

# Decision of the Players' Status Chamber

passed on 28 July 2023

regarding a contractual dispute concerning  
the player Victor Leandro CUESTA

**BY:**

**Angélica Islas (Mexico)**, Single Judge

**CLAIMANT:**

**Club Atlético Independiente, Argentina**

Represented by Ariel Reck

**RESPONDENT:**

**Sport Club Internacional, Brazil**

Represented by Cravo, Pastl e Balbuena Advogados Associados

## I. Facts of the case

1. On 17 February 2017, the Argentinian club, Club Atlético Independiente (hereinafter: *the Claimant*) and the Brazilian club, Sport Club Internacional (hereinafter: *the Respondent*) concluded a transfer agreement for the definitive transfer of the Player Victor Leandro Cuesta (hereinafter: *the transfer contract*).
2. On 8 February 2022, the parties signed a payment agreement called “acuerdo de pago” (hereinafter: *the agreement*) by means of which the Respondent acknowledged the existence of the amounts due from the Respondent to the Claimant with regards to the transfer contract and a new payment calendar was determined.
3. In accordance with clause 1 of the agreement, the Respondent undertook to pay the following amounts:
  - USD 450,000 payable on 15 February 2022.
  - USD 450,000 payable on 30 June 2022.
  - USD 364,000 payable on 20 December 2022.
4. Clause 3.2. of the agreement reads as follows:

*“A los fines del pago de las sumas señaladas, INTERNACIONAL cede en este acto, suscribiendo los documentos necesarios a tales efectos y hasta las sumas comprometidas en cada cuota, el crédito que tiene con el club Zenit FC por la transferencia del jugador Yuri Alberto Monteiro da Silva. En consecuencia, INTERNACIONAL instruye al club ruso FC Zenit para que pague directamente a la cuenta de INDEPENDIENTE las sumas señaladas en cada vencimiento por cuenta y orden de INTERNACIONAL. El pago recibido del club FC Zenit tendrá efecto cancelatorio de la deuda respectiva de INTERNACIONAL.”.*

Freely translated to English:

*“For the purpose of payment of the sums indicated, [the Respondent] hereby assigns, by signing the necessary documents for this purpose and up to the amounts indicated in each instalment, the credit that the Respondent has with the club Zenit FC for the transfer of the player Yuri Alberto Monteiro da Silva. Consequently, [the Respondent] instructs the Russian club FC Zenit to pay directly to the account of [the Claimant] the amounts indicated in each due date for the account and order of [the Respondent]. The payment received from the club FC Zenit will have the effect of cancelling the respective debt of [the Respondent]”.*

5. Clause 4 of the agreement reads as follows:

*“INTERNACIONAL garantiza la solvencia y la existencia del crédito. Par ello, en la hipótesis de retraso en el pago de cualquier de las cuotas establecidas por las partes en este acuerdo, y procediendo INDEPENDIENTE a la respectiva notificación hábil de INTERNACIONAL para su*

*constitución en mora, con un plazo de 15 (quince) días para abonar la cuota en abierto, y dicha cuota no sea abonada, la integralidad de la deuda será considerada vencida. En tal supuesto, la aplicación de la multa contractual de 10% y de los intereses de 10% anual se aplicarán desde la fecha de la primera intimación de pago descontados los pagos efectuados”.*

Freely translated to English:

*“[The Respondent] guarantees the solvency and the existence of the credit. Therefore, in the event of delay in the payment of any of the instalments established by the parties in this agreement, and [the Claimant] proceeding to the respective default notice to [the Respondent], with a period of 15 (fifteen) days to pay the instalment due, and such instalment is not paid, the entire debt will be considered overdue. In such case, the application of the contractual penalty of 10% and the interest of 10% per annum shall be applied from the date of the first default notice after deducting the payments made”.*

6. On 22 February 2023, the Claimant sent to the Respondent the following e-mail (quoted verbatim):

*“Soy ariel reck abogado de Independente y te escribo por indicación de Felipe Baumann para coordinar el pago de la última parcela del acuerdo con inter por cuenta y bustos que venció en diciembre  
Dime cual es la idea para ese pago?”*

Freely translated to English:

*“I am ariel reck, lawyer of [the Claimant] and I am writing to you following the indication of Felipe Baumann to coordinate the payment of the last instalment of the agreement with [the Respondent] by cuenta and bustos that expired in December  
Tell me what the idea for that payment is?”*

## II. Proceedings before FIFA

7. On 13 June 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

8. The Claimant requested that the Respondent be ordered to pay to it overdue payables in the amount of USD 364,000 corresponding to the last instalment of the agreement and USD 36,400 as contractual penalty, in accordance with clause 4 of the agreement.

9. The Claimant further asked to be awarded interest of 10% as from 22 February 2023 and that the Respondent be imposed sporting sanctions.

**b. Position of the Respondent**

10. In its reply, the Respondent indicated, *inter alia*, the following:

*"[...] on 23 February 2023, the Claimant submitted a notification to try to coordinate and agree the payment of the instalment due. However, the club advised that it was trying to meet its obligations and that the cash flow was not sufficient for payments, but that they would try to prioritize the amount.*

*6. Furthermore, the Respondent is acting in good faith in stating that it is unable to make direct and immediate payment of the amounts provided for in the contract that is the subject of this claim.*

*7. In addition, we emphasize that, as it is of public knowledge, Brazilian teams are experiencing difficulties in renewing the contract for profits from television, so that [the Respondent] is not receiving these amounts in its cash".*

11. The Respondent requested to dismiss the request of sanctions and penalty clause.

### III. Considerations of the Players' Status Chamber

#### a. Competence and applicable legal framework

12. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 13 June 2023 and submitted for decision on 28 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
13. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. g) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
14. 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 (May 2023 edition) and considering that the present claim was lodged on 13 June 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

15. 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 she 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

16. 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 she will refer only to the facts, arguments, and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

**i. Main legal discussion and considerations**

17. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties only dispute the application of the clause 4 of agreement.
18. The Single Judge acknowledged that the payment of USD 364,000 claimed by the Claimant is not contested by the Respondent. 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 amount of USD 364,000.
19. With regards to the application of clause 4 of the agreement, the Single Judge observed that the Claimant argued that such clause should apply to the present case. On the other hand, the Respondent contested the application of said clause considering that (i) the parties were trying to coordinate the payment of said amount, (ii) the Respondent is unable to make direct and immediate payment and (iii) the Respondent is having financial issues.
20. In view of the foregoing, the Single Judge took note of the wording of clause 4 of the agreement, which established that the Respondent shall pay a penalty of 10% and interest at the rate of 10% would apply, if following the due date of the instalments, the Claimant put in default the Respondent with a 15-days deadline in order for the Respondent to fulfil the payment; and the Respondent does not pay the amount requested within the provided deadline.
21. The Single Judge observed that the Claimant sent an e-mail to the Respondent on 22 February 2023. However, in accordance with the wording of the mentioned e-mail, it appears that the Claimant was coordinating with the Respondent the payment of the last instalment, as in fact alleged by the Respondent. Moreover, the Single Judge highlighted that a deadline of 15 days was not indicated in the message sent by the Claimant in such occasion. The Single Judge concluded thus that a default notice was not provided prior to the present claim, and the e-mail sent by Claimant to the Respondent could not be deemed to have met the conditions set forth by clause 4 of the agreement.
22. In view of the foregoing, the Single Judge concluded that the conditions indicated in the clause 4 of the agreement were not met and the penalty of 10% and interest at the rate of 10% are not applicable.
23. Lastly, 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 standard interest on USD 364,000 at the rate of 5% p.a. as of 28 February 2023 until the date of effective payment.

## ii. Compliance with monetary decisions

24. 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.
25. 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.
26. 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.
27. 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.
28. 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

29. 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 only in part accepted, the Single Judge concluded that the costs of the proceedings before FIFA shall be split between the parties. According to Annexe 1 of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to USD 25,000.

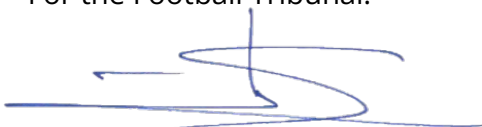
31. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of CHF 25,000 and concluded that said amount has to be paid by the Claimant and the Respondent in order to cover the costs of the present proceedings, in the following manner: USD 5,000 payable by the Claimant, which was offset against the advance of costs paid at the start of the proceedings, and USD 20,000 payable by the Respondent.
32. Lastly, the Single Judge concluded the 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, Club Atlético Independiente, is partially accepted.
2. The Respondent, Sport Club Internacional, must pay to the Claimant the following amount:
  - **USD 364,000 as outstanding remuneration** plus 5% interest *p.a.* as from 28 February 2023 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. 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.
6. 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.
7. The final costs of the proceedings in the amount of USD 25,000 are split between the parties and shall be paid to FIFA in the following manner:
  - a) USD 5,000 by the Claimant. As the Claimant already paid the amount of USD 5,000 to FIFA as advance of costs at the start of the proceedings, no further amount is to be paid as procedural costs.
  - b) USD 20,000 is to be paid by the Respondent (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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