

Decision of the Single Judge of the Players' Status Committee

passed on 14 February 2020,

by

Roy Vermeer (The Netherlands)

Single Judge of the Players' Status Committee,

on the claim presented by the club

CD Huachipato, Chile,
Represented by Messrs Juan de Dios Crespo and Enric Ripoll

as Claimant

against the club

Atletico MG, Brazil,
Represented by Mr Breno Costa Ramos Tannuri

as Respondent

regarding a contractual dispute arisen between the parties
and relating to the player Romulo Otero Vasquez

I. Facts of the case

1. On 20 July 2016, the Chilean club, CD Huachipato (hereinafter: *the Claimant*) and the Brazilian club Atletico MG (hereinafter: *the Respondent*) (hereinafter jointly referred to as *the parties*) concluded a loan agreement (hereinafter: *the agreement*) concerning the temporary transfer of the player Romulo Otero Vasquez (hereinafter: *the player*) from the Claimant to the Respondent for the period from the date of signature until 30 June 2017 for an amount of EUR 800,000 to be paid in two instalments.

2. Clause 15 of the agreement named "*Exclusive Option*", provided, *inter alia*, the following terms:

"[The Claimant] herein grants an exclusive option for the permanent transfer of the federative rights of [the player] to [the Respondent], as well of 50% of its economic rights, conditioned upon the compliance of the following conditions:

- [the Respondent] *shall notify [the Claimant] by no later than 15 June 2017 communicating its decision exercise the option for the permanent transfer of [the player];*

- *On the other hand, [the Claimant] undertakes to consent the issuance of the permanent ITC relating to [the player] by CFA by no later than 20 June 2017. In the event, however CFA fails to forward said ITC within the time limit above, [the Respondent] will be entitled to claim from [the Claimant] any losses and damages regarding such failure;*

- [The Respondent] *undertakes to pay [the Claimant] a fixed transfer fee of EUR 800,000 net as follows: (i) EUR 400,000 net payable on 31 August 2017; and (ii) EUR 400,000 net payable on 31 January 2018;*

(...)

- [The Respondent] *shall pay to [the Claimant] also a variable transfer fee of 50% of any "net amount" received by [the Respondent] in the event of permanent transfer of [the player] to a third club".*

3. On 9 March 2017, the Claimant and the Respondent signed an "*amendment agreement*" containing, *inter alia*, the following clauses:

"1. [The Respondent] grants to [the Claimant] a first refusal right regarding any offer received from any third club for loan or permanent transfer of [the player]. In case [the Claimant] decides to exercise such first refusal right on the same terms and conditions of the offer received by [the Respondent], it will have 3 days working – but not more than 96 hours – to communicate [the Respondent] and obtain the formal consent from [the player].

1.1 Whether [the Claimant] failed to comply with the aforementioned conditions within the established time limit, in particular, the formal consent of [the player], [the

Respondent] *will be free to accept the offer addressed for the loan or permanent transfer of [the player] by said third club.*

2. [The Respondent] *herein undertakes to communicate [the Claimant], in 48 hours from the respective receipt, in case the former receives any offer from third club for loan or permanent transfer of [the player]”.*

4. On 30 May 2018, after having executed the aforementioned purchase option contained in clause 15 of the agreement, the Respondent and the Saudi club, Al Wehdah SC (hereinafter: *Al Wehdah*), signed a loan agreement for the temporary transfer of the player from the Respondent to Al Wehdah, from 20 June 2018 until 20 June 2019, for a loan fee amounting to EUR 4,650,000, to be paid as follows:

*“- EUR 2,325,000 within 5 (five) days as from the signature of the (...) contract, and;
- EUR 2,325,000 by no later than 1 August 2018”.*

5. Moreover, in accordance with clause 15.1. of the aforementioned loan agreement :

“[The Respondent] herein grants [Al Wehdah] an exclusive option regarding the permanent transfer of [the player] to [Al Wehdah], conditioned upon the compliance of the following conditions:

*- [Al Wehdah] shall notify [the Respondent] by 30 November 2018 communicating its decision to exercise the option for the permanent transfer of [the player];
- [Al Wehdah] shall notify [the Respondent] by 30 November 2018 confirming that reached an agreement with [the player] regarding the terms and conditions of the new (...) contract for the upcoming seasons, and;
- For the permanent transfer of [the player], [Al Wehdah] shall pay to [the Respondent] without any discount whatsoever, save for the solidarity contribution (...), 4,650,000 (...Euros) due as transfer fee as follows: (i) EUR 2,325,000 due on 31 December 2018, and; (ii) EUR 2,325,000 due on 30 March 2019”.*

6. On 8 August 2018, the Claimant lodged a claim in front of FIFA and requested to be awarded EUR 2,235,000 based on the 50% of the fees received by the Respondent from Al Wehdah, plus 5% interest as follows:

- i. Over EUR 1,162,500 as from 30 May 2018 until the date of effective payment;
- ii. Over EUR 1,162,500 as from 1 August 2018 until the date of effective payment.

7. In its claim, the Claimant maintained that it was entitled to 50% of the loan fee since, in accordance with the loan agreement, it owned 50% of any income generated from the move of the player, be it from a loan or a transfer.

8. In other words, the Claimant maintained that, by virtue of the said agreement, the parties had set up a sort of joint venture, insofar as they had arranged to jointly own and hold title to the economic rights to the performances of the player.
9. Furthermore, the Claimant argued that the Respondent simulated a loan in order to avoid paying the Claimant 50% of the fee, by establishing a loan transfer fee of EUR 4,650,000 and including a purchase option of further EUR 4,650,000.
10. In this respect and according to the Claimant, the said loan was a simulated act, mainly due to the fact that it was allegedly an astounding loan fee for the value of the player and because the purchase option was very unusually set at *"just 2 months after Al Wehdah SC starts its national league competition"*.
11. The Claimant further maintained that it was also denied the first refusal right in violation of the loan agreement.
12. For its part, the Respondent explained that the wording of the loan agreement was clear in establishing that the 50% of the amounts received were to be transferred to the Claimant only in the event of a permanent transfer, which did not occur.
13. In addition and with regards to the first refusal right, the Respondent explained that it had sent an e-mail to the Claimant on 24 May 2018 regarding the offer received by Al Wehdah, however said correspondence having remained in its opinion unanswered.
14. Consequently, the Respondent rejected the Claimant's allegations and requested that the claim be rejected in full.
15. In June 2019, at the end of the loan with Al Wehdah, the player returned to the Respondent.

II. Considerations of the Single Judge of the Players' Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter: *Single Judge*) 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, he referred to art. 21 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber as well as to the fact that the present matter was submitted to FIFA on 8 August 2018. Consequently, the Single Judge concluded that the 2018 edition of said Procedural Rules is applicable to the matter at hand (hereinafter: *Procedural Rules*).

2. Subsequently, the Single Judge 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 January 2020 edition of the Regulations on the Status and Transfer of Players, he is competent to deal with the matter at stake since it concerns a dispute between two clubs affiliated to different associations.
3. In continuation, the Single Judge 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, he referred to art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (January 2020 edition) and to the fact that the present matter was submitted to FIFA on 8 August 2018. In view of the foregoing, the Single Judge concluded that the June 2018 edition of the Regulations on the Status and Transfer of Players (hereinafter: *Regulations*) is applicable in the matter at hand as to the substance.
4. His competence and the applicable regulations having been established, and entering into the substance of the matter, the Single Judge started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Single Judge emphasized 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. In this respect, and first of all, the Single Judge noted that the parties had signed a loan agreement on 20 July 2016, according to which the player would be transferred on a loan basis from the Claimant to the Respondent for the period from the date of signature until 30 June 2017 for which the Claimant was to receive from the Respondent the total amount of EUR 800,000, payable in two equal instalments.
6. In continuation, the Single Judge noted that the parties agreed, *inter alia*, upon an "Exclusive Option", according to which, the Claimant granted an exclusive option for the permanent transfer of the federative rights of the player to the Respondent, as well of 50% of its economic rights, conditioned upon the compliance of certain conditions.
7. In respect to the above, the purchase option having been executed by the Respondent, the Single Judge underlined that the Claimant was also entitled to receive from the Respondent "a variable transfer fee of 50% of any "net amount" received by [the Respondent] in the event of permanent transfer of [the player] to a third club".
8. Furthermore, the Single Judge recalled that the parties also concluded an "additional agreement" on 9 March 2017, which provided for the Claimant to have a first refusal right regarding any offer received from any third club for loan or permanent transfer of the player. In this respect, the said agreement also stipulated that the Respondent undertook to communicate the Claimant, in 48 hours from the respective receipt, in case it received any offer from third club for loan or permanent transfer of the player.

9. Moreover, the Single Judge also recalled that on 30 May 2018, the Respondent and Al Wehdah signed a loan agreement for the temporary transfer of the player from the former to the latter from 20 June 2018 until 20 June 2019 for a loan fee of EUR 4,650,000, payable in two instalments.
10. With the above in mind, the Single Judge took note as well of the exclusive purchase option, contained in the aforementioned loan agreement, regarding the permanent transfer of the player to Al Wehdah, which provided in such case, *inter alia*, the payment by Al Wehdah to the Respondent of EUR 4,650,000, payable in two equal instalments of EUR 2,325,000 each, due on 31 December 2018, and on 30 March 2019.
11. In continuation, the Single Judge took note that at the end of the loan with Al Wehdah, the player returned to the Respondent in June 2019.
12. Having said this, the Single Judge recalled that the Claimant lodged a claim in front of FIFA against the Respondent and requested to be awarded EUR 2,235,000 based on the 50% of the fees received from Al Wehdah, plus interest as from the due dates.
13. In this respect, the Single Judge understood that the Claimant deemed that it was entitled to 50% of the loan fee paid by Al Wehdah to the Respondent since, in accordance with the agreement concluded between the parties, it owned 50% of any income generated from the move of the player, be it from a loan or a transfer. In addition, the Single Judge recalled that, in the Claimant's opinion, the Respondent and Al Wehdah concluded a loan agreement which was set up such way that its main purpose was to avoid paying the Claimant 50% of the fee by establishing a loan transfer fee of EUR 4,650,000 and including a purchase option of further EUR 4,650,000. Finally, the Single Judge took note as well that in the Claimant's point of view, it had been denied the first refusal right in violation of the agreement.
14. On the other hand, the Single Judge underlined the Respondent's main argument referring to the wording of the agreement which it deemed to be clear as it established that the 50% of the amounts received by it from Al Wehdah were to be transferred to the Claimant only in the event of a permanent transfer, which did not happen. In addition, the Single Judge also recalled the Respondent's explanation related to the Claimant's refusal right according to which it had sent an e-mail to the Claimant on 24 May 2018 regarding the offer received by Al Wehdah, however to no avail.
15. At this point and after having carefully examined the position of the parties, taking into consideration all the aforementioned arguments, the Single Judge observed that the main issue in the present was to determine, if the scenario contained in clause 15 of the agreement had effectively occurred, *i.e.* if the Claimant was entitled to receive 50% of the net amount received by the Respondent in the event of the permanent transfer of the player to Al Wehdah.

16. In this respect and after a thorough examination of the explanations and evidence provided by the parties, the Single Judge observed that despite the loan scheme used to temporarily transfer the player from the Respondent to Al Wehdah presented peculiar characteristics, the loan agreement signed between the Claimant and the Respondent was clear in conditioning to a permanent transfer the Claimant's entitlement to 50% of the fee received from a third club.
17. As such, the Single Judge deemed that no such permanent transfer did happen, instead, only a loan took place between Al Wehdah and the Respondent, therefore the said scenario of the permanent transfer could not be considered as having occurred.
18. Additionally, the Single Judge also underlined that the player returned to the Respondent in June 2019, at the end of the loan with Al Wehdah, which confirmed, once more, that no permanent transfer of the player had occurred between the Saudi club and the Respondent.
19. Furthermore and for the sake of good order, the Single Judge also remarked that despite the Claimant's allegations regarding its first refusal right having been violated, the Respondent provided conclusive evidence that it had duly communicated the existence of the relevant offer to the Claimant on 24 May 2018, in accordance with the "*amendment agreement*" of 9 March 2017.
20. In view of all the above-mentioned considerations and in accordance with the contractual basis binding the parties, the Single Judge concluded that the Claimant should not be entitled to the requested amount based on the 50% of the fees received by the Respondent from Al Wehdah for the loan of the player which took place between the former and the latter.
21. Consequently, the Single Judge decided to reject the claim of the Claimant in its entirety.
22. Finally, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the Players' Status Committee including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further 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.
23. In respect of the above and taking into account that the claim of the Claimant has been rejected, the Single Judge concluded that the latter has to bear the entire costs of the current proceedings before FIFA. 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. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings was EUR 2,235,000. Consequently, the

Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.

24. In conclusion, and in view of the circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 15,000. Consequently, the Single Judge of the Players' Status Committee decided that the amount of CHF 15,000 has to be paid by the Claimant in order to cover the costs of the present procedure.

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

1. The claim of the Claimant, CD Huachipato, is rejected.
2. The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Claimant to FIFA. In view of the fact, that the Claimant already paid CHF 5,000 as advance of costs, only CHF 10,000 shall be paid by the Claimant to the following bank account with reference to case nr. 18-01546/ssp:

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

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:

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For the Single Judge of the
Players' Status Committee

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