoluzione del rapporto di lavoro.

Keywords: *Swiss law – FIFA – Court of Arbitration for Sport – Swiss Federal Tribunal – Waiver – Settlement – Termination.*

Diritto svizzero – FIFA – Tribunale Arbitrale dello Sport (CAS) – Tribunale federale svizzero – Rinuncia ai diritti – Transazione – Risoluzione del rapporto di lavoro.

* Siddharth Gosain is the Head of Arbitration (International) and Dispute Resolution at Muñoz y Arias Sports Lawyers, a sports law firm in Valencia, Spain. He regularly appears and represents clients in multitudinous sports disputes before various adjudicatory bodies and courts. Siddharth has considerable experience in disciplinary, employment, commercial and regulatory matters.

SUMMARY: 1. Introduction – 2. Application by the SFT – 3. Application by the FIFA Football Tribunal – 4. Application by the CAS – 4.1 Calculation of the period under Article 341 (1) SCO – 4.2 Concept of reciprocal concession – 4.3 Assessment of clauses vis-à-vis circumstances beyond the control of the parties – 4.4 Termination without any financial consequences – 4.5 Assessment of clauses that restrict compensation entitlements – 4.6 Variable remuneration – 4.7 Waiver versus Acknowledgment – 5. Conclusion

1. Introduction

The vast majority of contractual disputes in football concern the termination of an athlete's employment contract and overdue payments. From an international perspective, in football, whilst the current FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") do postulate the provisions relating to the termination of contracts, it does not address the facets relating to the waiver of remuneration.

This is where Article 341(1) of the Swiss Code of Obligations ("SCO") gains prominence, particularly in matters where Swiss Law is applicable,¹ either on a primary basis or on a subsidiary basis. As per this article, an employee cannot validly waive any claims arising from mandatory provisions of law during and for one month² after the termination of the employment agreement: "*Art. 341 I. For the period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract*".

¹ At FIFA, the applicable law is FIFA Statutes and FIFA regulations and relevant arrangements, laws, and/or collective bargaining agreements at national level (Article 3 Procedural Rules Governing the Football Tribunal, January 2026 edition). At CAS, as per Article R45 of the CAS Code, in ordinary arbitration, the law applicable is the law chosen by the parties and in the absence of such an agreement, Swiss Law is applicable. Under Article R58 of the CAS Code, in appeals procedures, the applicable law is "(...) according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate (...)". In this respect, FIFA is an association headquartered and registered in Switzerland (Article 1 of the FIFA Statutes, 2025 edition) and Article 49 of the FIFA Statutes states that in proceedings before CAS, FIFA Regulations and Swiss Law shall apply. Furthermore, in case of any ambiguity in any provision of the FIFA Regulations, the Swiss Law is applied (for e.g. CAS 2012/A/2919 FC Seoul v. Newcastle Jets FC, award of 24 September 2013). On the other hand, also see case CAS 2020/A/7094, wherein the Sole Arbitrator refused to apply Article 341(1) of the SCO where the employment contract was governed under Portuguese Law. Also see D MAVROMATI-M REEB, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Second Edition, 2025.

² The one-month period following the termination of the employment relationship is calculated in accordance with Article 77(1)(3) SCO. It expires on the same day of the following month or, if there is no such day, at the end of that month. If the expiry of the one-month period falls on a Saturday, Sunday or public holiday, it is automatically extended to the next working day according to Art. 78(1) SCO.