

Decision of the Players' Status Committee

passed on 16 August 2022

regarding an employment-related dispute concerning Mr Gustavo Daniel Satto

BY:

Thulaganyo GAOSHUBELWE (South Africa),
Single Judge of the Players' Status Committee

CLAIMANT:

Gustavo Daniel Satto, Argentina

RESPONDENT:

São Paulo Futebol Clube, Brazil

I. Facts

1. On 15 February 2021, Mr Gustavo Daniel Satto and São Paulo - SP concluded an employment contract valid as from the date of signature until 31 December 2022.
2. According to the contract, the coach was entitled to the following:
PÁRRAFO ÚNICO: Se deja constancia que el CONTRATADO debe recibir del CONTRATANTE en concepto de salario una suma anual, neta y líquida de impuesto a las ganancias y/o de cualquier otro impuesto que grave dichos pagos y que deba abonar el CONTRATADO en Brasil, de R\$ 340.093,22 durante el año 2021 y de R\$ 388.677,96 durante el año 2022. En consecuencia, el CONTRATANTE deberá incrementar las sumas a pagar en los montos necesarios para que, una vez efectuadas todas las retenciones y/o deducciones que correspondan para el pago de los impuestos que el CONTRATADO deba abonar en Brasil, éste reciba la cantidad neta indicada anteriormente. (...).
Free translation into English:
SOLE PARAGRAPH: It is hereby stated for the record that the CONTRACTOR shall receive from the CONTRACTOR as salary an annual sum, net and liquid of income tax and/or any other tax levied on such payments and payable by the CONTRACTOR in Brazil, of R\$ 340,093.22 during the year 2021 and of R\$ 388,677.96 during the year 2022. Consequently, the CONTRACTOR shall increase the amounts to be paid in the necessary amounts so that, once all the withholdings and/or deductions corresponding to the payment of the taxes that the CONTRACTOR must pay in Brazil have been made, the CONTRACTOR shall receive the net amount indicated above (...). (...).
3. Clause 1 of the agreement stipulated the following:
"CLÁUSULA PRIMERA - El CONTRATADO será integrante del cuerpo técnico del equipo profesional de fútbol del CONTRATANTE, encargándose de las actividades del referido equipo y de la orientación técnica y táctica a los atletas, de los cuales exigirá disciplina, obediencia, empeño, perfeccionamiento y conducta ética, con el de cumplir su contrato de trabajo, la legislación deportiva, los reglamentos oficiales y las normas establecidas por el CONTRATANTE."
Free translation into English:
"CLAUSE ONE - The CONTRACTOR shall be a member of the coaching staff of the CONTRACTOR's professional football team, in charge of the activities of said team and of the technical and tactical guidance to the sportsmen, to whom he shall demand discipline, obedience, commitment, self-improvement and ethical conduct, to comply with his employment contract, sports legislation, official regulations and the rules established by the CONTRACTOR"
4. Clause 3 of the contract stipulated the following:
"CLAUSULA TERCERA - Si bien el presente contrato tiene un plazo fijo, cualquier PARTE podrá, en cualquier momento, anticipar la terminación de este contrato de trabajo, y en este caso, la PARTE responsable de dicha terminación anticipada deberá abonar a la otra la cantidad de R\$ 205.200,00, si ocurre hasta el 30 de junio de 2021; de 153.900,00, si ocurre entre el 1 de julio y el 31 de diciembre de 2021 y, finalmente, de R\$ 102.600,00, si ocurriera antes de la finalización del contrato. En todos los casos, dichas sumas son netas y líquidas de impuesto a las ganancias y / o de cualquier otro impuesto que grave dichos pagos y que deba abonar el CONTRATADO en Brasil."
Free translation into English:
"CLAUSE THREE - Although this contract has a fixed term, either PARTY may, at any time, anticipate the termination of this employment contract, and in this case, the PARTY responsible for such early termination shall pay to the other the amount of R\$ 205.200.00, if it occurs until 30 June 2021; of R\$ 153,900.00, if it occurs between 1 July and 31 December 2021 and, finally, of R\$ 102,600.00, if it occurs before the end of the contract. In all cases, such sums are net and net of income tax and/or any other taxes levied on such payments and payable by the CONTRACTOR in Brazil"
5. On 13 October 2021, the club sent a **termination letter** to the head coach, while noting that it will pay the agreed penalties (note: the dispute between the head coach and the club, FPSD-5065, was decided on 19 July 2022).
6. On 1 April 2022, the Claimant concluded an employment contract with the Argentinean club, Ferro Carril Oeste, valid as from 1 April 2022 until 31 March 2023.

7. Accordingly, the Claimant was entitled to a monthly salary of ARS (Argentinean Pesos) 200,000.
8. On 29 March 2022, the player Gustavo Daniel Satto lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause and requested the payment of a total amount of BRL 223,598.56, detailed as follows:
- **BRL 69,698.56 net** as “salary differences”, plus 1% interest per month as from 12 November 2021;
 - **BRL 153,900 net** for breach of contract without just cause, plus 1% interest per month as from 12 November 2021, in accordance with clause 3 of the contract, plus 1% interest per month.
9. In relation to the claimed outstanding salaries, the coach explained that, from 15 February 2021 until 13 October 2021, he should have received following amounts:

Month	Amounts
Feb-21	BRL 16.194,92
Mar-21	BRL 32.389,83
Abr-21	BRL 32.389,83
May-21	BRL 32.389,83
Jun-21	BRL 32.389,83
Jul-02	BRL 32.389,83
Ago-21	BRL 32.389,83
Sep-21	BRL 32.389,83
Oct-21	BRL 32.389,83
Total	BRL 275.313,56

10. However, according to the coach, we was paid as follows:

DATE	RECEIVED
05/03/2022	BRL 14.697,00
07/04/2022	BRL 27.274,00
05/05/2022	BRL 27.274,00
04/06/2022	BRL 27.274,00
05/07/2022	BRL 27.274,00
04/08/2022	BRL 27.274,00
30/08/2021	BRL 27.274,00
30/09/2021	BRL 27.274,00
Total	BRL 205.615,00

11. As a result, the coach considered that there is a difference of BRL 69,698.56 (i.e. BRL 275.313,56-205.615).
12. However, the coach acknowledged that, following the termination of the contract, he received the amount of BRL 51,300, as follows:
- BRL 12,825 on 22 December 2021;
 - BRL 12,825 on 22 January 2022;
 - BRL 12,825 on 21 February 2022;
 - BRL 12,825 on 21 March 2022
13. In its reply, the Respondent contested the competence of FIFA insofar it deemed that the Claimant is not a coach in the sense of articles 22.1 c) and 23.2 of the FIFA RSTP.

14. The Respondent argued that the professional duties and position performed by the Claimant do not fit into the definition of “coach” adopted by the FIFA RSTP.
15. The Respondent considered that the “one and only coach” is Mr Crespo.
16. The Respondent was of the opinion that, since there are six persons claiming against it before the Football Tribunal (i.e. FPSD-5516 (Alejandro Gabriel Kohan), FPSD-5517 (Tobias Kohan), FPSD-5518 (Juan Branda), FPSD-5519 (Gustavo Nepote) and FPSD-5065 (Hernán Crespo)) there is an “*attempt to improperly manipulating the concept of coaches*”.
17. The Respondent considered that it is clearly not credible that a club effectively had 6 (six) coaches at the same time.
18. The Respondent further explained that the contract of Mr Satto was not registered before the CBF.
19. The Respondent argued that that Mr Satto had the burden of proving that he acted as a coach by demonstrating that his activities effectively corresponded to the ones described at the item 28 of the “*Definitions*” section of the RSTP.
20. São Paulo – SP further attached an interview with Mr Satto in the newspaper “La Calle”, dated 27 June 2021, in which he allegedly stated the following:
“No nos metemos en la parte técnica, sí colaboramos desde afuera en observar si el trabajo con pelota tiene alta intensidad o baja, tenemos que buscar cómo llegar para que el jugador levante velocidad y frecuencia cardíaca alta para que sirva la parte física y lo pueda transferir en un partido.”
Free translation into English:
“We don't get involved in the technical part, we do collaborate from the outside in observing if the work with the ball has high or low intensity, we have to find a way to get the player to raise speed and high heart rate so that the physical part is useful and can be transferred in a match”.
21. As to the substance, and “*only for the sake of debate*”, the Respondent argued that it paid the Claimant as follows:

DESCRIPTION	DATE	GROSS (BRL)	NET (BRL)	SUPPORTING DOCS
Feb. 2021 wage (pro rata) minus tax	05.03.2021	19.825,07	14.697,34	(Doc. 03)
Mar. 2021 wage plus adjustment minus deductions	07.04.2021	37.172,00	27.273,87	(Doc. 04)
Apr. 2021 wage minus tax	05.05.2021	37.172,00	27.273,87	(Doc. 05)
May. 2021 wage minus tax	04.06.2021	37.172,00	27.273,87	(Doc. 06)
Jun. 2021 wage minus tax	05.07.2021	37.172,00	27.273,87	(Doc. 07)
Jul. 2021 wage minus tax	04.08.2021	37.172,00	27.273,87	(Doc. 08)
Aug. 2021 wage minus tax	02.09.2021	37.172,00	27.273,87	(Doc. 09)

Sep. 2021 wage minus tax	04.10.2021	37.172,00	26.975,87	(Doc. 10)
Severance payments (including proportional Oct. 2021 wage)	22.10.2021	60.428,15	60.428,15	(Doc. 11)

22. In his replica, the Claimant argued that the allegations made by SPFC lack any factual and/or normative basis in that, first, the burden of proof is on SPFC to show that he did not act as coach.
23. In this regard, in the opinion of the Claimant, the description of his tasks as stated in the contract leave no room for doubt.
24. In this regard, the Claimant explained that his tasks as described in the contract are comprised within the definitions of the RSTP.
25. The Claimant considered that the lack of registration of the Employment Contract with the CBF is not a requirement in order to be valid.
26. The Claimant underlined that the evolution of the figure of the Coach and the development of football in general, means that nowadays the coaching staffs are made up of several people, with a Head Coach supported by different specialists with different roles, such as specialists in defensive and offensive techniques or specialists in goalkeeping.
27. As to the payable compensation, the Claimant underlined that the contract includes a liquidated damages clause and therefore no mitigation is applicable.
28. In its duplica, the Respondent insisted that its main position is that FIFA is not competent and that its arguments concerning the substance are *"ad argumentandum tantum"*.
29. The Respondent stated that the Claimant has always acted as a fitness coach.
30. In the opinion of the Respondent, *"it is extremely important to point out that the Claimant's allegation that he performed as a proper coach towards SPFC" since "after subsequent jobs as a fitness coach (i.e. at Argentinian clubs Club Atletico Independiente, Club Atletico Banfield and Defensa y Justicia), he surprisingly worked as an assistant coach for the Respondent."*
31. The Respondent stated that the CBF National Regulation for Registration and Transfer of Football Players, imposes the registration of the employment agreement of football coaches within CBF's registration system. In this regard, the Respondent explained that the Head Coach, Mr Crespo had his Employment Contract registered, since he was duly employed as a coach; but on the other hand, the Claimant Mr Satto never had his Employment Contract registered before CBF, considering he was not employed as a proper coach following the RSTP definition.

II. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Players Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 29 March 2022 and submitted for decision on 16 August 2022. Taking into account the wording of art. 34 of the June 2022 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (June 2022 edition), he is competent to deal with employment-related disputes between a club and a coach of an international dimension
3. Thereafter, 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 2 of the Regulations on the Status and Transfer of Players (March 2022 edition), and considering that the present claim was lodged on 29 March 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 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, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Admissibility

5. The Single Judge noted that the Respondent disputed the competence of FIFA to decide over the present matter, insofar the Respondent argues that the Claimant is a fitness coach.
6. In this regard, the Single Judge wished to refer to item 28 of the definitions section of the Regulations in combination of art. 22 par. 1 lit c) of the Regulations. In particular, the Single Judge noted that "Coach" is defined as follows:

"an individual employed in a football-specific occupation by a professional club or association whose:

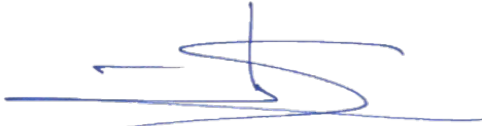
- i. employment duties consist of one or more of the following: training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions; and/or*
- ii. employment requires the holding of a coaching licence in accordance with a domestic or continental licensing regulation."*

7. In this respect, the Single Judge carefully reviewed the evidence provided by the Respondent in support of this allegation, and concurred that, indeed the Claimant appears to have developed a career as fitness coach with a specialization in physical preparation. The Single Judge thus confirmed that, in particular, the background of the coach would indicate that the Claimant primarily served as a physical coach.
8. In addition, and while referring to the employment contract concluded between the parties, the Single Judge turned his attention to its clause, and noted that the Claimant is defined in a very generic manner as a "football professional". Clause 1 refers to "technical and tactical guidance". The Single Judge considered that the aforementioned job description is not sufficiently clear and does not allow to determine the exact tasks to be handled by the Claimant, and therefore considered that the Claimant did not meet his burden of proof in order to prove that he is indeed a coach in the sense of item 28 of the Regulations.
9. In relation to item 28 of the definitions section of the Regulations, the Single Judge underlined that a coach is defined as "an individual employed in a football-specific occupation". In this respect, and in line with the applicable jurisprudence of the Players' Status Committee, the Single Judge highlighted that fitness coaches are not defined as having a "football specific occupation".
10. In view of the above, the Single Judge established that it is not competent to decide over the present matter as it does not fulfil the requirements of art. 22 par. 1 lit c) of the Regulations in combination with item 28 of the definitions section of the same Regulations.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Gustavo Daniel Satto, is inadmissible.
2. This decision is rendered without costs.

For the Football Tribunal:



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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