

Decision of the Single Judge of the Players' Status Committee

passed on 20 February 2019,

by

Mr Geoff Thompson (England)

Single Judge of the Players' Status Committee,

on the claim presented by the club,

Club A, Country B,

as Claimant

against the club,

Club C, Country D

as Respondent

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

I. Facts of the case

1. On 31 August 2017, Club A (hereinafter: *the Claimant*) and the club, Club C (hereinafter: *the Respondent*) signed an agreement regarding the transfer of the player, Player E (hereinafter: *the player*) from the Claimant to the Respondent (hereinafter: *the agreement*).
2. Pursuant to the agreement, the Respondent undertook to pay the Claimant the amount of USD 500,000 (hereinafter: *the transfer fee*) in two instalments of USD 250,000 each, payable on 30 January 2018 and 30 August 2018 respectively.
3. According to the agreement, the Claimant was also entitled to an interest of 8% *p.a.* on the aforementioned amounts in case of non-payment within the respective due dates, as from the date of default.
4. By correspondence dated 11 September 2018, the Claimant put the Respondent in default of payment of USD 406,930, corresponding to part of the first instalment and the entire second instalment of the transfer fee, interest included. By means of the same correspondence, the Claimant set a 10 days' time limit in order for the Respondent to remedy the default.
5. On 16 October 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to it overdue payables in the amount of USD 406,930, corresponding to the following:
 - USD 150,000 as part of the first instalment of the transfer fee due on 30 January 2018;
 - USD 250,000 for the entire second instalment, due on 30 August 2018;
 - USD 6,930 for accrued interest.
6. The Claimant further asked to be awarded interest of 8% *p.a.* on the aforementioned amount of USD 406,930 as of the month of January 2018.
7. In its reply, the Respondent maintained that it made all the payments set out in the agreement, even though in dates different from those indicated therein. In support of its argumentations, the Respondent provided some bank receipts, amongst which only two, in the amount of USD 50,000 each and dated 9 and 27 February 2018 respectively, are in an official FIFA language and refer to payments addressed to the Claimant.

8. The Claimant provided its comments on the Respondent's submission reiterating that the latter had only paid a part (namely USD 100,000) of the first instalment of the transfer fee. Furthermore, the Claimant alleged that the other payment receipts presented by the Respondent referred to the player's salaries or other items, but not to the transfer fee.
9. Despite having been invited to do so, the Respondent did not provide any final comments on the present matter.

II. Considerations of the Single Judge of the Player's Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter: *the Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 16 October 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 Single Judge referred to art. 3 par. 2 and par. 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) he is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations.
3. Furthermore, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he 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 16 October 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 Single Judge and the applicable regulations having been established, the Single Judge entered into the substance of the matter. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts,

arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

5. Having said this, the Single Judge acknowledged that the Claimant and the Respondent signed a transfer agreement, in accordance with which the Claimant was entitled to receive from the Respondent the total amount of USD 500,000, payable in two instalments of USD 250,000 each, on 30 January 2018 and 30 August 2018 respectively.
6. The Single Judge 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 USD 406,930, corresponding to part of the first instalment, the entire second instalment of the transfer fee and interest already accrued.
7. In this context, the Single Judge took particular note of the fact that, on 11 September 2018, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a 10 days' time limit in order to remedy the default.
8. Consequently, the Single Judge 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 Single Judge took into account that the Respondent, for its part, stated that it paid the claimed amount and provided some bank receipts in support of its argumentation. Having noticed the above, the Single Judge referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. On the basis of said principle, the Single Judge concluded that it was up to the Respondent to prove that it actually provided the Claimant with the payment of the claimed amount.
10. Having stated the above, the Single Judge noted that, among the bank receipts submitted by the Respondent, only two referred to payments made to the Claimant and, nevertheless, they only covered the first part of the first instalment of the

transfer fee, namely the amount of USD 100,000, the payment of which was never disputed by the Claimant.

11. Consequently, the Single Judge considered that the arguments raised by the Respondent cannot be considered a valid reason for the non-payment of the monies claimed by the Claimant, as the Respondent did not provide evidence that the payment of the claimed amount to the Claimant was actually made.
12. Therefore, the Single Judge decided to reject the argumentation put forward by the Respondent in its defence.
13. On account of the aforementioned considerations, the Single Judge established that the Respondent failed to remit the total amount of USD 400,000, corresponding to the part of the first instalment and to the entire second instalment of the transfer fee, payable to the Claimant.
14. In addition, bearing in mind the considerations under numbers II./7. and II./8. above, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
15. Consequently, the Single Judge 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 USD 400,000.
16. In addition, taking into account that, according to the agreement, the Claimant was entitled to an interest of 8% *p.a.* on the instalments of the transfer fee in case of non-payment within the due dates, and in view of the Claimant's request, the Single Judge decided that the Respondent must pay to the Claimant interest of 8% *p.a.* on the amount of USD 400,000 as follows:
 - a) on the amount of USD 150,000 as from 31 January 2018 until the date of effective payment;
 - b) on the amount of USD 250,000 as from 31 August 2018 until the date of effective payment.
17. In continuation, taking into account the consideration under number II./15 above, the Single Judge 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.

18. The Single Judge established that, in virtue of art. 12bis par. 4 of the Regulations, he has competence to impose sanctions on the Respondent. In this context, the Single Judge highlighted that, on 19 November 2018, the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis, as a result of which a warning had been imposed on the Respondent.
19. Moreover, the Single Judge 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.
20. Bearing in mind that the Respondent has replied to the claim of the Claimant as well as the considerations under numbers II./18. and II./19. above, the Single Judge decided to impose a reprimand on the Respondent in accordance with art. 12bis par. 4 lit. b) of the Regulations.
21. Finally, the Single Judge 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, 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.
22. Taking into account that the responsibility of the failure to comply with the payment of the amounts as agreed in the transfer agreement can entirely be attributed to the Respondent and that the Claimant is the successful party, the Single Judge 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 Single Judge held that the amount to be taken into consideration in the present proceedings is USD 406,930. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
23. Considering the particular circumstances of the present matter, the Single Judge determined the costs of the current proceedings in the amount of CHF 20,000, which has to be paid by the Respondent in order to cover the costs of the present proceedings.

24. The Single Judge concluded its deliberations by rejecting any further claim of the Claimant.

III. Decision of the the Single Judge of the Players' Status Committee

1. The claim of the Claimant, Club A, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, overdue payables in the amount of USD 400,000, plus 8% interest *p.a.* as follows:
 - a) on the amount of USD 150,000 as from 31 January 2018 until the date of effective payment;
 - b) on the amount of USD 250,000 as from 31 August 2018 until the date of effective payment.
3. If the amount plus interest under point III.2 is not paid **within the stated time limit**, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further claim lodged by the Claimant is rejected.
5. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent **within 30 days** as from the notification of the present decision, as follows:
 - 5.1 The amount of CHF 5,000 has to be paid to the Claimant.
 - 5.2 The amount of CHF 15,000 has to be paid to FIFA to the following bank account **with reference to case nr. XXX:**

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

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points III.2. and III.5.1 are to be made and to notify the Single Judge of the Players' Status Committee of every payment received.
7. A reprimand is imposed on the Respondent.

Note relating to the motivated decision (legal remedy):

According to art. 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
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1012 Lausanne
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For the Single Judge of the
Players' Status Committee:

Omar Ongaro
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Encl. CAS directives