

Decision of the Players' Status Chamber

passed on 11 April 2023

regarding a contractual dispute concerning
the player Ronaël Julien Pierre-Gabriel

BY:

Luis KANONNIKOFF (Paraguay), Single Judge

CLAIMANT:

AS Monaco FC

RESPONDENT:

1. FSV Mainz 05, Germany

I. Facts of the case

1. On 1 July 2019, AS Monaco FC and 1. FSV Mainz 05 e.V. concluded a transfer agreement for the player Ronaël Pierre-Gabriel, for a fix fee of EUR 5,500,000 net.
2. Art. 4 of the agreement stipulated, *inter alia*, the following:
*“Mainz shall pay the following additional transfer fees if one and/or some of the following events take(s) place during the period the Player is owned by Mainz or if the Player has participated to an event which occurs:
Each time Mainz will be ranked between the 1st (first) and 9th (ninth) position of the Bundesliga 1's ranking at the end of one sportive season, Mainz shall pay to AS Monaco a net amount of 250.000 € (two hundred fifty thousand euros)
(...)
Each bonus shall be paid by Mainz to AS Monaco within 7 (seven) days following the event occurs.”*
3. Within this context, Mainz and the player concluded an employment agreement until 30 June 2024.
4. On 16 July 2020, the player transferred on loan to the French club, Stade Brestois.
5. On 3 July 2020, Mainz and the player concluded an agreement to suspend their existing employment agreement (the suspension agreement), until 30 June 2022, in view of his temporary transfer to the French club, Stade Brest.
6. On 8 July 2022, the player returned to Mainz from Stade Brestois.
7. On 26 July 2022, the player transferred to the French Club, Racing Club Strasbourg Alsace.
8. Mainz terminated the 2021/2022 sporting season (Bundesliga 1) in the 8th place (i.e. on 30 June 2022).
9. On 9 June 2022, Monaco sent a correspondence to Mainz, attaching an invoice for the amount of EUR 250,000 for *“Bonus Amount for the Transfer of the Player - Ranked between the 1st 250 000,00 EUR and 9th position of the Bundesliga 1's ranking at the end of season”*.
10. On 25 July 2022, Mainz replied to Monaco, and stated that the bonus is not due since the player was registered with Stade Brest during the season 2021/2022.
11. Monaco replied on 19 August 2022 and expressed its disagreement with the position of Mainz.

12. On 14 November 2022, Mainz sent a letter with the following contents:

"Thank you for your e-mail. I understand, that "owned" can apparently be interpreted in different ways. Bonus transfer compensation is, in our understanding, always a performance-based compensation with regard to the transfer of the player. The former club shall be participated in the success of the new club as a result of the transfer of the player. When the player is registered for another club for the season, he has no effect at all on any success.

The employment agreement was (and is still) suspended and our club has no legal influence in any way on the player. In this period, the player can't be considered "owned by Mainz 05", so that a performance-based bonus payment can be triggered. (...)

What do you think about letting a third, neutral party decide? You could file a claim with FIFA, we both send our arguments and if FIFA agrees with your interpretation, we'll comply with that decision, of course."

II. Proceedings before FIFA

1. On 6 February 2023, AS Monaco FC lodged a claim before the FIFA Football Tribunal for outstanding transfer fee and requested the payment of EUR 250,000, as established in art. 4 of the agreement, plus 5% interest p.a. as from 31 January 2023.
2. Monaco also requested the payment of the procedural fees.
3. In its reply, the Respondent requested the rejection of the claim.
4. Mainz acknowledged that it finished 8th at the end of the 2021/2022 season, but argued that the player was not owned at that time, since the player temporarily transferred to the French club, Stade Brest, between 1 July 2020 and 30 June 2022.
5. In the opinion of the Respondent, the Player nor was owned neither participated in the event according to Article 4 of the Transfer Agreement.
6. Mainz argued that the Transfer Agreement must be understood in a way that Article 4 is intended to let the Claimant participate in the sportive success of the Respondent as a direct result of the transfer of the Player.
7. In his *replica*, the Claimant considered that the bonus in question can be realized whether or not the Player participated in the event.
8. Monaco argued that the inclusion of the word "*owned*", without further clarification, shows that the intention was not at all to consider that the Player had to be available to 1. FSV Mainz 05 to validate the bonus. According to Monaco, if the parties had a different intention, they would have used the word "*registration*" instead, so that the clause would have been "*(...) during the period the Player is registered with Mainz*".
9. Monaco therefore insisted in its initial request.
10. In its *duplica*, the Respondent stated that the definitions of the words "*registered*" and "*owned by*" provided by the Claimant in point 5 of the Claimant's reply are the Claimant's own definitions which were not included in the transfer agreement.
11. Mainz underlined that it did not benefit from the transfer of the player. After only one season the player was transferred to another club.
12. In conclusion, Mainz insisted that the Claimant is not entitled to the claimed transfer compensation in the amount of EUR 250,000.

III. Considerations of the Players Status 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* or *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 15 February 2023 and submitted for decision on 11 April 2023. Taking into account the wording of art. 34 of the October 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 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit f. of the Regulations on the Status and Transfer of Players (October 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
3. Subsequently, 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 (October 2022 edition), and considering that the present claim was lodged on 15 February 2023, the October 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. Merits of the dispute

5. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. 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.

i. Main legal discussion and considerations

6. The foregoing having been established, the Single Judge moved to the substance of the matter.
7. In particular, the Single Judge noted that the parties concluded a transfer agreement for the player Ronaël Pierre-Gabriel which, apart from a fixed transfer fee, established *inter alia* the following conditional payment:

“Mainz shall pay the following additional transfer fees if one and/or some of the following events take(s) place during the period the Player is owned by Mainz or if the Player has participated to an event which occurs:

Each time Mainz will be ranked between the 1st (first) and 9th (ninth) position of the Bundesliga 1's ranking at the end of one sportive season, Mainz shall pay to AS Monaco a net amount of 250.000 € (two hundred fifty thousand euros)

(...)

Each bonus shall be paid by Mainz to AS Monaco within 7 (seven) days following the event occurs.”

8. Subsequently, the Single Judge observed that Monaco requested the payment of USD 250,000, as it argued that the conditions established in the aforementioned clause were met.
9. Conversely, the Single Judge took note of the position of the Respondent, which acknowledged, as foreseen in the applicable clause, that it was ranked between the 1st (first) and 9th (ninth) position of the Bundesliga 1 during the season 2021/2022, but argued that during said season the player was temporarily transferred to the French club, Stade Brest, between 1 July 2020 and 30 June 2022. Thus, in the view of the Respondent, given that the player did not participate in said sports achievement, Mainz was of the opinion that the conditions foreseen in the quoted clause were not met.
10. Given the above, the Single Judge understood that the legal matter at stake is to determine whether the conditional payment of USD 250,000 is due by the Respondent to the Claimant.
11. In doing so, the Single Judge considered that to properly address this issue, he should carefully analyse the contents and intent of the aforementioned clause. In particular, the Judge verified that, as per said clause, the conditional payment would be due if (a) Mainz is ranked between the 1st and 9th position of the Bundesliga 1's ranking at the end of one sportive season, but only if (b) *“during the period the Player is owned by Mainz”*.

12. As to condition (a), the Judge verified that it is uncontested that the Respondent was placed within the 1st and 9th positions of the Bundesliga 1 league during the 2021/2022 season. Hence, condition (a) appears to have been met.
13. However, the Single Judge noted there was a disagreement regarding the conditional payment to the player's loan to Brest for the 2020/2021 and 2021/2022 seasons. Indeed, the Respondent considered that since the player was registered with a different club during the 2021/2022 season, the bonus was not due, as he did not contribute to the success of Mainz.
14. As to the element (b) of the clause, the Single Judge recalled once again, as per the contract, that the conditional payment was due "*during the period the Player is owned by Mainz or if the Player has participated in an event which occurs*" (underline added).
15. Thus, the Single Judge understood that, in relation to this conditional element (b), it should first try to discern what did the parties try to imply with use of the word "*owned*".
16. In this respect, the Single Judge observed that the contract concluded between the parties did not provide a particular definition of the term "*owned*".
17. Moreover, the Single Judge also wished to underline that the FIFA Regulations on the Status and Transfer of Players do not recognize the concept of "*ownership*" of a player. Indeed, said regulatory framework, as per its art. 1 par. 1, is intended to lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.
18. In fact, the Single Judge noted that, and although in common language, it is frequent to use the expression "*ownership*" to describe a player's relationship with a club, this is only a metaphor that cannot be taken literally from a civil and contractual law standpoint.
19. Hence, given that the use of the word "*ownership*" is not the most legally accurate term to describe a player's relationship with a club, the Single Judge thus understood that the clause at stake is essentially flawed, as it uses a concept ("*ownership*" of a player) that is legally imprecise.
20. As a result, and considering the FIFA Regulations on the Status and Transfer of Players do not acknowledge the concept of "*ownership*" of a player, the Single Judge wished to shed light on what did the parties try to mean by using this term.
21. In this regard, the Judge observed that, while a club cannot "*own*" a player, this word is often used in football to describe a situation under which a club bears a right to control a player's services during the term of the contract. This includes the ability to determine where the player will play, his registration rights, how much he will be paid, and other conditions of the employment relationship.

22. As a result, the Single Judge identified two key elements that must be met to define "*owned*" within the context of the disputed clause: (a) the presence of a valid, binding, and active employment relationship between the player and Mainz during the 2021/2022 season; and (b) Mainz's effective use of the player's registration rights during the 2021/2022 season.
23. However, the Single Judge noted that the employment relationship between the player and Mainz was suspended during the 2021/2022 season due to his loan to Brest, making it difficult to satisfy the aforementioned condition (a). Additionally, the player was registered with the French club, Stade Brestois, during the 2021/2022 season, making it difficult to satisfy condition (b).
24. As a result, the Single Judge concluded that Mainz could not be deemed as the "*owner*" of the player during the 2021/2022 season. Indeed, in the opinion of the Judge, the disputed clause seemed to suggest that the "*owner*" was the club actively using the player's services through an employment contract and his registration before the relevant national association.
25. Nevertheless, and for the sake of completeness, the Judge acknowledged that Mainz could be by some means considered to be the "*owner*" of the player in a limited sense due to the temporary transfer to Brest. Yet, the Judge considered that this right is in reality only a right to reclaim the player's registration rights after the end of the temporary transfer, which differs from the right of actively using the player's services, which was the meaning of "*ownership*" implied by the relevant clause.
26. The Single Judge then considered that this interpretation of the intent of the parties is reinforced by the fact that the second part of the clause made the bonus conditional on the player's participation in an event, indicating that the parties intended to reward Monaco for the player's potential sporting successes with Mainz.
27. Therefore, the Single Judge determined that the conditional payment aimed to reward Monaco for the player's contribution to Mainz, but ultimately, the player did not participate in Mainz's sporting achievement during the 2021/2022 season. As a result, the intent of the disputed clause was not met.
28. Consequently, the Single Judge established the requirements for the payment of the conditional payment were not met. Hence, the Claim of the Claimant could only be rejected.

d. Costs

29. Finally, the Single Judge referred to art. 25 par. 1 and 2 of the Procedural Rules, according to which in disputes between clubs, costs in the maximum amount of USD 25,000 are levied. As per art. 25 par. 5 of the Procedural Rules, the Single Judge will decide the amount

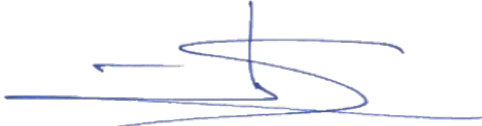
that each party is due to pay, in consideration of the parties' degree of success and their conduct during the procedure, as well as any advance of costs paid.

30. Taking into account that the claim of the Claimant has been rejected , the Single Judge concluded that the Claimant shall bear the costs of the current proceedings before FIFA. Consequently, and after taking into account the degree of success of the parties and the amount in dispute, the Single Judge concluded that the amount of costs of the proceedings corresponds to USD 20,000.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, AS Monaco, is rejected.
2. The final costs of the proceedings in the amount of USD 20,000 are to be paid by the Claimant to FIFA. As the Claimant already paid the amount of USD 5,000 to FIFA as advance of costs at the start of the proceedings, the residual amount of USD 15,000 is still to be paid as procedural costs (cf. note relating to the payment of the procedural costs below).

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 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 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

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