

Decision of the Players' Status Chamber

passed on 4 July 2023

regarding a dispute concerning the transfer of
the player Nadiem Amiri

BY:

Gregory Durand (France), Single Judge

CLAIMANT:

Bayer 04 Leverkusen Fußball GmbH, Germany

Represented by Monteneri Sports Law

RESPONDENT:

Genoa Cricket and F.C. SPA, Italy

Represented by Lombardi Associates

I. Facts of the case

1. On 28 January 2022, the German club Bayer 04 Leverkusen Fußball GmbH (hereinafter: the *Claimant*) and Genoa Cricket and Football Club (hereinafter: the *Respondent*) entered into an International Loan Agreement with respect to the temporary transfer of the player Nadiem Amiri for the period from 30 January 2022 until 30 June 2022 (hereinafter respectively, "the Agreement", "the Player" and "the Loan Period").
2. In accordance with Section 5 par. 1 of the Agreement, the Respondent committed to pay to the Claimant a fee in the amount of EUR 500,000 plus VAT, if applicable, as consideration for the temporary transfer of the Player from the Claimant to the Respondent (hereinafter, "the Loan Fee"). The parties agreed that the Loan Fee shall be due and payable in full by 30 June 2022.
3. Furthermore, in Section 5 par. 2 of the Agreement, the Claimant and the Respondent established that the Loan Fee would be reduced by EUR 250,000 plus VAT, if applicable, after the Player had made 8 appearances for at least 15 minutes or more for the Respondent during an official match (i.e. Serie A) and by a further EUR 250,000 plus VAT, if applicable, after the Player has made 13 appearances for at least 15 minutes or more for the Respondent during an official match (i.e. Serie A) during the Loan Period.
4. Finally, pursuant to Section 7 of the Agreement, the Parties agreed that in relation to any solidarity contribution due to third clubs, each party would bear 50% of the costs. Consequently, the Loan Fee shall be subject only to a deduction of 50% of the respective amount of the solidarity contribution that is payable to third clubs.
5. During the Loan Period, the Player participated in 13 matches of Serie A with the Respondent.
6. On 31 May 2022, the Claimant informed the Respondent that, as the Player had failed to participate for at least 15 minutes in 13 matches of Serie A, the Loan Fee in the amount of EUR 250,000 had become due under the Agreement; hence the Claimant issued the relevant invoice and requested the payment to be executed by 30 June 2022.
7. Subsequently, on 29 August 2022, 26 September 2022, 14 October 2022, and 11 January 2023 the Claimant sent a reminder of the above to the Respondent.
8. On 19 January 2023, one of the Respondent's attorneys, Mrs. Anna Cerbara, replied to the Claimant with a letter, whereby she argued that "*the failure to reach the 15-minute threshold did not depend on the will of [the Respondent] but from the psychophysical condition of the Player, who was not yet 100%*" hence "*the consideration of EUR 250,000.00 would not be due because of achievement of the presences indicated*".

9. During the month of February 2023, the parties negotiated a potential settlement of the matter, with the Respondent insisting on the importance of adopting an interpretation of the Loan Agreement in good faith due to the peculiar circumstances which had led to the impossibility of the player to play for a longer number of minutes.
10. On 30 March 2023, the Claimant sent to the Respondent a formal default letter, by means of which it urged the latter to pay within 10 days the outstanding amount of EUR 250,000 plus VAT, if applicable, as well as the interest accrued.
11. In reply to the above, on 5 April 2022, the Respondent sent to the Claimant a letter rejecting the requests for payment of the Loan Fee.

II. Proceedings before FIFA

12. On 8 May 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

13. According to the Claimant, during the Loan Period, the Player participated in 13 matches of Serie A, however, according to the official match reports elaborated by the Italian "Serie A", only in 12 matches his appearance lasted for more than 15 minutes.
14. In particular, the Claimant emphasized that during the match between the Respondent and the Italian club FC Internazionale Milano (hereinafter: *Inter*), the Player played for a total of 14 minutes only.
15. Consequently, in the Claimant's view, it appears evident that the Respondent failed to comply with Section 5 par. 2 of the Agreement, to the extent that the amount of EUR 250,000 became due and should have been paid by the Respondent by the end of the relevant season.
16. In this respect, the Claimant stated that the word of the referred provision is clear and does not leave room for any diverging interpretation, hence the Respondent shall be held liable for the payment of the claimed sum regardless of the reasons for which the Player did not play the required number of minutes per match during the season.
17. The request for relief of the Claimant was therefore the payment by the Respondent of EUR 250,000 plus 5% interest as of 1 July 2022.
18. Furthermore, the Claimant demanded that *"the Respondent shall only be entitled to deduct 50% of the respective amount of the solidarity contribution which is payable to third clubs"*.

b. Position of the Respondent

19. In its reply, the Respondent first objected to the calculation of the number of minutes effectively played by the Player, namely with regard to the match between the Respondent and Inter.
20. In this respect, the Respondent argued that indeed the Player played 15 minutes during the relevant match, and not 14 as indicated in the relevant match report.
21. Moreover, regarding the letter sent by one of the Respondent's attorneys on 19 January 2023, Mrs. Anna Cerbara, the Respondent declared that her attempt to negotiate was without prejudice to the Respondent's right to dispute the matter afterwards, hence it shall not be considered as an admission of the Respondent's financial liability.
22. In a subsidiary manner, the Respondent argued that, having the Player played a total of 744 minutes during the Loan Period, the Respondent's conduct was in line with the spirit of the agreement as, indeed, its efforts in providing playing time to the Player far exceeded the minimum number of playing minutes stipulated under the Agreement (i.e., 195).
23. As a consequence, in the Respondent's view, the conditions necessary for a complete reduction of the loan fee pursuant to section 5 of the Agreement shall be considered fulfilled and therefore no payment is owed to the Claimant.
24. Furthermore, the Respondent declared that due to the injuries and sickness suffered by the Player during the relevant Loan Period, the reduced number of minutes played in certain matches was an inevitable consequence of the mandatory precautions the Respondent had to take for the safeguard of the Player's health, which therefore cannot be waived up in force of any contractual provision.
25. In view of all the above considerations, the Respondent requested to reject the claim in its entirety.

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

26. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *the 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 8 May 2023 and submitted for decision on 4 July 2023. Taking into account the wording of art. 34 of the March 2023 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.
27. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. g) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Single Judge is competent to deal with the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
28. Subsequently, the Single Judge analysed 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 on the Status and Transfer of Players (May 2023 edition) and considering that the present claim was lodged on 8 May 2023, the March 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

29. 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

30. The 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

31. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the payment of certain financial obligations by the Respondent as per the Agreement, namely the Loan Fee of EUR 250,000.
32. In this context, the Single Judge acknowledged that his task was to determine, based on the evidence presented by the parties, whether the claimed amount had in fact remained unpaid by the Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
33. In this respect, the Single Judge first observed that pursuant to the Agreement, the Respondent had undertaken the obligation to pay the Claimant a total of EUR 500,000 as consideration for the temporary transfer of the Player from the Claimant to the Respondent.
34. In continuation, the Single Judge noted that according to the said Agreement, the parties had stipulated a double potential reduction of the Loan Fee depending on the number of games and minutes played by the Player during the relevant Loan Period.
35. In particular, the Single Judge observed that the Claimant agreed to reduce the relevant fee in the amount of EUR 250,000 if the Player had made 8 appearances in Serie A during the Loan Period, each one for at least 15 minutes ("the first condition").
36. Moreover, the Single Judge took note of a potential further reduction of EUR 250,000 in case the Player had made 13 appearances in Serie A, once again for at least 15 minutes during each official match ("the second condition").
37. With the above in mind, the Single Judge thoroughly analysed the official reports elaborated by the governing body of the relevant competition (i.e., the Serie A), as these are to be deemed a reliable and accurate source of information for the purpose of the present dispute.
38. In this respect, the Single Judge observed that according to the abovementioned documents, the Player played a total of 15 or more minutes during 12 matches of Serie A, whereas in occasion of the match disputed between the Respondent and Inter, held on 25 February 2022, the Player effectively played for 14 minutes only.
39. Notwithstanding the above, the Single Judge recalled that while the Claimant demanded a strict interpretation of the relevant contractual provision, the Respondent was instead of

the opinion that, having the aforementioned clauses the scope of granting enough experience to the Player during the Loan Period, and having the Player played many minutes during the other 12 matches, it would be contrary to the spirit of the agreement between the parties not to acknowledge that the Respondent safeguarded the Claimant's interest sufficiently.

40. In this respect, the Single Judge wished to emphasize that according to a common principle of law, when interpreting a contract or a clause, the judging body shall first adhere to its literal content, giving the words their natural and ordinary meaning together with the principles of good faith and true intention of the parties, if the latter does not appear evident from such words.
41. With the above in mind, the Single Judge was of the opinion that, in the case at stake, the relevant clause of the Agreement has been drafted in an unequivocal manner to the extent that its interpretation results clear and without room for any further alternative conclusion, therefore imposing on the Respondent the burden of making the Player play for at least 15 minutes during each of the minimum number of matches thereto defined (i.e. 13), *quid non in casu*.
42. Accordingly, the Single Judge determined that the second condition contractually set by the parties for the reduction of the Loan fee has not been triggered, hence the Respondent remained financially obligated towards the Claimant.

ii. Consequences

43. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the outstanding amounts deriving from the contract concluded between the parties, namely the amount of EUR 243,500. In this context, the Single Judge outlined that this amount considers the relevant contractually agreed deductions for solidarity contributions, which was not objected to by the Claimant.
44. In addition, taking into consideration the Claimant's request as well as the constant practice of the Players' Status Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from 1 July 2022 until the date of effective payment.

iii. Compliance with monetary decisions

45. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 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.

46. In this regard, the Single Judge highlighted 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
47. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
48. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
49. 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. 24 par. 8 of the Regulations.

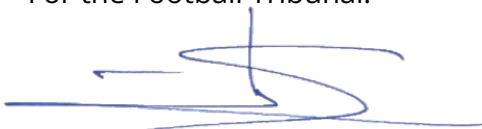
d. Costs

50. 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.
51. Taking into account that the claim of the Claimant has been fully accepted, the Single Judge determined the costs of the current proceedings at the amount of USD 25,000 and concluded that the said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
52. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players Status Chamber

1. The claim of the Claimant, Bayer 04 Leverkusen Fußball GmbH, is accepted.
2. The Respondent, Genoa Cricket and F.C. SPA, must pay to the Claimant the following amount(s):
 - **EUR 243,500 as outstanding amount** plus 5% interest *p.a.* as from 1 July 2022 until the date of effective payment;
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
5. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
6. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (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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