Decision of the Single Judge of the Players' Status Committee

passed via videoconference, on 14 July 2020,

regarding a contractual dispute concerning the player Antenor Junior Fernandes da Silva Vitoria

BY:

Castellar Guimaraes Neto (Brazil), Single Judge of the PSC

CLAIMANT:

GNK DINAMO ZAGREB, Croatia

Represented by Mr Davor Radic

RESPONDENT:

ALANYASPOR KULÜBÜ DERNEGI, Turkey

Represented by Mr Sami Dinc

I. FACTS OF THE CASE

1. On 4 September 2017, the Croatian club, GNK Dinamo Zagreb (hereinafter: *the Claimant*) and the Turkish club, Alanyaspor Kulübü Dernegi (hereinafter: *the Respondent*) signed an agreement over the permanent transfer of the player, Mr Antenor Junior Fernandes da Silva Vitoria (hereinafter: *the player*), from the Claimant to the Respondent (hereinafter: *the transfer agreement*).

2. In accordance with article 3.D. of the transfer agreement, the parties agreed that "[the Respondent] *at its own expenses, shall organize a pre-season camp for* [the Claimant] *during January or February 2018*". The parties further agreed that the pre-season camp should be organized under the following conditions:

> "- *The exact dates shall be decided exclusively by* [the Claimant] *and informed min. 30 days before;*
> - *Duration: 14 days;*
> - *Location: Alanya;*
> - *Hotel: Gold City Alanya or alternatively another 5 star hotel in Belek;*
> - [The Claimant's] *delegation shall receive full board;*
> - [The Claimant's] *delegation: maximum 50 persons;*
> - [The Respondent] *shall organize for* [the Claimant]*:*
>   - *The trip from and to the Airport in Antalya;*
>   - *The daily trip by bus to and from the training facilities during the entire period;*
>   - *The truck for the equipment of the delegation during the entire period;*
>   - *The security personnel for the delegation at the hotel and at the training fields;*
>   - *Two training fields*".

3. As per article 3.D. of the transfer agreement, it was also established that "*in the event that* [the Respondent] *cannot organize the 2 training fields and 5 stars hotel in January or February 2018, then Parties agree that* [the Respondent] *shall pay to* [the Claimant] *instead the amount of EUR 200,000 by 30 March 2018*".

4. Furthermore, according to article 4 of the transfer agreement, the parties agreed that "*in the event that* [the Respondent] *fails more than 15 working days to pay to* [the Claimant] *on due dates the amounts indicated under Art. 3* […] *or makes only partial payment, then the unpaid amount will become immediately due and payable. In case of default an interest rate of 10% p.a. will apply*".

5. On 22 March 2020, the Claimant lodged a claim against the Respondent before FIFA, requesting payment of EUR 200,000, plus 10% interest *p.a.* as from 30 March 2018 until the date of effective payment, corresponding to the penalty agreed by the parties under article 3.D. of the transfer agreement.

6. In its claim, the Claimant explained that, according to article 3.D. of the transfer agreement, it was the obligation of the Respondent to organise "*at its own expenses*", preparations for the Claimant's pre-season camp during the period contractually stipulated. In this context, the Claimant explained that it tried to contact the Respondent on several occasions, but the Respondent did not reply or replied with "*contradictory and inconsistent*" allegations.

7. As per the Claimant, after having elapsed the stipulated period to organize the 2 training fields, *i.e.* "*January or February 2018*" (cf. see point I.3. above), the Claimant addressed an invoice to the Respondent in March 2018, requesting payment of EUR 200,000.

8. The Claimant further maintained that, despite its several attempts to urge the Respondent to pay the agreed amount of EUR 200,000, the latter failed to do so. Hence, the Claimant argued that "*according to the general principle of contractual law pacta sunt servanda, contracts are binding between the parties and must be respected in good faith*".

9. On 10 March 2020, the Claimant put the Respondent in default of payment in the amount of EUR 200,000 providing the latter with a 10 days' deadline to remedy the default.

10. In its reply to the claim of the Claimant, the Respondent argued that it had duly complied with its contractual obligations. In support of its statements, the Respondent referred to an e-mail sent to the Claimant on 27 December 2017, in which the Respondent stated the following: *"We* […] *hereby inform you that your winter-break preparation camp request is confirmed as you asked in Alanya Gold City Hotel. We are looking for more details about your camp programme".*

11. Notwithstanding the above, as per the Respondent, on 2 January 2018, the Claimant answered to the aforementioned e-mail maintaining the following "*according to our mail sent to you on 26th October 2017, we have requested hotel Regnum in Belek, from 17.01.2018.-31.01.2018. You did not reply us until 27th of December. Then you have confirmed hotel we did not request*". In his regard, the Respondent wished to emphasize that the transfer agreement did not contain any *"direct and/or indirect provision* […] *which provides the Claimant to choose a hotel for the pre-season camp".*

12. The Respondent argued that, in line with the wording of article 3.D. of the transfer agreement, it had rightfully offered the Alanya Gold City Hotel in answer to the Claimant's request. In this context, the Respondent further highlighted that, on 13 January 2018, it confirmed, once again, that said hotel "*was paid by* [the Respondent's] *side in Gold City Alanya Hotel*". In support of its statements, the Respondent provided a copy of an e-mail allegedly sent by Alanya Gold City Hotel, according to which "[the Respondent] *has made a reservation for the football team of* [the Claimant], *staying between the dates of 17.01.2018 - 31.01.2018 at Goldcity Hotel. The prepayment of this accommodation also has been paid by* [the Respondent]".

13. As per the Respondent, despite the fact that it had allegedly organised the pre-season camp for January 2018, the Claimant *"never confirmed the Respondent's e-mails and the Claimant didn't make its pre-season camp in the Gold City Hotel".*

14. According to the Respondent, the parties subsequently agreed on "*the postponement of the pre-season camp to the year of 2019*". In this regard, the Respondent underlined that, even though the parties had not concluded a new contract to amend the provisions of the transfer agreement dated 4 September 2017, the exchange of emails between January and February 2019 "*are the direct and documentary proof and it is beyond doubt that it is absolutely binding for the parties*".

15. Notwithstanding the above, as per the Respondent, by means of an e-mail dated 15 May 2018, the Claimant replied sustaining the following: "*we want to remind you that there is still unpaid invoice in amount of 200.000€, according to article 3 D of the transfer agreement, for not organising training camp in January or February 2018*".

16. Subsequently, according to the Respondent, by means of a correspondence dated 9 October 2018, it informed the Claimant about the "*requirements of Team and Technical Staff* […] *at Hotel Antalya, from 10th January* […] *until 26th January 2019*". As per the Respondent, by means of an e-mail dated 19 October 2018, the Claimant replied maintaining the following: "*we have already passed the deadline for organisation of the training camp, meaning that we have already organised it for this winter*".

17. In view of the foregoing, the Respondent stressed that "[it] *made* [its] *best by all means to fulfill* [its] *obligations*".

18. As to the Claimant's request to receive the amount of EUR 200,000, the Respondent further wished to emphasise that "*the Claimant could not choose to be paid 200.000 EUR instead of not accepting the pre-season camp organization*". At this stage, the Respondent highlighted that such payment was only due in the event that "*the Respondent fails to fulfil* [its] *obligation regarding the pre-season camp organization*".

19. Finally, the Respondent argued that it had consistently fulfilled its contractual obligations, and that the Claimant's refusal to organize the pre-season camps in January 2018 and January 2019 "*doesn't allow the Claimant to choose having cash money instead of the pre-season camp organization*". Having said this, the Respondent held that "*the Claimant shall bear the consequences of this breach and* […] *shall not be entitled to get 200.000 EUR and also shall not be entitled to request the Respondent to organize a new pre-season camp*".

II. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

20. First of all, the Single Judge of the Players' Status Committee (hereinafter: *the Single Judge*) analysed whether he was competent to deal with the present matter. In this respect, he took note that the present matter was submitted to FIFA on 22 March 2020. Taking into account the wording of art. 21 of the June 2020 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

21. Subsequently, the Single Judge referred to art. 3 of the Procedural Rules and noted that in accordance with art. 23 par. 1 and 3 in combination with art. 22 lit. f) of the June 2020 edition of the Regulations on the Status and Transfer of Players, he is in principle competent to deal with the matter at stake which concerns contractual dispute of an international dimension between a Croatian club and a Turkish club.

22. Furthermore, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance to art. 26 par. 1 and 2 of the June 2020 edition of the Regulations on the Status and Transfer of Players and considering that the present claim was lodged with FIFA on 22 March 2020, the March 2020 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the present matter as to the substance.

23. His competence and the applicable regulations having been established, and entering into the merits of the case, the Single Judge started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, he 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.

24. In this respect, and first of all, the Single Judge established that it was undisputed between the parties that they concluded, on 4 September 2017, an agreement regarding the definitive transfer of the player from the Claimant to the Respondent, according to which the latter committed itself to "*organize a pre-season camp for* [the Claimant] *during January or February 2018".* The Single Judge further observed that, pursuant to article 4 of the transfer agreement, the parties agreed upon the following: "*in the event that* [the Respondent] *cannot organize the 2 training fields and 5 stars hotel in January or February 2018, then Parties agree that* [the Respondent] *shall pay to* [the Claimant] *instead the amount of EUR 200,000 by 30 March 2018".*

25. The Single Judge also acknowledged that the Claimant lodged a claim against the Respondent, stating that the latter had not complied with the provisions of article 3.D. of the transfer agreement, *i.e.* organising 2 training fields. As such, the Single Judge noted that the Claimant, pursuant to articles 3.D and 4 of the transfer agreement, requested payment of the total amount of EUR 200,000 plus 10% interest *p.a.* as from 30 March 2018 until the date of effective payment.

26. In continuation, the Single Judge duly observed that, for its part, the Respondent rejected the claim of the Claimant and maintained that it "*made* [its] *best* […] *to fulfill* [its] *obligations*". The Single Judge further noted that the Respondent alleged that the Claimant's email of 19 October 2018 "*clearly*" demonstrated that the Croatian club was "*the breaching party*", as "*the Claimant didn't want* [the Respondent] *to organize the pre-season camp and wished to be paid 200.000 EUR instead of the camp organization*".

27. With the above-mentioned considerations in mind, the Single Judge determined that the main issue in the present matter was to establish whether the Respondent had duly organised a pre-season camp in accordance with the provisions of article 3.D. of the transfer agreement.

28. In this respect, the Single Judge recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

29. According to this, the Single Judge noted that the Respondent did not substantiate its defense, as it did not provide any conclusive evidence in order to prove that it did pay the trainings fields it sustained to have organised. In this respect, referring to the letter dated 27 December 2017, the Single Judge stressed that the Respondent simply sustained having organised the "*winter-break preparation camp* […] *in Alanya Gold City Hotel*", but without providing any evidence that it had truly made all the preparations required.

30. In view of the above, the Single Judge concluded that the Respondent had not properly substantiated its defense. In other words, the Single Judge could not conclusively establish that the Respondent had organised the pre-season camp in accordance with the provisions of article 3.D. of the transfer agreement. Given that the Respondent did not fulfill its obligations as per the transfer agreement concluded with the Claimant and taking into consideration the general principle of *pacta sunt servanda*, the Single Judge determined that the Respondent is to be held liable to pay the amount of EUR 200,000 to the Claimant.

31. In addition, the Single Judge further acknowledged that the Claimant requested an annual interest at a rate of 10% as from 30 March 2018 until the date of effective payment on the total amount of EUR 200,000 based on article 4 of the transfer agreement.

32. In this context, the Single Judge deemed that the wording of article 4 of the transfer agreement was clear and precise as regards establishing the application of a default interest at a rate of 10% *p.a.* on the outstanding amount, *i.e.* EUR 200,000.

33. In this respect, considering the content of article 4 of the transfer agreement as well as referring once again to the principle of *pacta sunt servanda*, the Single Judge decided that an interest of 10% *p.a.* should be paid by the Respondent to the Claimant on the outstanding amount of EUR 200,000 as from 31 March 2018 until the date of effective payment.

34. In view of all the above, the Single Judge of the Players' Status Committee decided to partially accept the Claimant's claim, and established that the Respondent has to pay to the Claimant the amount of EUR 200,000, plus 10% interest *p.a.* on the amount of EUR 200,000 as from 31 March 2018 until the date of effective payment.

35. Taking into account the consideration with respect to the applicable Regulations previously outlined, 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.

36. 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.

37. 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.

38. 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.

39. Lastly, 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 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.

40. In this respect, the Single Judge reiterated that the Claimant's claim is partially accepted and that the arguments raised by the Respondent were fully rejected. Therefore, the Single Judge decided that the Respondent shall bear the entirety of costs of the current proceedings in front of FIFA.

41. The Single Judge further observed the temporary amendments outlined in art. 18 par. 2 lit. ii) of the Procedural Rules, which entered in force in 10 June 2020, according to which the maximum amount of procedural costs levied for any claim lodged prior to 10 June 2020, which was yet to be decided at the time of such temporary amendment, shall be equivalent to any advance of costs paid.

42. Accordingly, the Single Judge observed that the Claimant paid the amount of CHF 5,000 as advance of costs, and therefore decided that the maximum amount of costs of the proceedings corresponds to CHF 5,000.

43. Consequently, the Single Judge determined that the Respondent shall pay the amount of CHF 5,000 in order to cover the costs of the present proceedings.

44. Subsequently, the Single Judge reverted to art. 17 par. 5 in combination with art. 18 of the Procedural Rules, and observed that the advance of costs paid by a party shall be duly considered in the decision regarding costs. Therefore, given that the Respondent is responsible to pay the entirety of the procedural costs, the Single Judge decided that the amount paid by the Claimant as advance of costs shall be reimbursed to the latter by FIFA.

III. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, GK Dinamo Zagreb, is partially accepted.

2. The Respondent, Alanyaspor Kulübü Dernegi, has to pay to the Claimant, EUR 200,000, plus 10% interest *p.a.* as from 31 March 2018 until the date of effective payment.

3. Any further claims of the Claimant are rejected.

4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.

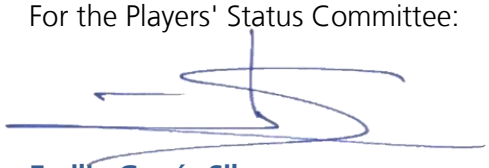
5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to **psdfifa@fifa.org**, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount due, plus interest as established 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 following consequences shall arise:

    1. 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. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
    2. In the event that the payable amount as per in this decision 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 the FIFA Disciplinary Committee.

7. The final costs of the proceedings in the amount of CHF 5,000 are to be paid by the Respondent to FIFA (cf. note relating to the payment of the procedural costs below).

For the Players' Status Committee:



Emilio García Silvero
Chief Legal & Compliance Officer

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) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, 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 Procedural Rules).

NOTE RELATING TO THE PAYMENT OF THE PROCEDURAL COSTS:

If applicable, payments to FIFA should be made by wire transfer in Swiss francs (CHF) to the following bank account:

366.677.01U (FIFA Players' Status) UBS Zurich,
SWIFT: UBSWCHZH80A, Clearing number 230, IBAN: CH 27 0023 0230 3666 7701U,
Please mention the applicable reference number

CONTACT INFORMATION:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777