

Decision of the Single Judge of the Players' Status Committee

passed on 3 December 2019,

by

Mr Johan Van Gaalen (South Africa)

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 1 January 2019, the club of Country B, Club A (hereinafter: *the Claimant*) and the club of Country D, Club C (hereinafter: *the Respondent*) signed a transfer agreement regarding the transfer of the player, Player E (hereinafter: *the player*) from the Claimant to the Respondent.
2. In accordance with the transfer agreement, the Respondent undertook to pay to the Claimant *inter alia* EUR 3,000,000, as follows:
 - a) EUR 1,000,000 by 4 January 2019;
 - b) EUR 1,000,000 by 5 August 2019;
 - c) EUR 1,000,000 by 5 January 2020.
3. The transfer agreement further stipulated that if the Respondent delays *"on pay any of these instalments above mentioned for more than 5 days, will be subjected to a 20% penalty, notwithstanding the obligation on paying the relevant amount"*.
4. By correspondence dated 26 August 2019, the Claimant put the Respondent in default of payment of EUR 1,000,000, corresponding to the second instalment of the transfer agreement, setting a time limit expiring on 5 September 2019 in order to remedy the default.
5. By correspondence dated 9 September 2019, the Claimant put the Respondent in default of payment of EUR 1,000,000, as well as EUR 200,000 corresponding to the *"contractual penalty"*, setting a 10 days' time limit in order to remedy the default.
6. On 25 September 2019, 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 EUR 1,000,000, corresponding to the second instalment of the transfer fee that fell due on 5 August 2019 as per the transfer agreement. The Claimant also claimed the payment of EUR 200,000 corresponding to the *"contractual penalty in the amount of 20% of the default amount"*.
7. The Claimant further asks to be awarded interest of 5% *p.a.* on the amount of EUR 1,000,000 as from 5 August 2019 until the date of effective payment.
8. In reply to the claim, the Respondent did not contest the claim of the Claimant and only proposed an amicable agreement for the payment of EUR 1,000,000 as follows:
 - a) EUR 250,000 on 10 February 2020;
 - b) EUR 250,000 on 10 March 2020;
 - c) EUR 250,000 on 10 April 2020;

d) EUR 250,000 on 10 May 2020.

II. Considerations of the Single Judge of the Players' 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 25 September 2019. Consequently, the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is 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 2019) 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 (editions June 2019 & October 2019), and considering that the present claim was lodged on 25 September 2019, the June 2019 edition of the Regulations on the Status and Transfer of Players (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 regarding the transfer of the player, pursuant to which the Respondent undertook to pay to the Claimant the total amount of EUR 3,000,000, payable in three equal instalments of EUR 1,000,000 each, respectively payable on 4 January 2019, 5 August 2019 and 5 January 2020.

6. In addition, the Single Judge acknowledged that the transfer agreement contains a clause stipulating that if the Respondent delays *“on pay any of these instalments above mentioned for more than 5 days, will be subjected to a 20% penalty, notwithstanding the obligation on paying the relevant amount”*.
7. The Single Judge further acknowledged that, on 25 September 2019, 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 1,000,000, corresponding to the second instalment of the transfer fee. Furthermore, the Single judge noted that the Claimant requested the payment by the Respondent of an additional amount of EUR 200,000, corresponding to the aforementioned penalty.
8. The Single Judge further observed that the Claimant asked to be awarded 5% interest *p.a.* as of 5 August 2019 until the date of effective payment.
9. In this context, the Single Judge took particular note of the fact that, on 9 September 2019, the Claimant put the Respondent in default of payment of EUR 1,000,000, as well as EUR 200,000 corresponding to the *“contractual penalty”*, setting a 10 days' time limit in order to remedy the default.
10. 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 obligation(s).
11. Subsequently, the Single judge took into account that the Respondent, for its part, did not contest the claim of the Claimant and only proposed an amicable agreement for the payment of EUR 1,000,000 to be paid in four instalments, however, that such amicable settlement was apparently never concluded between the parties.
12. In this regard, the Single judge considered that the arguments raised by the Respondent cannot be considered a valid reason for non-payment of the second instalment of EUR 1,000,000 claimed by the Claimant, in other words, the reasons brought forward by the Respondent in its defence do not exempt the Respondent from its obligation to fulfil its contractual obligations towards the Claimant.
13. Consequently, the Single judge decided to reject the argumentation put forward by the Respondent in its defence.
14. On account of the aforementioned considerations, the Single Judge established that the Respondent failed to remit EUR 1,000,000 to the Claimant.

15. In addition, bearing in mind the considerations under numbers II./9. and II./10. above, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
16. 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 EUR 1,000,000.
17. Furthermore, taking into consideration the Claimant's request as well as the constant practice of Players' Status Committee, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the amount of EUR 1,000,000 as of the 6 August 2019 until the date of effective payment.
18. In continuation, the Single Judge focussed his attention on the Claimant's request for payment of the penalty amount of EUR 200,000 in accordance with the transfer agreement, the Respondent in its reply did not contest to the said penalty.
19. In this respect, the Single Judge deemed it appropriate to stress that penalty clauses 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, the Single Judge highlighted that in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the deciding body shall also be taken into consideration.
20. In the specific case at hand, the Single Judge deemed that the penalty fee of 20% of the outstanding instalment in the case at hand is both proportionate and reasonable. Therefore, the Single Judge concluded that the Respondent has to pay to the Claimant the penalty fee amounting to EUR 200,000.
21. As a consequence of the foregoing considerations, the Single Judge decided that the Respondent has to pay to the Claimant the additional amount of EUR 200,000 as the penalty fee agreed by both parties in the transfer agreement.
22. In this regard, the Single Judge wished to highlight that the aforementioned contractual penalty in the amount of EUR 200,000 does not fall within the scope of art. 12bis of the Regulations.
23. In continuation, taking into account the consideration under number II./16. 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.

24. The Single Judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Therefore, and in the absence of the circumstance of repeated offence, the Single Judge decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
25. In this respect, the Single Judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.
26. What is more, taking into account the consideration under number II./3. above, the Single Judge 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.
27. In this regard, the Single Judge 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.
28. Therefore, bearing in mind the above, the Single Judge decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, 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 the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
29. Finally, the Single Judge 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.
30. Having established the above, 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 including its Single Judge, 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.
31. 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, 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 EUR 1,200,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.

32. Considering the particular circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 25,000 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 Single Judge of the Players' Status Committee

1. The claim of the Claimant, Club A, is accepted.
2. The Respondent, Club C, has to pay to the Claimant overdue payables in the amount of EUR 1,000,000, plus interest at the rate of 5% *p.a.* as from 6 August 2019 until the date of effective payment.
3. The Respondent has to pay to the Claimant the penalty amount of EUR 200,000.
4. A warning is imposed on the Respondent.
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 III./2. and III./3. above.
6. The Respondent shall provide evidence of payment of the due amount in accordance with point III./2. and III./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 III./2. and III./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 amount is 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 III./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. The final amount of costs of the proceedings of CHF 25,000 is to be paid by the Respondent **within 45 days** as from the date of notification of the present decision as follows:
 - a) The amount of CHF 5,000 has to be paid directly to the Claimant.
 - b) The amount of CHF 20,000 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

11. In the event that the aforementioned amount of costs 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.

Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an

anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note related to the appeal procedure:

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. 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 Single Judge
of the Players' Status Committee:



Emilio García Silvero
Chief Legal Officer