

Decision of the Dispute Resolution Chamber

passed on 18 June 2020,

regarding solidarity contribution for the transfer of the player Gelson Dany BATALHA MARTINS

COMPOSITION:

Geoff Thompson (England), Chairman
Mohamed Muzammil (Singapore), member
Stefano Sartori (Italy), member

CLAIMANT:

CF Benfica, Portugal

RESPONDENT:

Club Atlético de Madrid, Spain

INTERVENING PARTY:

Sporting CP, Portugal

I. FACTS OF THE CASE

1. According to the players' passport issued by the Federação Portuguesa de Futebol (FPF), the Portuguese player, Gelson Dany Batalha Martins, born on 11 May 1995, was registered with the Claimant as follows:

Club:	Start date	End date
Benfica	27 October 2008	30 June 2009
Benfica	7 October 2009	30 June 2010
Benfica	7 October 2010	30 June 2011

2. On 6 June 2018, the player unilaterally terminated the contract with Sporting.
3. On 25 July 2018, the player registered "out of contract" with Atlético (TMS Ref. 204717).
4. On 13 August 2018, Sporting lodged a claim before FIFA (PSC) against Atlético.
5. On 31 August 2018, the player lodged a claim against Sporting before the Tribunal Arbitral do Desporto (TAD), case ref. 64/22018.
6. On 24 April 2019, Atlético and Sporting concluded a settlement agreement, stipulating the following:
"(K) Without admitting any kind of liability of whatsoever nature, Atletico recognises there is a value to the Player's registration that it acquired. As such, to avoid the disputes between the Parties progressing, it is prepared to pay an indemnity to Sporting to reflect the transfer fee it could have assessed to pay had it concluded a formal transfer with Sporting prior to the Player's termination of the Sporting Contract, in the terms foreseen in the present document.
"1.5 Sporting and the Player accept the terms of this Agreement in full and final settlement, release, withdrawal and waiver of any and all actions, claims, counterclaims, complaints, causes or rights of action or proceedings, whether at law or in equity, of whatsoever nature and howsoever arising, now or in the future, in any jurisdiction whatsoever, against Sporting, the Player and/ or Atletico, in relation to the unilateral termination of the employment contract between Sporting and the Player and the registration of the Player with Atletico
2.1. In consideration of the Parties' respective rights and obligations hereunder, Atlético agrees to pay Sporting the total amount of €22.500.000,00 (twenty-two million five hundred thousand Euros) (the "Indemnity") [payable as follows]:
(a) Euro 3.000.000,00 (three million euro) upon signature of the present agreement;
(b) Euro 8.250.000,00 (eight million two hundred and fifty thousand Euro) by 31 July 2019;
(c) Euro 11.250.000,00 (eleven million two hundred and fifty thousand Euro) by 31 July 2020.
(...)
2.3. It is clear for the parties that the present Indemnity is not subject to any deduction regarding the Solidarity Mechanism as established in article 21 and Annex 5 of the FIFA RSTP. Notwithstanding the above, in the unlikely event that a claim is filed in this respect, the Parties agree that Sporting will be the sole responsible for any payment that is ordered. In the event that Atletico is ordered to make any payment by any court in this concept, Sporting shall reimburse that amount to Atletico immediately."
7. The Claimant lodged a claim against the Respondent 1 and requested the payment of the amount of EUR 103,500 as solidarity contribution, corresponding to 9.2% of the 5%.

8. In particular, the Claimant considered that the Respondent paid the amount of EUR 22,500,000 for the transfer of the player.
9. In its reply to the claim, Atlético rejected the claim of the claimant.
10. In particular, Atlético argued that the player was registered with it as a free agent and argued that the settlement agreement did not reflect a transfer.
11. In its reply to the claim, Sporting explained that it never transferred the federative rights of the player to Atlético de Madrid, and noted that he registered with said club as a free agent.
12. Sporting further explained that, "under the Settlement Agreement, parties agreed to settle and close all pending and potential disputes over the unilateral termination of the employment contract by the Player and the registration of the Player's federative rights."
13. In this respect, Sporting underlined that "the object of the Settlement Agreement – concluded almost a year after the Player had become a free agent – was not the transfer of the Player (which was legally impossible at that point), but rather the settlement of any pending and potential disputes over the unilateral termination of the employment contract by the Player. Sporting insisted that said Settlement Agreement cannot be qualified as a transfer agreement for the purposes of art. 21 RSTP.
14. According to Sporting, "Article 21 of the RSTP is clear: the solidarity mechanism is (only) payable when a player is transferred before the expiry of his contract, and this means that free agency and solidarity mechanism are intrinsically incompatible."
15. Sporting further refer to the [Arbitral Award CAS 2011/A/2356](#), noting that "the player's federative rights were not transferred by Sporting CP (which had no federative rights to transfer) and surely not before the expiry of the Employment Contract, hence no solidarity mechanism is payable.
16. In sum, Sporting concluded that no solidarity mechanism is payable to CF Benfica, and wished to express that, "in the present case and given its legal complexity, no bad faith could be attributed to Sporting CP or to Atlético de Madrid, as both are objectively convinced of the soundness of their arguments."

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as: *the Dispute Resolution Chamber*) analyzed whether it was competent to deal with the matter at hand. In this respect, it took note that, according to art. 21 of the November 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution (hereinafter: *the Procedural Rules*), said edition of the Procedural Rules is applicable to the matter at stake.
2. Subsequently, the Dispute Resolution Chamber referred to art. 3 par. 1 and 3 of the Procedural Rules and confirmed that in accordance with art. 3 of Annexe 6 of in conjunction with art. 24 par. 1 and 2 and art 22 lit. d) of the Regulations on the Status and Transfer of Players, it is competent to deal with the dispute at stake, which concerns a dispute relating to the solidarity mechanism between clubs belonging to different associations.
3. Furthermore, the Dispute Resolution Chamber analyzed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance

with art. 26 par. 1 and 2 of the Regulations, and considering that the player was registered with the Respondent on 25 July 2018, the June 2018 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the Dispute Resolution Chamber and the applicable regulations having been established, the Dispute Resolution Chamber entered into the substance of the matter. In this respect, the Dispute Resolution Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Dispute Resolution Chamber emphasized that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Dispute Resolution Chamber noted that the Claimant lodged a claim against the Respondent, insofar it considered the Respondent paid the amount of EUR 22,500,000 for the transfer of the player from Sporting (i.e. *the intervening party*).
6. Thus, the Chamber noted that the Claimant requested the payment of the amount of EUR 103,500 as solidarity contribution, corresponding to 9.2% of the 5% of EUR 22,500,000.
7. For its part, the Chamber noted that the Respondent argued that it registered with it as a free agent, and that, as such, he was not transferred from Sporting.
8. In this respect, the Chamber wished to recall the provisions of art. 1 par. 1 of Annexe 5 of the Regulations, which establish the following basis for the payment of the solidarity contribution:

"If a professional moves during the course of a contract, 5% of any compensation paid within the scope of this transfer, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years."
9. In analyzing the aforementioned provision, the Chamber wished to underline that the Regulations mention that solidarity contribution arises from a payment performed *within the scope* of a transfer.
10. As a result, the Chamber wished to recall the specific events until the registration of the player with Atlético.
11. In doing so, the Chamber first observed that, on 6 June 2018, the player unilaterally terminated the contract with Sporting.
12. Thereafter, the Chamber noted that, on 25 July 2018, the player registered "*out of contract*" with Atlético (TMS Ref. 204717).
13. As a result, the Chamber considered that said two elements would *in principle* mean that the player was indeed registered with Atlético as free agent without any direct compensation paid from Atlético to Sporting.
14. However, the Chamber then evaluated the subsequent events occurred after this registration.

15. In particular, the Chamber noted that, on 31 August 2018, the player lodged a claim against Sporting before the Tribunal Arbitral do Desporto (TAD), case ref. 64/22018 and that, thereafter, on 24 April 2019, Atlético and Sporting concluded a settlement agreement.
16. Reverting to said settlement agreement, the Chamber noted that Atlético accepted to pay to Sporting the amount of EUR 22.500.000, as follows:
 - (a) Euro 3.000.000,00 (three million euro) upon signature of the present agreement;
 - (b) Euro 8.250.000,00 (eight million two hundred and fifty thousand Euro) by 31 July 2019;
 - (c) Euro 11.250.000,00 (eleven million two hundred and fifty thousand Euro) by 31 July 2020
17. In this respect, the Chamber observed that, as a reason behind said payment, the settlement agreement stipulated that "*Atletico recognises there is a value to the Player's registration that it acquired*".
18. As such, and even though the settlement agreement is formally not a transfer agreement, the Chamber concurred that the amount of EUR 22,500,000 reflects a price agreed between Atlético and Sporting for the player's registration with the Spanish club.
19. Within this context, the Chamber further noted that the settlement agreement stipulated the following:

2.3. It is clear for the parties that the present Indemnity is not subject to any deduction regarding the Solidarity Mechanism as established in article 21 and Annex 5 of the FIFA RSTP. Notwithstanding the above, in the unlikely event that a claim is filed in this respect, the Parties agree that Sporting will be the sole responsible for any payment that is ordered. In the event that Atletico is ordered to make any payment by any court in this concept, Sporting shall reimburse that amount to Atletico immediately."
20. In this respect, and without entering into the merits of said clause and its possible legal consequences, the Chamber considered that its mere existence already exposes that the parties were aware that the settlement agreement had the elements of a transfer agreement (in particular, by establishing a price for the transfer of the player) and thus, decided to foresee its possible consequences concerning the payment of the solidarity contribution.
21. This being said, the Chamber wished to underline at this point that the matter at stake concerns the distribution of the solidarity contribution which, following art. 1 par. 2 of the Regulations, is a system to reward clubs investing in the training and education of young players. Therefore, the Chamber understood that the right of the training club (i.e. the Claimant, in this case) shall not be harmed due to specific contractual arrangements for situations that are *de facto* similar to a transfer agreement.
22. In this particular matter, the Chamber summarized that, in essence the settlement agreement included the following elements:
 - (i) the *a posteriori* acceptance of Sporting to the early termination of its contract with the player,
 - (ii) the willingness and consent of Atlético of destiny to acquire the player's rights,
 - (iii) the consent of the player to move from one club to the other,
 - (iv) the price or value of the transaction
23. As such, the Chamber understood that, save for the *a posteriori* element of the agreement, the settlement agreement had all the basic elements of a transfer agreement. The

fundamental difference is only concerning its timing, as it was concluded on 24 April 2019, well after the player's registration with Atlético on 25 July 2018.

24. Therefore, the Chamber further noted that, although the player, registered *de jure* with Atlético as a free agent, it was, *de facto*, a transfer from Sporting to Atlético for the amount of EUR 22,500,000. The Chamber wished to underline that the circumstances surrounding this *de facto* transfer are of a unique and exceptional nature, which are related to the specificity of a settlement agreement that resembles very much to a transfer agreement.
25. As a result, the Chamber unanimously agreed that amount of EUR 22,500,000, including its payments in instalments, shall be considered as a payment within the scope of art. 1 par. 1 of Annexe 5 of the Regulations.
26. At this point, the Chamber turned its attention to the merits of clause 2.3. of the Settlement Agreement and, in particular, to the element providing that *"in the unlikely event that a claim is filed in this respect, the Parties agree that Sporting will be the sole responsible for any payment that is ordered. In the event that Atletico is ordered to make any payment by any court in this concept, Sporting shall reimburse that amount to Atletico immediately."*
27. In this respect, the Chamber wished to recall its jurisprudence for similar clauses, according to which, in strict application of the Regulations, the following would, in principle, occur:
 - (a) the player's new club (i.e. Atlético) is ordered to remit the relevant proportion of the 5% solidarity contribution to the clubs involved in the player's training
 - (b) the player's former club (i.e. Sporting) is invited to reimburse the same proportion of the 5% of the compensation that it received from the player's new club.
28. Thus, in view of the above, the Chamber understood that, for this matter, which concerns the distribution of the solidarity contribution, the player's new club (i.e. Atlético) is the sole responsible for the payment of the solidarity contribution to the training clubs, without prejudice of any potential dispute between the new club and the former club as to the application of the aforementioned clause.
29. After establishing that solidarity contribution is payable by Atlético for the *de facto* transfer of the player from Sporting, the Chamber went on to calculate the payment of the solidarity contribution to the Claimant, after duly examining the information on file. To that end, the DRC referred again to art. 1 of Annexe 5 of the Regulations which provides the figures for the distribution of the solidarity contribution, according to the period of time the player was effectively trained by a specific club and taking into consideration the age of the player at the time he was being trained and educated by the club(s) concerned. For the sake of clarity, the specific calculation is provided in the following table, which is drafted by taking into account the player players' passport issued by the Federação Portuguesa de Futebol (cf. point I. 1 above):

CALCULATION / SOLIDARITY MECHANISM

Annexe 5 of the FIFA Regulations on the Status and Transfer of Players

Transfer Matching System (TMS) Ref. No.	5723
CLAIMANT / RESPONDENT 1 \ INTERVENING PARTY	CF Benfica, FPF, Portugal Atletico Madrid, RFEF, Spain Sporting CP, FPF, Portugal
Registration date with the Respondent	25 Jul 2018
Date of the claim	10 Mar 2020

PLAYER /	Gelson Dany BATALHA MARTINS
Date of Birth	11 May 1995
12th Birthday	11 May 2007
23rd Birthday	11 May 2018

Value of the settlement agreement	22.500.000	
Instalment 1	3.000.000	on 24 April 2019
Instalment 2	8.250.000	on or before 31 07 2019
Instalment 3	11.250.000	on or before 31 07 2020 (not yet due at the date of the decision)
Amount used for the calculation	11.250.000	(two first instalments)

CURRENCY		EUR				
SEASON OF BIRTHDAY	CLUB	FROM	UNTIL	SEASON	AMOUNT	
Season of 12th Birthday				2006-2007	0,00	
Season of 13th Birthday				2007-2008	0,00	
Season of 14th Birthday	CF Benfica, FPF, Portugal	27 Oct 08	30 Jun 09	2008-2009	19.032,53	
Season of 15th Birthday	CF Benfica, FPF, Portugal	7 Oct 09	30 Jun 10	2009-2010	20.573,63	
Season of 16th Birthday	CF Benfica, FPF, Portugal	7 Oct 10	30 Jun 11	2010-2011	41.147,26	
Season of 17th Birthday				2011-2012	0,00	
Season of 18th Birthday				2012-2013	0,00	
Season of 19th Birthday				2013-2014	0,00	
Season of 20th Birthday				2014-2015	0,00	
Season of 21st Birthday				2015-2016	0,00	
Season of 22nd Birthday				2016-2017	0,00	
Season of 23rd Birthday				2017-2018	0,00	

Note: Seasons will be counted from July to June of the following year (2019/2020)

TOTAL	80.753,42
% (of 5%)	14,36%

30. As a result, the Chamber established that the Respondent, Club Atlético de Madrid, shall pay to the Claimant, CF Benfica, the amount of EUR 80,753.42, corresponding to 14.36% of the solidarity contribution, as detailed in the attached table.
31. In addition, taking into account the well-established jurisprudence in this respect, the Chamber decided to award interest at the rate of 5% *p.a.* as from the due dates (cf. art. 2 par. 1 of the Annexe 5 of the Regulations) over the aforementioned amount until the date of effective payment.
32. In continuation, the deciding authority 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 Dispute Resolution Chamber relating to disputes regarding solidarity mechanism 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.
33. However, in this respect, the Chamber referred to the [Covid-19 Football Regulatory Issues – FAQ, published on 11 June 2020](#) that, given the current circumstances, for any claim lodged prior to 10 June 2020 which has yet to be decided, the maximum amount of the procedural costs shall be equivalent to any advance of costs paid. Thus, considering that no advance of costs was paid in this matter, no procedural costs can be awarded in this matter.
34. Thereafter, taking into account the previous considerations, the Chamber 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.
35. In this regard, the Chamber 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.
36. Therefore, bearing in mind the above, the Chamber 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.
37. Finally, the Chamber 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 DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, CF Benfica, is partially accepted.
2. The Respondent, Club Atlético de Madrid, has to pay to the Claimant, CF Benfica the following amount:

EUR 80,753.42 as solidarity contribution (i.e. 14.36% of the due solidarity contribution), plus 5% interest *p.a.* as from the due dates (cf. art. 2 par. 1 of the Annexe 5 to the [Regulations on the Status and Transfer of Players](#)).
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:
 - A. 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](#)).
 - B. 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.

For the Dispute Resolution Chamber:



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 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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