

**Decision of the
Single Judge of the Players' Status Committee**

Passed on 20 July 2020,

regarding a contractual dispute concerning the player Juan Fernando QUINTERO

BY:

Roy Vermeer (the Netherlands), Single Judge of the PSC

CLAIMANT:

FC PORTO, Portugal

RESPONDENT:

CA RIVER PLATE, Argentina

I. FACTS OF THE CASE

1. On 23 January 2018, the Portuguese club, FC Porto (hereinafter: *the Claimant*) and the Argentinian club, CA River Plate (hereinafter: *the Respondent*) executed a loan transfer agreement (hereinafter: *the loan agreement*), by means of which the services of the player Juan Fernando Quintero (hereinafter: *the player*) were loaned by the Claimant to the Respondent.

2. Clause 3 of the loan agreement reads as follows:

"3) Further, FC PORTO grants to RIVER PLATE an option to acquire the registration of the PLAYER on a permanent basis against the payment of the agreed amount of € 3.725.000 (Three Million Seven Hundred Twenty Five Thousand Euros), payable as follows:

- 1.862.500 (one Million Eight Hundred Sixty Two Thousand and Five Hundred Euros) until 10th February 2019;

- 931.250 (Nine Hundred Thirty One Thousand Two Hundred and Fifty Euros) until 31st August 2019;

- 931.250 (Nine Hundred Thirty One Thousand Two Hundred and Fifty Euros) until [20th] February 2020."

3. Clause 4 of the loan agreement reads as follows:

4) The parties hereby establish that RIVER PLATE shall retain 2.5% (two point five per cent) of all payments made to FC PORTO under this Agreement to distribute it as part of its solidarity contribution obligation pursuant to FIFA Regulations. For the avoidance of doubt FC PORTO shall receive the total amount of € 487.500 (four hundred eighty seven thousand and five hundred euros) and the total amount of € 3.631.875 (three million six hundred thirty [one] thousand eight hundred seventy-five euros in case RIVER PLATE exercises the option right set out under clause 3). Therefore, any payment regarding solidarity mechanism related to the PLAYER's transfer (temporary or definitive) shall be sole responsibility of RIVER PLATE additionally to the amounts agreed under this clause.

§ The parties also agree and declare that, in case RIVER PLATE fails to complete the payment of any of the amounts on the due dates, as established under clauses 2) or 3), FC PORTO shall be entitled to receive interest at a rate of 10% (ten per cent) per year on the unpaid amount(s)."

4. In October 2018, the Respondent informed the Claimant in writing that it wished to exercise the option to engage the player on a permanent basis, requesting the Claimant to send an invoice.
5. According to the information contained in the Transfer Matching System (TMS), on 19 October 2018, the Respondent entered a transfer instruction to engage the player permanently from the Claimant. The Claimant duly matched such instruction.

6. On 26 February 2020, the Claimant informed the Respondent via email that it had not yet received the third instalment, which was due on 20 February 2020.
7. On 28 February 2020, the Respondent replied to the Claimant as follows (quoted *verbatim*):
“Thanks for your email, and remainder. We are working hard to secure the funds in order to honor our obligations due on Feb 20th. Please be aware that we are fully committed to solving this situation, and I expect to have more clarity within the next few weeks. I will keep you informed of any news and provide you with more clarity as soon as possible”.
8. On 2 March 2020, 13 March 2020, 16 March 2020 and 20 March 2020, the Claimant sent further reminders to the Respondent regarding the payment of the last instalment.
9. On 1 April 2020, the Claimant put the Respondent in default, informing it that the amount of EUR 931,250, corresponding to the last instalment of the loan agreement, remained outstanding. In this context, the Claimant provided the Respondent until 13 April 2020 to remedy the default.

II. PROCEEDINGS BEFORE FIFA

10. On 21 April 2020, the Claimant lodged a claim against the Respondent before FIFA. A brief summary of the parties’ positions is detailed in continuation.

a. Position of the Claimant

11. The Claimant lodged a claim against the Respondent for overdue payables, and requested that the Respondent be ordered to pay EUR 931,250 plus interest of 10% p.a. as agreed in the loan agreement. The Claimant further asked that the Respondent is ordered to bear the procedural costs of the proceeding and to be sanctioned in accordance with article 12bis para. 4 of the FIFA Regulations on the Status and Transfer of Players.
12. In its claim, the Claimant held that the Respondent had paid the first two instalments of the agreement, but that it failed to pay the third instalment in the amount of EUR 931,250, which was due on 20 February 2020.
13. Furthermore, as per the Claimant, notwithstanding all its reminders as well as its default letter dated 1 April 2020, said instalment remained outstanding.
14. Finally, the Claimant referred to the principle of *pacta sunt servanda* as well as clause 4 of the agreement and maintained that the Respondent has to pay interest at the rate of 10% p.a. on the outstanding amount.

b. Position of the Respondent

15. The Respondent, for its part, contested the Claimant’s claim.

16. Firstly, the Respondent recalled the contents of clause 4 of the transfer agreement, according to which it was entitled to deduct from the transfer fee 2.5% as solidarity mechanism. As such, the Respondent highlighted that the last instalment sum is in fact EUR 907,968.75 and not EUR 931,250 as requested by the Claimant. Further, the Respondent indicated that it timely paid approx. 78% of the transfer fees due to Porto (either on loan or permanent transfer).
17. Secondly, the Respondent claimed Argentina is facing a serious economic crisis, which escalated in the months before the Presidential election in December 2019. To this extent, the Respondent argued that such crisis severely impacted the foreign exchange of the Argentinian Peso, with allegedly rose more than 300% in relation to the Euro. The Respondent further argued that such exceptional circumstance amounts to a situation of hardship (*"excesiva onerosidad sobreviniente"*), which allegedly would entitle the Respondent to renegotiate the terms of the contract and represents an exception to the principle of *pacta sunt servanda* brought forward by the Claimant. The Respondent pointed out that the principle of hardship is accepted by most legal systems, and references the UNIDROIT principles in this regard.
18. Thirdly, the Respondent outlined the COVID-19 Pandemic, and recalled that the Argentinian Football Association decided to cancel its competitions, which, together with the social distancing measures enacted by the Argentinian government, impacted the Respondent's earnings.
19. Lastly, the Respondent argued that the interest of 10% under clause 4 of the transfer agreement consist of "punitive damages", which amounts to an abuse of right. It requested that proceedings are suspended for 30 days in order for the parties to try to reach a settlement agreement.
20. The Respondent further requested that neither interest nor procedural costs nor sporting sanctions are applied.

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

A. Competence and applicable legal framework

21. 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 21 April 2020. Consequently, the June 2020 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).
22. 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 June 2020) he is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations, i.e. a Portuguese club and an Argentinian club.

23. 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 (June 2020), and considering that the present claim was lodged on 21 April 2020, the March 2020 edition of the Regulations on the Status and Transfer of Players (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

B. Burden of proof

24. 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. Likewise, he stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
25. In this respect, the Single Judge also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

C. Merits of the Dispute

I. Main legal discussion and considerations

26. 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.
27. Having said this, the Single Judge acknowledged that the Claimant and the Respondent signed a loan agreement regarding the temporary transfer of the player, pursuant to which the Respondent was granted an option to acquire the player's services on a permanent basis, which it undisputedly did.
28. Accordingly, the Single Judge observed that the Respondent undertook to pay to the Claimant the total amount of EUR 3,725,000 in three instalments, the last of which amounted to EUR 931,250 and was due by 20 February 2020. Along the same lines, the Single Judge took note of the fact that Clause 4 of the loan agreement entitled the Respondent to deduct 2.5% from the amounts due to the Claimant in light of the solidarity contribution due to clubs that have contributed to the player's training and education.
29. The Single Judge further acknowledged that, on 21 April 2020, 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 931,250, corresponding to the instalment that fell due on 20 February 2020 as per the loan agreement.
30. The Single Judge further observed that the Claimant asked to be awarded 10% interest p.a. as of said date until the date of effective payment.
 31. In this context, the Single Judge took particular note of the fact that, on 1 April 2020, the Claimant put the Respondent in default of payment of the aforementioned instalment, setting a time limit until 13 April 2020 in order to remedy the default, i.e. 12 days.
 32. 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).
 33. Subsequently, the Single Judge observed that the Respondent, for its part, does not contest that the claimed amount is due, but rather that it found itself inserted in a poor economic situation worsened by the COVID-19 pandemic. The Respondent also claimed that it is entitled to deduct 2.5% of the amounts payable to the Claimant as solidarity contribution.
 34. Having said this, the Single Judge acknowledged that, in accordance with the loan agreement, the Respondent was obliged to pay to the Claimant the amount of EUR 931,250 on 20 February 2020, something that the parties do not dispute.
 35. Notwithstanding the foregoing, the Single Judge observed that while the parties were exchanging communications concerning the payment due, Respondent did not mention at any moment the issues of the economic struggle and/or COVID. Rather, the Single Judge noted that it seems that those arguments are only being raised now in light of the claim, and decided that such position cannot be upheld.
 36. Consequently, the Single Judge concluded that the reasons brought forward by the Respondent cannot set aside its contractual obligations, and specifically found that the issue of the alleged economic hardship could not prevent the contract from being complied with. In particular, the Single Judge was observant that the matter of the devaluation of the Argentinian Peso has been in place for a number of years and, nevertheless, it did not prevent the Respondent from engaging the player on both a temporary and subsequent definitive basis.
 37. What is more, the Single Judge found incongruent that the Respondent would revert to clause 4 of the contract to argue it could deduct 2.5% of the transfer fee but at the same time submits that the interest established therein could be abusive. The Single Judge was adamant that he could not support this line of reasoning, i.e. one that only the parts of the loan agreement which are convenient to the Respondent are enforceable, and the remaining are not.
 38. Lastly, the Single Judge recalled the longstanding and well-established practice of the Players' Status Committee, according to which the Respondent could indeed deduct 2.5% from the

amounts due, provided it had paid (and duly provided evidence thereof) the solidarity mechanism to the training clubs, something that was not done. In this respect, the Single Judge recalled that allowing the Respondent to withhold the amounts corresponding to the solidarity contribution without proof that these had been distributed to the training clubs would result in unjust enrichment of the Respondent, something he cannot uphold.

39. Taking into account the foregoing considerations as well as the documentation presented by the Claimant in support of its petition, the Single Judge concluded that the Claimant had substantiated its claim pertaining to overdue payables with sufficient documentary evidence.
40. On account of the above, the Single Judge established that the Respondent failed to remit EUR 931,250 to the Claimant. In addition, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
41. 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 931,250.
42. Furthermore, taking into consideration the Claimant's claim as well as the contractual stipulation in this regard, the Single Judge decided to award the Claimant interest at the rate of 10% p.a. on the relevant instalment as of the date of default, i.e. 21 February 2020.

II. Consequences

43. In continuation, taking into account the consideration under para. 32 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.
44. 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.
45. 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.
46. Furthermore, taking into account the consideration under number 23. 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.

47. 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.
48. 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.
49. 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.

D. Costs

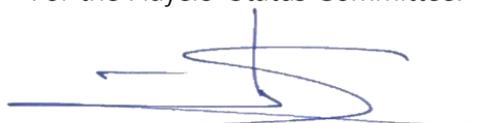
50. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Players' Status Committee and the Single Judge, costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.
51. In this respect, the Single Judge reiterated that the Claimant's claim is fully accepted. Therefore, the Single Judge decided that the Respondent shall bear the entirety of the costs of the current proceedings in front of FIFA.
52. 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.
53. 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.
54. 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.
55. 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, the Single Judge decided that the Claimant is entitled to a reimbursement of CHF 5,000 given his considerations on the costs of the proceedings.

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

1. The claim of the Claimant, FC PORTO, is accepted.
2. The Respondent, CA RIVER PLATE, has to pay to the Claimant the following amount:
 - EUR 931,250 as outstanding remuneration plus 10% interest *p.a.* as from 21 February 2020 until the date of effective payment.
3. A warning is imposed on the Respondent.
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.

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).

CONTACT INFORMATION:

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