

Decision of the Bureau of the Players' Status Committee

passed in Zurich, Switzerland, on 25 September 2019,

in the following composition:

Raymond Hack (South Africa), Chairman

Roy Vermeer (The Netherlands), member

Anna Peniche (Mexico), member

Castellar Guimaraes Neto (Brazil), member

on the claim presented by the club

FC Nantes, France
represented by Mr J. Marsaudon,
Mr L. Absil and Mr D. Casserly

as Claimant

against the club

Cardiff City FC, Wales
represented by Mr S. Demeulemeester
and Mr G. Bouchat

as Respondent

regarding a contractual dispute arisen between the parties
and relating to the player Emiliano Raul Sala.

I. Facts of the case

1. On 19 January 2019, FC Nantes (hereinafter: "*Nantes or the Claimant*") and Cardiff City FC (hereinafter: "*Cardiff or the Respondent*") signed a transfer agreement (hereinafter: "*the transfer agreement*") concerning the transfer of the player Emiliano Raul Sala (hereinafter: "*the player*") from Nantes to Cardiff.
2. In accordance with its clause 2.1., the transfer agreement's validity was "*conditional upon*" the fulfilment of the following requirements:
 - 2.1.1. the player completing successfully medical examination with Cardiff City FC;*
 - 2.1.2. FC Nantes and the Player agreeing all the terms of a mutual termination of FC Nantes contract of employment with the Player;*
 - 2.1.3. the mutual termination of FC Nantes contract of employment with the Player is registered by the LFP [i.e. the French Ligue de Football Professionnel];*
 - 2.1.4. the LFP and the FAW [i.e. the Football Association of Wales] have confirmed to Cardiff City FC and FC Nantes that the Player has been registered as a Cardiff City FC player and that the Player's International Transfer Certificate has been released."*
3. As per clause 2.2. of the transfer agreement, "*both parties shall use all reasonable endeavours to ensure that the conditions are satisfied no later than 22 January 2019. If the conditions are not fulfilled within this period then this Transfer Agreement shall be null and void. In such event: 2.2.1. this Transfer Agreement shall cease to have legal effect; 2.2.2. no payment shall be due from Cardiff City FC to FC Nantes; 2.2.3. neither party shall have any ongoing obligations or liability in relation to this Transfer Agreement.*"
4. Moreover, the transfer agreement provided a transfer fee in the amount of EUR 17,000,000 to be paid by Cardiff to Nantes in 3 instalments as follows:
 - (i) EUR 6,000,000 "*within five days of the player registering with Cardiff City FC*" (hereinafter: *the first instalment*);
 - (ii) EUR 6,000,000 on 1 January 2020 (hereinafter: *the second instalment*) and
 - (iii) EUR 5,000,000 on 1 January 2021 (hereinafter: *the third instalment*).
5. In addition, pursuant to clause 3.2 of the transfer agreement, Cardiff undertook to pay to Nantes the following "*promotion bonus*" (hereinafter: *the bonuses*):

- (i) EUR 1,000,000 if Cardiff *"participate and retains its Premier League Status following the close of the football season 2018/2019"*;
 - (ii) EUR 500,000 if Cardiff *"participate and retains its Premier League Status following the close of the football season 2019/2020"* and
 - (iii) EUR 500,000 if Cardiff *"participate and retains its Premier League Status following the close of the football season 2020/2021"*.
6. More specifically, the *"promotion bonus"* was due to Nantes even in case the player *"has not been registered with Cardiff City FC during the season which Cardiff City FC participates and retains its Premier League Status"* [...] on 31 August following the football season in which the Promotion Bonus is due".
 7. Following the conclusion of the transfer agreement, on 21 January 2019, at 10.00 local time in Wales, the Football Association of Wales (FAW) requested the Fédération Française de Football (FFF) to deliver the international transfer certificate (ITC) for the player. On the same day, at 17.17 local time in France, the FFF delivered the ITC for the player and, subsequently, the FAW registered the player with Cardiff in the International Transfer Matching System (ITMS). In particular, the FAW entered the registration date in the TMS and confirmed receipt of the ITC on 21 January 2019, at 17.30 local time in Wales.
 8. In the night between 21 and 22 January 2019, the player tragically passed away in a plane crash across the English Channel.
 9. On 26 February 2019, Nantes lodged a claim in front of FIFA against Cardiff and requested from the latter the payment of EUR 6,000,000, corresponding to the first instalment of the transfer fee, plus 5% interest *p.a.* as of 27 January 2019. Nantes further requested that sanctions be imposed on Cardiff.
 10. With his claim, Nantes clarified that it was reserving its right to claim from Cardiff also the second and third instalments as per the transfer agreement, should they become due during the course of the proceedings.
 11. More specifically, in Nantes' opinion, since the requirements enshrined in clause 2.1. of the transfer agreement (cf. *supra* point 2) had been complied with, the transfer fee had become due despite the player's tragic decease.
 12. In respect of the above, Nantes alleged that, on 18 January 2019, the player had successfully completed his medical examination with Cardiff and that, on 19 January 2019, it had signed with him a termination of their employment contract, which had been duly ratified by the French Ligue de Football Professionnel (LFP).

13. Nantes further emphasized that, on 19 January 2019, Cardiff had officially announced having signed an employment contract with the player.
14. Moreover, Nantes stressed that, on 21 January 2019, the player's ITC had been issued in favour of the FAW and that, a few minutes later, the player had been registered with Cardiff in the TMS.
15. Lastly, Nantes clarified that, from its point of view, the player's tragic passing could not be considered as a valid reason not to pay the transfer fee, given that the relevant payment was only conditional upon the prerequisites of clause 2.1. of the transfer agreement being fulfilled.
16. In view of all the aforementioned and in accordance with the legal principle of *pacta sunt servanda*, Nantes deemed to be entitled to receive the first instalment of the transfer fee plus interest.
17. In reply to the claim, first and foremost, Cardiff challenged FIFA's competence to entertain the present claim, based on clause 8.2. of the transfer agreement. According to said provision, *"[a]ny dispute arising out of or in connection with this Transfer Agreement shall be subject to the jurisdiction of the FIFA Dispute Resolution Chamber ("the FIFA DRC") and on appeal (or in the event that FIFA declines jurisdiction) to the Court of Arbitration for Sport ("CAS") to be finally settled in accordance with the rules of the Code of Sports Related Arbitration, which rules are hereby deemed incorporated. The FIFA DRC and the CAS shall determine the dispute in accordance with the FIFA Regulations and the laws of England and Wales. The CAS proceedings shall be held in the English language"*.
18. Cardiff argued that, because the provision in question wrongly referred to the FIFA DRC rather than the FIFA Players' Status Committee (PSC) as the competent body to resolve any dispute arising out of the transfer agreement, *"the jurisdiction clause in favour of the DRC at clause 8.2. [...] must be deemed invalid, null and void/or inoperative and/or impossible to perform. Accordingly, pursuant to clause 8.2. of the Transfer Agreement, the Court of Arbitration for Sport is the competent body"*.
19. Alternatively, Cardiff requested that the proceedings be suspended until the later of:
 - Publication of the final report of the Air Accidents Investigations Branch on the crash of 21 January 2019;
 - The conclusion of all the criminal investigations and prosecutions (including those which may be pursued by the Police and Civil Aviation Authority in the UK) in connection with the plane crash and

- The conclusion of any civil claim pursued by Cardiff against Nantes in either England or Wales or France against Nantes in relation with the organisation of the flight operated by Willie McKay and the company 'Mercato'.
20. In respect of the above, Cardiff was of the opinion that, *"on balance, the damaging consequences associated with FIFA making a premature decision without allowing appropriate public authority and criminal investigations to take place and be concluded are far greater than any prejudice Nantes could ever suffer as a result"* of a stay in the present proceedings.
 21. Equally, in this context, Cardiff deemed that the circumstances surrounding the player's decease are to be considered as *"directly relevant and central as to the context and meaning of the Transfer Agreement and also any liability for losses that may arise from the same contract."*
 22. Moreover, from Cardiff's point of view, *"FIFA should do nothing whatsoever to prejudice the ongoing AAIB investigation, ongoing criminal investigations, future public inquiry or potential criminal trial. Further, FIFA should not make any findings that could clash with the determination and findings of those public authorities. If FIFA was to progress this matter nevertheless, such action would be highly prejudicial, and likely lead to serious criticism of FIFA"*.
 23. Entering into the merits of the facts, Cardiff substantially developed its argumentations around (i) the alleged invalidity of the transfer agreement and (ii) Nantes' alleged responsibility in relation to the mentioned tragic occurrence.
 - I. As to the validity of the transfer agreement:
 24. Cardiff claimed the invalidity of the transfer agreement, alleging that no valid ITC had been *de facto* issued to the FAW. Equally, Cardiff alleged that no valid employment contract had been concluded with the player.
 25. Moreover, according to Cardiff, Nantes had failed to confirm the name of the agent involved in the transfer of the player when uploading the relevant information in TMS.
 26. In this regard, Cardiff clarified that the employment contract concluded with the player on 18 January 2019 and uploaded in TMS on 19 January 2019 (hereinafter: *"the employment contract"*), had been considered invalid by the Premier League and, as a result, the player could not be registered with it.
 27. More specifically, Cardiff explained that, since the method of payment of the signing-on fee to the player provided for in the employment contract was not in line with 'Rule T 17' of the *"Premier League Handbook"*, the registration department of the Premier League had refused to register the player.

28. To that end, Cardiff provided FIFA with a printout of an emails allegedly received by the Premier League on 21 January 2019 which reads as follows: *“this is an automated email to inform you that your Contract Application for Emiliano Raul Sala requires an amendment before being approved. The following comments from PL explain the need for the amendment: Michelle, unfortunately we are unable to accept your submission as a “New Registration”. Please create a new application selecting “Permanent Transfer” as your original application cannot be edited due to the incorrect transaction type being used. Also, after reviewing the Contract we would require the signing-on fee to be amended. It is currently not being payable in equal instalments as there appears to be no instalment payable in the player’s final contract year (1 July 2021 – 30 June 2022)”*.
29. In this respect, Cardiff recalled that its membership to the Premier League had been a fundamental term of the transfer agreement, as Nantes *“was only prepared to sell the player to a Premier League club”* and referred to clause 3.2.1. of the transfer agreement, which provided for the payment of *“bonuses [...] to Nantes if [Cardiff] “retains its Premier League Status”*.
30. Considering that the Premier League had deemed the employment contract invalid and that no other employment contract had been signed and uploaded in the TMS in the meantime, Cardiff concluded that the parties had failed to comply with Article 8.2.1. of Annexe 3 of the Regulations, which – for the creation of an ITC – requires that the new club uploads, *inter alia*, a copy of the employment contract with the player. In other words, according to Cardiff, the ITC had not been validly released pursuant to the Regulations, because it was resting upon an invalid employment contract and the player could not be registered.
31. In light of the above and since the express conditions precedent established in Article 2.1.4. had not been fulfilled, Cardiff considered the transfer agreement null and void as per its clause 2.2.1 and deemed that no payment had to be made to Nantes in connection with the player’s transfer, pursuant to the ensuing clause 2.2.2.
32. Notwithstanding the aforementioned and *“in the unlikely event that the Commission deems that the transfer may rest upon an invalid employment contract”*, Cardiff requested FIFA to consider that the LFP and FAW did not confirm the release of the ITC nor the player’s registration to the parties and that, therefore, clause 2.1.4. of the transfer agreement had not been complied with anyway.
33. As a result and because *“the express condition established in clause 2.1.4. was not fulfilled”*, Cardiff concluded that the transfer agreement was null and void and that no payment was due to Nantes pursuant to clauses 2.2.1. and 2.2.2.

II. As to Nantes’ alleged responsibility:

34. Cardiff's second main argument concerned Nantes' alleged responsibility for the circumstances leading to the player's decease.
35. More specifically, Cardiff inferred that, since the player's flight had been wrongfully organised by his agent Mr Willie McKay and his company 'Mercato' acting under Nantes' mandate, the French club was to be considered *"civilly liable [...] for the legal consequences resulting from this accident as if it had organized it itself"*. In this context, Cardiff held that, after having been declared ineligible to be a registered football agent due to bankruptcy, Mr Willie McKay had formed the company 'Mercato' *"to operate as a football agency company"*. Cardiff further recalled that the shareholders and directors of said company are *"Willie McKay's wife [...] and Mark McKay, Willies son"*. Thus, in Cardiff's opinion, the creation of this company had the purpose of allowing Mr Willie McKay to *"carry on as before as football agent, albeit working with his son"*. In this context, Cardiff maintained that Nantes contracted Mercato to work with Willie McKay, who was, ultimately, the person who organised the flight in order for the player to reach Cardiff, *"finalise his contract"* and provide his services as from 22 January 2019.
36. That said, Cardiff maintained that, by hiring an unlicensed aircraft and employing an unlicensed and inexperienced pilot for the player's flight of 19 January 2019, Mr Willie McKay and his company had grossly failed in their duty of care. This alleged negligence resulted in the crash of the aircraft that caused the player's decease. Consequently, according to Cardiff, the individuals involved in the flight operations should be deemed directly responsible for the damage suffered by Cardiff, which includes, but is not limited to, the player's market value as Premier League forward at the time of his decease.
37. In connection with the plane crash, Cardiff provided a preliminary report of the *"Aircraft Accident Investigation Branch (AAD)"*, arguing that the document in question had identified two breaches of duty of care. Namely, (i) the necessary authorisation to operate the aircraft for commercial purpose had not been obtained and (ii) the pilot, David Ibbotson, held a private pilot license and not the one required for commercial flights.
38. In relation to the above, Cardiff maintained that article 1242, paragraph 5, of the French Civil Code provides that all acts emanating from an agent are to be enforced against the principal who hired the agent as if the principal had performed the acts himself. Consequently, in Cardiff's opinion, in the context of the mandate given to its agent, Nantes had to be considered civilly liable for any of its agent's faults.
39. In light of all the aforementioned, Cardiff concluded that Nantes was responsible for the financial consequences deriving from the agent's misconduct in taking care of the player's flight. Consequently, *"in the unlikely event that [it] considered that the*

transfer has been completed and that Emiliano Sala has become a [Cardiff] player” Cardiff requested FIFA to conclude that Nantes is liable for the damages caused to it by the player’s decease.

40. Cardiff added that, under the principle of full reparation, such damages should include, but not be limited to, the player’s market value as a Premier League striker. In this respect, Cardiff explained that the most objective criterion for assessing this market value is the transfer fee agreed, *i.e.* EUR 17,000,000. Consequently, according to Cardiff, should the PSC consider that the transfer fee established in the transfer agreement is due, it should deduct the relevant amount from the damages suffered by Cardiff and be compensated by Nantes for its civil liability in relation to the acts of its agents. Thus, according to Cardiff, Nantes’ claim should be rejected.
41. In its replica, Nantes reiterated the content of its previous submission and contested Cardiff’s allegation that FIFA would not be competent to decide in the matter at stake.
42. In addition, Nantes rejected Cardiff’s request to suspend the proceedings and considered Swiss Law subsidiarily applicable to the dispute. Moreover, Nantes took position on Cardiff’s argumentations as follows:
 - I. As to the validity of the transfer agreement:
43. In this respect, Nantes reiterated that, since the requirements of clause 2.1 of the transfer agreement had been complied with, the transfer fee had undisputedly become due and payable by Cardiff.
44. Moreover, Nantes recalled that the player’s ITC had been regularly issued to the FAW and that the player had been registered with Cardiff in the TMS.
45. Concerning Cardiff’s argumentation on the alleged non-compliance of the employment contract with the rules of the Premier League, Nantes explained that any issue arising in relation to the compatibility of the employment contract with the said internal body of rules could not determine its invalidity or have any impact on the valid issuance of the player’s ITC.
46. In this context, Nantes explained that, in accordance with the constant jurisprudence of FIFA’s deciding bodies, the validity of an employment contract cannot be made conditional upon the fulfilment of formalities that only refer to the obligations of the engaging club.
47. Equally, Nantes emphasized that, if at all, the employment contract’s non-conformity with the Premier League’s rules would have had the only consequence of preventing the player from playing in the Premier League’s championship.

48. In this respect, Nantes further underlined that the parties had never agreed on the player's transfer being conditional upon the registration of his employment contract with the Premier League.
49. In any case, Nantes noted that Cardiff had failed to provide evidence indicating that the Premier League had considered the employment contract invalid.
50. Moreover, in Nantes' opinion, the fact that the player's contract could not be registered with the Premier League was solely the consequence of a mistake committed by Cardiff when the employment contract was drafted. Evidently, Cardiff could not rely on its own wrongdoing in order not to pay the transfer fee provided in the transfer agreement.
51. In continuation, Nantes contested Cardiff's interpretation of art. 2.1.4. of the transfer agreement, arguing that the parties had clearly agreed that the issuance of the player's ITC to the FAW as well as the player's registration with Cardiff were the sole conditions for the validity of the player's transfer.

II. As to its alleged responsibility:

52. In this respect, Nantes considered it necessary to first clarify that, as indicated in the TMS, it had concluded an agreement with Mark McKay, not with Willie McKay, and that the mandate in question only concerned the negotiation of the transfer agreement with Cardiff. From Nantes' point of view, if at all, Willie McKay had acted under his own name as an imperfect agent.
53. Additionally, Nantes contested Cardiff's interpretation of the mandate and subordination relationship under French Law as well as the applicability of article 1242 of the French Civil Code in the matter at stake (cf. *supra* point 38). Nantes added that, anyway, the agreement concluded with Mark McKay forbade any kind of subordination between the parties.
54. Lastly, Nantes pointed out that any resolution concerning the eventual responsibilities in relation to the player's flight and his tragic passing, as well as the legal consequences deriving from them, would not be relevant anyway to the outcome of the present dispute, which only deals with the fulfilment of a contractual obligation.
55. In conclusion, Nantes amended its claim against Cardiff by additionally requesting FIFA to establish that also the second and third instalment in the amount of EUR 6,000,000 and of EUR 5,000,000 respectively were to be paid by Cardiff. Equally, Nantes additionally requested FIFA to establish that Cardiff had to pay the contractually agreed bonuses if they became due.
56. In its last submission, Cardiff took position on Nantes' reply as follows:

I. As to the validity of the transfer agreement:

57. Cardiff reiterated that the conditions outlined in clause 2.1. of the agreement had not been complied with and that, consequently, no valid transfer had occurred since the player could not be registered with the Premier League.
58. First of all, from Cardiff's point of view, the player and Nantes had not agreed on all the terms of the mutual termination of their employment relationship as prescribed by clause 2.1.2 of the transfer agreement. Cardiff explained that the termination agreement between Nantes and the player contained the following two conditions precedent: (i) the player having definitely moved to Cardiff and (ii) the FFF having delivered the ITC to the English FA. Cardiff maintained that these conditions had not been satisfied, given that the ITC had been delivered to the FAW rather than the FA and, thus, the player remained a player of Nantes. Consequently, the termination did not occur and, as such, clause 2.1.2 of the transfer agreement had not been fulfilled.
59. In continuation, Cardiff explained, once again, that clause. 2.1.4 of the transfer agreement should be read in light of the player's intention underpinning his transfer to Cardiff, namely, taking part in the Premier League championship. Thus, in Cardiff's opinion the Premier League's refusal to register him determined the non-fulfilment of the condition precedent enshrined in the abovementioned provision.
60. In view of all the aforementioned, Cardiff reiterated that, as not all the essential preconditions under clause 2.1. of the transfer agreement had been satisfied, no payment should be performed towards Nantes, in accordance with the ensuing clause 2.2.2.
61. Cardiff also reiterated its conclusions concerning the alleged invalidity of the ITC in relation to the compatibility with the Premier League's rules.
62. In light of all the above, Cardiff concluded that the transfer agreement had to be deemed null and void as per clause 2.2.1.
63. In any case, Cardiff inferred again that – as the LFP and the FAW did not confirm the release of the ITC and the player's registration to the parties – the third condition precedent contained in clause 2.1.4. of the transfer agreement had not been complied with and, thus, no payment should be performed towards Nantes as per its clause 2.2.2.

II. As to Nantes' alleged responsibility:

64. In this respect, Cardiff reiterated its previous argumentations. In particular, Cardiff emphasised that, should the PSC consider that the transfer agreement is valid *quod non* and that the fee therein established is due, then it should also consider itself

competent to assess the consequences of Nantes' civil liability in relation to the acts of its agents.

65. Cardiff argued that FIFA would also have competence to decide on a civil claim, on the basis of art. 22 lit. f) and art. 23 par. 1 of the Regulations and of *"the principle of 'le juge de l'action est le juge de l'exception' as developed by the Swiss Federal Tribunal."*
66. In support of the aforementioned understanding, Cardiff explained that the Regulations do not specify on purpose the nature of the dispute between clubs falling within the scope of FIFA's competence. According to Cardiff, by means of Article 22 (f), the Regulations have the intent to extend at its maximum the PSC's jurisdiction in order to encompass disputes of any nature, apart from the ones explicitly excluded. In light of the foregoing, Cardiff considered that a civil liability claim lodged by a Welsh football club against a French football club is a dispute between football clubs belonging to different associations and, as such, falls within the scope of Article 22 lit. f) of the Regulations. Consequently, Cardiff maintained that the PSC should be also competent to deal with its claim against Nantes in relation to the civil liability for the accident and its consequences.
67. In this respect, Cardiff insists that the accident had been the result of a fault committed by Willie and Mark McKay in the performance of the agency agreement concluded with Nantes, triggering its civil liability therefore. Cardiff suggested that this tragedy could have been avoided had Willie McKay – and thus Nantes by way of representation – been more cautious in organizing the player's flight to Wales.
68. In conclusion, Cardiff reiterated that, *"in the unlikely event that [FIFA] considers that the transfer had been completed and that Emiliano Sala had become a [Cardiff] player"*, FIFA should also declare Nantes liable for the damages caused to Cardiff as a consequence of the player's tragic decease.
69. As a result, according to Cardiff, in the event that FIFA considers that the transfer fee established in the transfer agreement is due, it should deduct from it in full the damages Cardiff had allegedly suffered as a result of Nantes' actions.
70. Since Cardiff considered that such damage could be quantified using the market value of the player, *i.e.* the sum of EUR 17,000,000 *"plus any payments"*, it concluded that Nantes' claim had to be rejected.

II. Considerations of the Bureau of the Players' Status Committee

1. First, the Bureau of the Players' Status Committee (hereinafter: *"the Bureau"*) wishes to emphasise that it is aware that the dispute at stake is one that involves very tragic circumstances; two persons - amongst whom a talented young football player – have

passed away in a regrettable accident. The Bureau never lost sight of these sorrowful circumstances. Nevertheless, as tragic as the circumstances may be, an agreement was signed between two parties and a claim by one of those parties has been filed in front of FIFA. The Bureau finds it regrettable that the dispute could not be settled amicably, yet it has a duty to provide the parties with a ruling.

2. Having said that, the Bureau deemed it necessary to clarify to the parties that, contrary to the information contained in FIFA's letter dated 19 September 2019 by means of which they were *inter alia* informed of the composition of the Bureau, the member Geoff Thompson decided to refrain from participating in the deliberations in the case at hand. As a result, the following deliberations were taken by the Bureau in the presence of the remaining four members.
3. Its composition having been defined, the Bureau analysed which edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber is applicable to the matter at hand. In this respect, the Bureau referred to art. 21 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2018) as well as to the fact that the present matter was submitted to FIFA on 26 February 2019. Consequently, the Bureau concluded that the 2018 edition of said Procedural Rules is applicable to the matter at hand (hereinafter: *"the Procedural Rules"*).
4. Subsequently, the Bureau confirmed that, on the basis of art. 3 par. 1 and par. 2 of the Procedural Rules in connection with art. 23 par. 1 and par. 4 as well as art. 22 lit. f) of the 2019 edition of the Regulations on the Status and Transfer of Players, it would in principle be competent to deal with the matter at stake since it concerns a dispute between two clubs affiliated to different associations.
5. The Bureau, however, acknowledged that Cardiff contested the competence of FIFA to deal with the matter at stake based on the wording of clause 8.2. of the transfer agreement which reads as follows: *"Any dispute arising out of or in connection with this Transfer Agreement shall be subject to the jurisdiction of the FIFA Dispute Resolution Chamber ("the FIFA DRC") and on appeal (or in the event that FIFA declines jurisdiction) to the Court of Arbitration for Sport ("CAS") to be finally settled in accordance with the rules of the Code of Sports Related Arbitration, which rules are hereby deemed incorporated. The FIFA DRC and the CAS shall determine the dispute in accordance with the FIFA Regulations and the laws of England and Wales. The CAS proceedings shall be held in the English language"*.
6. The members of the Bureau observed that, according to Cardiff, because the above-mentioned provision wrongly indicated the Dispute Resolution Chamber and not the Players' Status Committee (hereinafter: *"the PSC"*) as the competent body to decide over a possible dispute between the parties, such clause was to be considered invalid,

and the matter was therefore to be referred to the Court of Arbitration for Sport instead.

7. In this respect, the members of the Bureau reiterated that – in accordance with art. 22 lit. f) and art. 23 par. 1 and 4 of the Regulations – FIFA is competent to hear a claim lodged by a club against another club affiliated to a different association.
8. That being said, the Bureau pointed out that, regardless of any clerical mistakes in the drafting of the clause at stake, or rather of any inaccuracy in indicating the correct deciding body within FIFA’s dispute resolution system, it was clear that the real intention of the parties behind the aforementioned jurisdiction clause was to refer any dispute arising from the agreement to FIFA.
9. Moreover, the members of the Bureau were eager to emphasize that even if the agreement would contain an invalid and consequently inapplicable jurisdiction clause, the PSC would still have competence to entertain the present matter in accordance with art. 22 lit. f) and art. 23 par. 1 and 4 of the Regulations.
10. Consequently, the members of the Bureau established that the latter is competent to entertain the claim at hand.
11. Subsequently, the Bureau analysed which edition of the Regulations on the Status and Transfer of Players is applicable as to the substance of the matter. In this respect, it referred to art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (editions 2018 and 2019) and to the fact that the present matter was submitted to FIFA on 26 February 2019. In view of the foregoing, the Bureau concluded that the June 2018 edition of the Regulations on the Status and Transfer of Players (hereinafter: “*the Regulations*”) is applicable in the matter at hand as to the substance.
12. Its competence and the applicable regulations having been established, the Bureau – prior to entering into the merits of the case – observed that, according to Cardiff, the proceedings before FIFA should have been suspended, pending the outcome of the ongoing investigations into the player’s fatal accident. More specifically, the Bureau observed that Cardiff mainly referred to a criminal investigation and to an investigation of the civil aviation authority pending in the United Kingdom.
13. In respect of the above, the members of the Bureau deemed it fit to recall that the present dispute operates in a completely different legal realm from that pertaining to criminal and civil liability to which the mentioned investigations relate. The dispute at stake, in fact, only concerns a contractual dispute between the parties. As such, the members of the Bureau pointed out that the outcome of the present dispute would not have any impact on any investigation carried out in respect of the player’s fatal accident and *vice versa*.

14. In light of the foregoing, the members of the Bureau could not see any reason justifying the suspension of the present proceedings. Consequently, they rejected Cardiff's argumentation on the point.
15. The foregoing having been established, the Bureau moved to the substance of the matter. In this respect, the Bureau started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the members of the Bureau emphasized that in the following considerations they will refer only to the facts, arguments and documentary evidence, which they considered pertinent for the assessment of the matter at hand. In particular, the Bureau recalled that, in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the TMS.
16. The Bureau acknowledged that, on 19 January 2019, Nantes and Cardiff signed a transfer agreement for the definitive transfer of the player from Nantes to Cardiff, for a transfer fee of EUR 17,000,000, to be paid in three instalments. Moreover, the Bureau observed that the first instalment, in the amount of EUR 6,000,000, had to be paid *"within five days of the player registering with Cardiff City FC"*.
17. Equally, the Bureau took into account that the validity of the transfer agreement, as per its clause 2.1, was *"conditional upon"* the fulfilment of the following four requirements:
 - "2.1.1. the player completing successfully medical examination with Cardiff City FC;*
 - 2.1.2. FC Nantes and the Player agreeing all the terms of a mutual termination of FC Nantes contract of employment with the Player;*
 - 2.1.3. the mutual termination of FC Nantes contract of employment with the Player is registered by the LFP;*
 - 2.1.4. the LFP and the FAW have confirmed to Cardiff City FC and FC Nantes that the Player has been registered as a Cardiff City FC player and that the Player's International Transfer Certificate has been released"*.
18. Similarly, the Bureau noticed that, in accordance with the agreement, Cardiff had undertaken to also pay to Nantes several bonuses depending on Cardiff's participation in the Premier League during the football seasons 2018/2019, 2019/2010 and 2020/2021, respectively.
19. In addition, the Bureau remarked that, in accordance with the information included in TMS, the FAW had entered the registration of the player in the system on 21 January 2019 and confirmed the receipt of his ITC on the same day at 17.30 local times in Wales.

20. In continuation, the members of the Bureau acknowledged that, in its claim to FIFA, Nantes had requested from Cardiff the payment of the entire transfer fee due as per the agreement, arguing that, because the requirements of clause 2.1. of the relevant document had been complied with, the amount in question had become due.
21. In the same context, the Bureau observed that, for its part, Cardiff had rejected the claim of Nantes on the basis of two main arguments, *i.e.* (i) the alleged invalidity of the transfer agreement and (ii) Nantes' alleged civil responsibility, through the mandate conferred to its agent, for the damage suffered as a consequence of the tragic decease of the player.
22. Taking into account all of the aforementioned and, in particular, bearing in mind the very particular circumstances surrounding the dispute at stake, the members of the Bureau deemed it appropriate to firstly address the second argument raised by Cardiff in its defence.
23. At this point, the Bureau was eager to underline that, despite the tragic passing of the player as well as the criminal and civil liability developments it may possibly trigger, the dispute lodged before FIFA by Nantes remains of a purely contractual nature.
24. In other words, even though the circumstances surrounding the player's tragic passing in a plane accident may activate criminal proceedings and civil actions regarding Nantes' possible liability before local courts, the Bureau was of the opinion that those proceedings should be settled by the local courts and not by FIFA. If the local courts would determine any criminal or civil liability on the side of Nantes, it is also for the local courts to determine the consequences of such liability. The Bureau held that Cardiff had not been able to prove that the outcome of the those local proceedings would be relevant for the outcome of the dispute pertaining to whether or not a transfer fee is due.
25. In light of the foregoing, the members of the Bureau decided not to take into account any arguments brought forward by Cardiff in front of FIFA in relation to the circumstances surrounding the tragic passing of the player. The Bureau established that it is not in a position to consider the allegations of Cardiff as to Nantes' alleged civil liability towards it as they lie outside of its competence.
26. Having established the aforementioned, the Bureau moved on to Cardiff's second argument, *i.e.* the supposed invalidity of the transfer agreement.
27. Considering the parties' conflicting position on the point, the members of the Bureau concluded that the pivotal issue in the matter at stake was to determine whether the parties had validly concluded a transfer agreement in light of the conditions precedent enshrined therein and, in the affirmative, to establish the consequences thereof.

28. The members of the Bureau took note that the transfer agreement set out four cumulative conditions precedent of its validity in clause 2.1 and, thus, they decided to thoroughly analyse each of them.
29. In doing so, the Bureau first agreed that the condition precedent outlined in clause 2.1.1., *i.e.* the player having completed successfully the medical examinations with Cardiff, had remained undisputed between the parties and therefore was not to be further analysed.
30. In continuation, the Bureau turned its attention to the next condition precedent set out at clause 2.1.2 which required for Nantes and the player to agree on “*all the terms of a mutual termination*” of the employment contract they had in place at the time.
31. In this respect, the members of the Bureau recalled Cardiff’s allegation that such clause was not complied with because two conditions precedent included the termination agreement signed between the player and Nantes had not been fulfilled, namely the definitive transfer of the player to Cardiff and the issuance of the player’s ITC to the FA. Thus, Cardiff deems that the employment relationship between the player and Nantes was not validly terminated and consequently clause 2.1.2 of the transfer agreement was not fulfilled, the agreement was to be considered as invalid and the transfer fee was not due.
32. However, the Bureau did not concur with Cardiff’s line of reasoning. The Bureau deemed that by the very act of signing a termination agreement Nantes and the player had agreed on all of the terms enshrined therein, regardless of whether the conditions precedent set out in that termination were, at a later stage, complied with or not. The latter is a question that attains to the subsequent efficacy of the termination, not to the – logically antecedent – agreement of its terms. As a side note, the Bureau also stated that evident clerical mistakes in an agreement obviously do not precede over the parties’ intention or the correct regulatory, technical procedures.
33. Consequently, the Bureau dismissed Cardiff’s remarks on the point and agreed that the second condition precedent of clause 2.1.2 had been fulfilled as well.
34. Subsequently, the Bureau analysed the third condition precedent indicated at clause 2.1.3 of the agreement, *i.e.* that the mutual termination of the employment contract between Nantes and the player had to be registered with the LFP. The members of the Bureau acknowledged that the fulfilment of this condition precedent was contested by Cardiff.
35. In this respect, the members of the Bureau deemed it worth to preliminary point out that, in light of the peculiarity of its prescription, the said clause required further interpretation of the parties’ real intention when they drafted it in order to be able to

assess its proper meaning. In doing so, the Bureau assumed that the *ratio* behind the inclusion of such a clause in the transfer agreement as condition precedent could have only been to provide Cardiff with a safeguard against the risk of being involved in a claim for breach of contract that Nantes might have lodged against the player. More specifically, the Bureau assumed that the clause at stake had been included in the transfer agreement with the sole purpose of securing Cardiff from the consequences in terms of possible inducement in the player's breach of contract at a later stage in case a dispute would arise between Nantes and the player, however remote such possibility might have been.

36. Notwithstanding the aforementioned and for the sake of good order, the Bureau, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, found it worthwhile to add that Nantes had produced a copy of the relevant termination agreement, dated 19 January 2019, and that such document bore a stamp with the indication "*Homologué le 21/01/2019*", i.e. "*Ratified on 21/01/2019*".
37. Consequently, the Bureau concurred that also this third condition precedent had to be considered as fulfilled.
38. The foregoing having been established, the members of the Bureau moved to the fourth and last condition precedent set out in clause 2.1.4 of the transfer agreement, which constituted the core of the legal discussion between the parties.
39. The said provision required that the LFP and the FAW confirmed to Cardiff and Nantes that the player had been registered as a Cardiff player and that the player's ITC had been released.
40. In this respect, the members of the Bureau observed that Cardiff contested the fulfilment of the said condition precedent, mainly on the basis of the fact that the employment contract could allegedly not be registered with the Premier League and, as such, had to be considered null and void, which in its opinion further lead to the invalidation of the issuance of the player's ITC.
41. In this respect, the members of the Bureau firstly observed that the clause at stake did not require the player's employment contract to be registered with the Premier League as a condition precedent. What it is more, the Bureau held that it was clear that it was always the intention of Cardiff to register the player with the Premier League and that the only reason why the contract was not approved was an omission of Cardiff itself.
42. Moreover, the members of the Bureau pointed out that the registration of an employment contract with the Premier League not only consists of an internal matter between Cardiff and the Premier League and/or the FAW, but it is also a formal requirement over which Nantes has no influence. As a result, from the Bureau's point

of view, whether or not Cardiff and the agents representing the player had carried out the required due diligence in drafting an employment contract that was in conformity with the Premier League's specific rules or not, can in no way affect the validity of the transfer agreement concluded between Nantes and Cardiff.

43. The foregoing having been established, the Bureau turned its attention to the question of whether the transfer of the player had been completed in TMS.
44. In this respect, the Bureau reverted to the specificities that govern the system of the international transfers through the TMS platform and first recalled that, in order for a transfer to occur on the TMS, a duly signed employment contract between the player and the 'new club' needs to be uploaded therein in the first place. Moreover, the Bureau highlighted that a transfer does not occur automatically in the TMS. On the contrary, the receiving association, *i.e.* the FAW in the case at stake, has to manually enter the registration date and confirm the ITC receipt from the former association, *in casu* the FFF. A transfer goes into the status "*closed-awaiting payments*" in TMS once the new association has entered the registration date and confirmed the ITC receipt. Considering the foregoing and the information contained in TMS, the transfer of the player was concluded in the system on 21 January 2019 at 17.30 local time in Wales, *i.e.* when the FAW entered all the necessary requirements in the system.
45. With all the foregoing in mind, the members of the Bureau could determine that the transfer of the player in TMS was completed and, therefore, that the player's transfer from Nantes to Cardiff has to be considered as validly concluded between the parties. Hence, the player was a player of Cardiff.
46. Having established the aforementioned, the Bureau turned its attention to the first part of Nantes' claim, *i.e.* its request for the payment of the first instalment in the amount of EUR 6,000,000, and recalled that its non-payment remained undisputed by Cardiff.
47. Considering the aforementioned as well as the legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Bureau resolved that Cardiff has to pay to Nantes the outstanding amount of EUR 6,000,000, corresponding to the first instalment of the transfer agreement, which was due "*within five days of the player registering with Cardiff City FC*", *i.e.* until 26 January 2019.
48. Additionally, considering Nantes' request, the terms of the transfer agreement and the well-established jurisprudence of the Players' Status Committee, the Bureau decided that interest in the amount of 5% *p.a.* was to be applied on the outstanding amount of EUR 6,000,000 as of the day after the relevant due date, *i.e.* 27 January 2019.

49. In continuation and with regard to Nantes request related to the payment of the second and third instalment, the Bureau pointed out that, in accordance with the agreement, the amounts in question fall due on 1 January 2020 and 1 January 2021 respectively.
50. In view of the aforementioned and bearing in mind that the second and third instalment are not yet due, the Bureau determined that, at this point in time, it was not in a position to render a decision on this part of Nantes' request.
51. Equally and as to Nantes' claim in connection with the future bonuses mentioned in the transfer agreement, the Bureau ruled that, at this point in time, it was not in a position to render a decision on this subject.
52. In conclusion, the Bureau decided that the claim of Nantes is partially accepted and that Cardiff has to pay to Nantes the amount of EUR 6,000,000 plus 5% interest *p.a.* as of 27 January 2019.
53. Lastly, 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 the proceedings before the Players' Status Committee and the Single Judge, costs in the maximum amount of CHF 25,000 are levied. 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.
54. Furthermore and 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. Consequently and taking into account that the total amount at dispute in the present matter is higher than CHF 200,000, the Bureau concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
55. However, the members of the Bureau wished to highlight that, throughout their deliberations and while analysing the content of the dispute at stake, they never lost sight of the tragic and sorrowful circumstances surrounding the present matter.
56. Consequently, the Bureau unanimously and exceptionally decided not to impose any procedural costs *in casu*.
57. Furthermore, taking into account the consideration under number II./11. above, the Bureau referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
58. In this regard, the members of the Bureau pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a

ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

59. Therefore, bearing in mind the above, the Bureau decided that, in the event that Cardiff does not pay the amount due to Nantes within 45 days as from the moment in which Nantes, following the notification of the present decision, communicates the relevant bank details to Cardiff, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on Cardiff in accordance with art. 24bis par. 2 and 4 of the Regulations.
60. Finally, the Bureau recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.

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

1. The claim of the Claimant, FC Nantes, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Cardiff City FC, has to pay to the Claimant, FC Nantes, the amount of EUR 6,000,000, plus 5% interest *p.a.* from 27 January 2019 until the date of effective payment.
4. Any further claim lodged by the Claimant is rejected.
5. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point 3. above.
6. The Respondent shall provide evidence of payment of the due amount in accordance with point 3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount due, plus interest in accordance with point 3. above, is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive

registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

8. The ban mentioned in point 7. above will be lifted immediately and prior to its complete serving, once the due amount is paid.
9. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
10. No procedural costs are imposed on the parties and the advance of costs will be reimbursed to FC Nantes.

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
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
www.tas-cas.org

For the Bureau of the
Players' Status Committee



Emilio García Silvero
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Encl. CAS directives