

## **Decision of the Bureau of the Players' Status Committee**

passed by way of circulars on 4 July 2018,

in the following composition:

**Raymond Hack** (South Africa), Chairman  
**Geoff Thompson** (England), member  
**Johan van Gaalen** (South Africa), member

on the claim presented by the club,

**Club A**, from country A,

*as Claimant*

against the club,

**Club X**, from country X,

*as Respondent*

regarding a contractual dispute  
between the parties in connection with overdue payables

## I. Facts of the case

1. On 20 July 2016, the Claimant and the Respondent signed a loan agreement (hereinafter: *the agreement*), including a buying option, and on 31 March 2017, the parties signed an amendment to the agreement (hereinafter: *the amendment*) regarding the definitive transfer of the player, Player Z, from the Claimant to the Respondent.
2. In accordance with the agreement and the amendment, the Respondent undertook to pay to the Claimant *inter alia* "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."
3. By correspondence dated 8 March 2018, the Claimant put the Respondent in default of payment of EUR 600,000 setting a 10 days' time limit in order to remedy the default.
4. On 28 March 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay its overdue payables in the amount of EUR 600,000 corresponding to part of the first instalment in the amount of EUR 200,000, as EUR 200,000 were already paid by the Respondent, plus 5% interest *p.a.* as from 1 September 2017, and to the second instalment in the amount of EUR 400,000, plus 5% interest *p.a.* as from 1 February 2018.
5. The Claimant further asks that the Respondent be ordered to pay the procedural costs, as well as to impose sporting sanctions on the Respondent.
6. In its reply to the claim, the Respondent confirmed that it owes to the Claimant the overdue payables in the amount of EUR 600,000, but that "*there is no reason to impose any disciplinary sanction on the Respondent*", as the Respondent "*always remained in contact with the Claimant in order to provide a clear picture of the financial problems*" and showed its "*incontestable commitment to the payment of the outstanding amount as soon as possible*" by paying EUR 200,000. Furthermore, the Respondent requested to "*equally afford with the payment of costs regarding the case at hand*".

## II. Considerations of the Bureau of the Player's Status Committee

1. First of all, the Bureau of the Players' Status Committee (hereinafter: *the Bureau*) analysed whether it was competent to deal with the matter at hand. In this respect, the Bureau took note that the present matter was submitted to FIFA on 28 March 2018. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2018; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the Bureau referred to art. 3 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and par. 4 in conjunction with art. 22 lit. f of the Regulations on the Status and Transfer of Players (edition 2018), the Bureau is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations.
3. Furthermore, the Bureau analysed which regulations should be applicable as to the substance of the matter. In this respect, the Bureau confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition 2018), and considering that the present claim was lodged on 28 March 2018, the 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Bureau and the applicable regulations having been established, the Bureau entered into the substance of the matter. In this respect, the Bureau started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Bureau emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.
5. Having said this, the Bureau acknowledged that the Claimant and the Respondent signed a loan agreement, including a buying option, as well as an amendment to it regarding the exercise of that option and the definitive transfer of the player from the Claimant to the Respondent, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, the total amount of EUR 800,000, payable

in two instalments of EUR 400,000 each, respectively due on 31 August 2017 and 31 January 2018.

6. The Bureau further acknowledged that the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards it in the total amount of EUR 600,000, EUR 200,000 being related to part of the first instalment plus 5% interest *p.a.* as from 1 September 2017 and EUR 400,000 being related to the second instalment plus 5% interest *p.a.* as from 1 February 2018.
7. In this context, the Bureau took particular note of the fact that, on 8 March 2018, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a ten-day time limit in order to remedy the default.
8. Consequently, the Bureau concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligations.
9. Subsequently, the Bureau took into account that the Respondent acknowledged that it owes to the Claimant the part of the transfer fee claimed by it for the permanent transfer of the player.
10. Having said this, the Bureau recalled that, in accordance with the loan agreement provided by the Claimant, the Respondent was obliged to pay to the Claimant the total amount of EUR 800,000, of which EUR 600,000 remained uncontestably outstanding.
11. Taking into account the documentation presented by the Claimant in support of its petition, the Bureau concluded that the Claimant had substantiated its claim pertaining to overdue payables with sufficient documentary evidence.
12. On account of the aforementioned considerations, the Bureau established that the Respondent failed to remit the total amount of EUR 600,000 payable to the Claimant. Furthermore, in accordance with Claimant's request and the Bureau's jurisprudence, interest at the rate of 5% *p.a.* shall apply 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.

13. In addition, the Bureau established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
14. Consequently, the Bureau decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the total amount of EUR 600,000.
15. In continuation, taking into account the consideration under number II./13. above, the Bureau referred to art. 12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations. The Bureau established that in virtue of art. 12bis par. 4 of the Regulations, it has competence to impose sanctions on the Respondent.
16. In this context, the Bureau highlighted that, on many occasions, the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis and without providing valid reasons for non-payment, as a result of which diverse sanctions had been imposed on the Respondent by the Single Judge of the Players' Status Committee and its Bureau. Consequently, the Bureau established that, for the sixth time, the Respondent has delayed a due payment for more than 30 days without a *prima facie* contractual basis.
17. Subsequently, the Bureau referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty.
18. Therefore and bearing in mind the considerations under numbers II./16. and II./17. above, the Bureau decided that in the event that the Respondent does not pay the amount due to the Claimant within the 30 days following the notification of the present decision, a ban from registering any new players, either nationally or internationally, for the next entire registration period following the notification of the present decision shall become effective on the Respondent in accordance with art. 12bis par. 4 lit. d) of the Regulations.

19. Finally, the Bureau referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in proceedings before the Players' Status Committee including its Bureau, costs in the maximum amount of CHF 25,000 are levied and which states that the costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.
20. Taking into account that the claim of the Claimant has been accepted and that the responsibility of the failure to comply with the payment of the amount as agreed in the loan agreement and in its amendment can entirely be attributed to the Respondent, the Bureau concluded that the Respondent has to bear the costs of the current proceedings before FIFA. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. On that basis, the Bureau held that the amount to be taken into consideration in the present proceedings is EUR 600,000. Consequently, the Bureau concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
21. Considering the particular circumstances of the present matter, the Bureau determined the costs of the current proceedings to the amount of CHF 20,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.

### **III. Decision of the Bureau of the Players' Status Committee**

1. The claim of the Claimant, Club A, is accepted.
2. The Respondent, Club X, 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.:

UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A

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 this 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.

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**Note relating to the motivated decision (legal remedy):**

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain

all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Bureau  
of the Players' Status Committee:

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Omar Ongaro  
Football Regulatory Director

Encl: CAS directives