



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

passed in Zurich, Switzerland, on 26 February 2020,

by

Roy Vermeer (the Netherlands)

Single Judge of the Players' Status Committee,

on the matter between the club

Fenerbahçe SK, Turkey

as Claimant

and the club

Al Nassr, Saudi Arabia
represented by Mr Daniel Munoz Sirera

as Respondent

regarding a contractual dispute arisen between the parties
and relating to the player Giuliano Victor De Paula

I. Facts of the case

1. On 19 August 2018, the Turkish club, Fenerbahçe SK (hereinafter: *Fenerbahce* or *the Claimant*), and the Saudi club, Al Nassr (hereinafter: *Al Nassr* or *the Respondent*) (hereinafter jointly referred to as *the parties*), signed a transfer agreement (hereinafter: *the transfer agreement*) regarding the definitive transfer of the Brazilian player, Giuliano Victor De Paula, from the former to the latter.
2. In accordance with the transfer agreement, Fenerbahce was entitled to receive from Al Nassr the total amount of EUR 10,500,000, payable as follows:
 - i. EUR 5,000,000 on 6 September 2018;
 - ii. EUR 3,500,000 on 28 February 2019;
 - iii. EUR 2,000,000 on 1 October 2019.
3. Moreover, article 2.2.d of the transfer agreement provided that *"in the event that Al Nassr fails to pay any of the instalments mentioned above after twenty days from the above-mentioned dates, and a notice sent by Fenerbahce to Al Nassr, Al Nassr shall pay the additional amount of EUR 350,000 as an overdue penalty each time Al Nassr fails to make the payment for each installment."*
4. In addition, article 2.3 of the transfer agreement provided that Fenerbahce was also entitled to some conditional payments *"with maximum total amount of EUR 500,000"*, in the following cases scenario:
 - i. EUR 250,000 *"in case that Al Nassr finishes in the top three places in the Saudi League whilst the player is registered with Al Nassr"*;
 - ii. EUR 250,000 *"in case that the player scores and/or assists more than 15 goals in all the official matches that Al Nassr plays in one season"*;Those conditional payments were to be paid *"within 15 days after conditions for the payment are met"*.
5. According to the information currently available on the Transfer Matching System (TMS), the season 2018/2019 in Saudi Arabia ended on 31 May 2019.
6. On 2 April 2019, Fenerbahce lodged a first claim against Al Nassr in front of FIFA requesting the total amount of EUR 4,100,000 corresponding to the second installment of the transfer agreement, as well as the penalty provided in art. 2.2.d and the conditional payment provided in art. 2.3.b of the transfer agreement.
7. On 11 April 2019, Fenerbahce put Al Nassr in default, requesting the total amount of EUR 500,000 corresponding to art. 2.3.a and 2.3.b of the transfer agreement. Fenerbahce gave 14 days for Al Nassr to remedy its default.

8. On 18 June 2019, Al Nassr replied to the default notice, via its counsel, making a “counter-offer”:
 - i. *“EUR 3,750,000 corresponding to the second installment + a bonus of EUR 250,000, by the end of the current week;*
 - ii. *EUR 2,250,000 corresponding to the second installment + a bonus of EUR 250,000 by 1 September 2019;*
 - iii. *The penalty over the second installment is waived, but would be triggered in case of delay in paying the installment due on 1 September 2019”.*
9. On 26 June 2019, Fenerbahce reiterated its default arguing that Al Nassr won the championship on 17 May 2019 and it did not pay the conditional payment provided in art. 2.3.a of the transfer agreement, payment that became due as of 17 May 2019 according to Fenerbahce. Consequently, Fenerbahce gave 10 days for Al Nassr to remedy its default and further added that, in total, Al Nassr owed it EUR 4,350,000 in accordance with the transfer agreement.
10. On 11 July 2019, Fenerbahce reiterated its default arguing that no payment had been received, and that it would proceed to lodge a second claim to FIFA and gave until 15 July 2019 for Al Nassr to pay.
11. In light of the above, on 23 July 2019, Fenerbahce lodged another claim against Al Nassr in front of FIFA for outstanding remuneration, requesting the total amount EUR 250,000 in accordance with art. 2.3.a (*“in case that Al Nassr finishes in the top three places in the Saudi League whilst the player is registered with Al Nassr”*) of the transfer agreement, plus interest as from the due date. In Addition, Fenerbahce also requested sanctions to be imposed on Al Nassr in accordance with art. 12bis of the Regulations and the costs of proceedings as well as the legal fees to be at Al Nassr’s charge.
12. Fenerbahce explained that Al Nassr won the Saudi League, and that consequently the conditional payment provided in art. 2.3.a of the transfer agreement had become due.
13. In addition, Fenerbahce held that in its reply to the default notice of Fenerbahce, Al Nassr had acknowledged the right of Fenerbahce to the conditional payment.
14. In reply to the claim of Fenerbahce, Al Nassr held that when Fenerbahce put Al Nassr in default on 11 April 2019, the season 2018/2019 had not finish yet as it finished on 17 May 2019 and that consequently the conditional payment became due on 1 June 2019.
15. Al Nassr further argued that Fenerbahce had badly interpreted the due date for the conditional payment provided in art. 2.3.a as being the date on which Al

Nassr had mathematically assured its position within the top-three teams of the Saudi League, when, according to Al Nassr, the payment became due at the end of the season.

16. Moreover, Al Nassr held that Fenerbahce should have waited 15 days after the end of the season in application of art. 2.3 of the transfer agreement.
17. Consequently, Al Nassr was of the opinion that art. 12bis was not applicable.
18. Finally, Al Nassr was of the opinion that the request of relief of Fenerbahce should be dismissed or, in the alternative, held that Al Nassr should not receive sporting sanctions, or limited to a warning. Al Nassr further requested that the costs of the proceedings be at the expense of Fenerbahce only.

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 23 July 2019. 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 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 (edition 2020) and to the fact that the present matter was submitted to FIFA on 23 July 2019. In view of the foregoing, the Single Judge concluded that the June 2019 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. First of all, the Single Judge acknowledged that it was undisputed between the parties that, on 19 August 2018, a transfer agreement was concluded relating to the transfer of the player from the Claimant to the Respondent and that said agreement contained a conditional clause as set out above under article 2.3.a, *i.e.* the Claimant would be entitled to receive EUR 250,000 *“in case that Al Nassr finishes in the top three places in the Saudi League whilst the player is registered with Al Nassr”*.
6. Having established the above, the Single Judge noted that the Claimant lodged a claim with FIFA against the Respondent on 23 July 2019 requesting the payment of the aforementioned amount, plus interest, in accordance with article 2.3.a of the contract, stating that Al Nassr won the Saudi League, and that consequently the conditional payment provided in art. 2.3.a of the transfer agreement had become due.
7. Moreover, the Single Judge also took note of the Claimant’s allegations referring that in the Respondent’s reply of 18 June 2019, to its prior default notice sent on 11 April 2019, the Respondent had actually acknowledged the right of the Claimant to the conditional payment.
8. Furthermore, the Single Judge took note that, in its reply to the claim, the Respondent first held that at the time the Claimant put it in default on 11 April 2019, the season 2018/2019 had not finish yet as it finished on 17 May 2019 and that consequently, the conditional payment became due on 1 June 2019.
9. In addition, the Single Judge recalled the Respondent’s argument according to which, in its opinion, the Claimant had actually badly interpreted the due date for the conditional payment provided in article 2.3.a as being the date on which the Respondent had mathematically assured its position within the top-three teams of the Saudi League, when, according to it, the payment became due at the end of the season. Therefore, the Respondent deemed that the Claimant should have waited 15 days after the end of the season in application of art. 2.3 of the transfer agreement.
10. Finally, the Single Judge underlined the Respondent’s comments as to the fact that art. 12bis was not applicable to the present proceedings and that the request of relief of the Claimant should be dismissed, or in the alternative, that the Respondent should not receive sporting sanctions, or limited to a warning, the costs of the proceedings being in any case at the expense of the Claimant only.

11. At this point and after having carefully examined the parties' positions, taking into consideration all the aforementioned arguments, the Single Judge observed that the parties, in particular, disputed when the clause contained in article 2.3.a was effectively triggered and as of which moment the conditional payment, as a consequence of the triggering of said clause, became effectively due. This, in the Single Judge's opinion, rather than whether the condition contained in article 2.3.a had effectively occurred or not.
12. In this regard, and after having analyzed the wording of art. 2.3.a, the Single Judge held that the payment of EUR 250,000 was due *"in case that Al Nassr finishes in the top three places in the Saudi League whilst the player is registered with Al Nassr"*, i.e. if the Respondent became Champion whilst the player was registered with it, which had effectively occurred, as acknowledged by the Respondent itself.
13. Therefore, considering that the relevant clause was clear and unambiguous, the Single Judge concluded that, as it remained uncontested that this condition occurred and that this amount remained unpaid, the Claimant was entitled to the amount of EUR 250,000.
14. Having established the aforementioned, the Single Judge turned his attention to the due date of payment of the aforementioned amount in accordance with the wording of article 2.3.a and, in general, of the transfer agreement.
15. In this respect, the Single Judge deemed that no precise due date for the payment of EUR 250,000 having been provided in the transfer agreement, i.e. said agreement only mentioning that *"the payments were to be made within 15 days after conditions for the payment are met"*, and the season ending on 31 May 2019, the Single Judge affirmed that said amount was due on 31 May 2019. Equally, the Respondent has to pay default interest of 5% on the aforementioned amount as of 1 June 2019, i.e. one day after the date on which the payment became due by the Respondent to the Claimant.
16. Consequently, the Single Judge considered the claim as accepted and decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the amount of EUR 250,000, plus default interest of 5% as of 1 June 2019, in accordance with clause 2.3.a of the transfer agreement.
17. At this point, the Single Judge further noticed that the relevant case did not fall under the application of art. 12bis of the Regulations since the requirements of said provision were not met.
18. In continuation, 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 (cf. art. 18 par. 1 of the Procedural Rules).

19. In respect of the above, and taking into account that the Claimant is the successful party in the present proceedings, the Single Judge concluded that the Respondent has to bear the full costs of the current proceedings before FIFA.
20. 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 is EUR 250,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
21. In conclusion, taking into account the particularities of the present matter and considering and in view of the invalidity of the reasons advanced by the Respondent for not paying the awarded amount to the Claimant, the Single Judge determined the costs of the current proceedings to the amount of CHF 25,000. Furthermore, and in line with his aforementioned considerations and taking into account the degree of success, the Single Judge of the Players' Status Committee decided that the amount of CHF 25,000 has to be paid by the Respondent.
22. Furthermore, 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.
23. 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.
24. 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.

25. 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

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

1. The claim of the Claimant, Fenerbahçe SK, is accepted.
2. The Respondent, Al Nassr, has to pay to the Claimant EUR 250,000 plus 5% interest *p.a.* as from 1 June 2019 until the date of effective payment.
3. 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 amounts mentioned under point 2. above.
4. The Respondent shall provide evidence of payment of the due amounts in accordance with point 2. 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).
5. In the event that the amounts due in accordance with point 2. above are 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).
6. The ban mentioned in point 5. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
7. In the event that the aforementioned sum plus interest are 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.
8. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent as follows:
 - 8.1. The amount of CHF 5,000 has to be paid directly to the Claimant.

- 8.2. The amount of CHF 20,000 has to be paid to FIFA to the following bank account, with reference to case nr. 19-01541/maa:

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:

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 & Compliance Officer