

Decision of the Players' Status Chamber

passed on 15 August 2023

regarding a contractual dispute concerning the player Jorge Nicolas Figal

BY:

Angélica ISLAS (Mexico)

CLAIMANT:

CA Independiente, Argentina

RESPONDENT:

Inter Miami CF, USA

I. Facts of the case

1. On 15 January 2020, CA Independiente (Independiente) and Major League Soccer (MLS) an agreement (the "*Independiente-Miami Transfer Agreement*") by which the player Jorge Nicolas Figal ("the Player") to the MLS (in favour of Inter Miami FC) in exchange for a transfer fee of USD 2,500,000.
2. The relevant transfer instruction (TMS Ref. 280497) performed a transfer from Independiente to Inter Miami CF.
3. Art. 3 of the "*Independiente-Miami Transfer Agreement*" stipulated the following:

"3. Future Transfer. MLS and the Club agree that in the event MLS permanently transfers the registration of the Player to another football club that is not in membership of MLS (save for any transfer to the Club) for a fee (the "Future Transfer"), MLS shall pay the Club a sum equal to Fifty Percent (50%) of the excess (if any) of the initial guaranteed and conditional transfer fees received directly by MLS from the Future Transfer (i.e., excluding any future sell-on sums in respect of which the Club shall have no entitlement) over the total of: (a) all sums paid and/or due to be paid to the Club under this Agreement; and (b) all fees and costs incurred by MLS in the acquisition and disposal of the registration of the Player, including intermediary fees.

Where such fees are received in installments, MLS will pay the Club proportionately following receipt of each installment. Payment of any sum due to the Club under this Section shall be made within thirty (30) business days of the later of the date of receipt of funds by MLS and the date on which a valid invoice from the Club is received by MLS."
4. Within this context, and following TMS, MLS and the player concluded an **employment contract** valid as from 15 January 2020 until 31 December 2023, for the following remuneration:

Start Date	End Date	Compensation	Estimated per season:
15 January 2020	31 December 2020	USD 41,666.67 per month	USD 500,000.04
1 January 2021	31 December 2021	USD 50,000.00 per month	USD 600,000.00
1 January 2022	31 December 2022	USD 58,333.33 per month	USD 699,999.96
1 January 2023	31 December 2023	USD 75,000.00 per month	USD 900,000.00
5. On 21 January 2022, MLS and Boca Juniors concluded a transfer agreement (the *Miami-Boca Transfer Agreement*) for the amount of USD 3,285,000, payable as follows:
 - USD 1,139,000 on or before 28 February 2022
 - USD 416,650 on or before 31 August 2022
 - USD 1,194,500 on or before 28 February 2023
 - USD 534,850 on or before 31 August 2023
6. Accordingly and following TMS (470177), the player transferred from Inter Miami CF to Boca Juniors.
7. Within this context, on 21 January 2022 the player and MLS concluded a **settlement agreement** in the light of his transfer to Boca Juniors, by means of which the player's contract with MLS was terminated.
8. Accordingly, the MLS accepted to pay to the player, the following amounts (subject to the player's transfer to Boca Juniors):
 - All outstanding amounts arisen until the date of the settlement

- USD 116,666.67 on 31 March 2022
 - USD 175,000 on 30 June 2022
 - USD 175,000 on 30 September 2022
 - USD 175,000 on 15 December 2022
 - USD 225,000 on 31 March 2023
 - USD 225,000 on 30 June 2023
 - USD 225,000 on 30 September 2023
 - USD 225,000 on 15 December 2023
 - Total: USD 1,567,666.67
9. On 29 August 2022, Independiente sent a letter to the MLS, asking to confirm the value of the transfer to Boca Juniors. In its letter, Independiente estimate a value of USD 3,285,000, meaning that *"the amount corresponding to [Independiente] would be USD 392.500.- (USD 3.285.000.- minus USD 2.500.000.- equal to USD 785.000.- / 2 = USD 392.500.-)."*
10. On 3 November 2022, MLS sent a letter in reply to Independiente, indicating the following:
"MLS is not due to make any payment to CAI under the Future Transfer section of the CAI Transfer Agreement, as the amount received by MLS does not exceed the total of (a) the amount paid to [Independiente]; and (b) the costs incurred by MLS in the payments made to Mr. Figal. Specifically, MLS paid [Independiente] a total transfer fee of U.S.\$2,500,000 and will incur a total cost of U.S.\$1,541,666.67 in payments made to Mr. Figal, for a total of U.S.\$4,041,666.67. This amount exceeds the guaranteed transfer fees that will be received by MLS under the Boca Juniors Transfer Agreement, which is U.S.\$3,285,000, and thus no amount remains that is subject to the future transfer percentage due to [Independiente]."
11. On 7 November 2022, Independiente sent a letter to the MLS, and rejected the position of the latter. In particular, Independiente underlined that *"the payment allegedly made to the player is not covered by [the relevant clause]."* Independiente explained that this *"it is not a cost incurred in the disposal of the player's registration, has no legal or customary basis (contrary to other countries were the player is indeed entitled to a percentage of the transfer fee) and represents approximately 48% of the total transfer fee and was made with full knowledge and thoughtlessness of or sell on fee agreement between the MLS and Independiente."*

II. Proceedings before FIFA

12. On 15 June 2023, CA Independiente lodged a claim before the FIFA Football Tribunal for outstanding sell-on fee and requested the payment of USD 392,500, which represents 50% of the surplus from the player's transfer to Boca Juniors, plus 5% interest p.a.

13. Independiente detailed its request as follows:

Transaction	Amount (USD)
A. Transfer from Independiente to Inter Miami	2,500,000
B. Transfer from MLS to Boca Juniors	3,285,000
C. Surplus (B-A)	785,000
D. 50% of Surplus (50% of C)	392,500

14. Independiente considered that the interpretation made by MLS in its default letter is in bad faith, since the agreement with the player was not part of the official transfer agreement.

15. The Claimant referred to CAS jurisprudence, stating that the sell-on clause should be interpreted according to the real intent of the parties, and any ambiguity should be interpreted against the party that drafted the clause.

16. In its reply, the Respondent rejected the claim of the player.

17. The Respondent considered that the claim does not fall within the scope of art. 12 bis, since *"there is a clear contractual dispute between the parties as to whether the Alleged Sell-On Debt has fallen due"*.

18. The Respondent acknowledged that, even if the transfer agreement was signed by the MLS, it was standing to be sued as it is its ultimate beneficiary.

19. The Respondent also explained that the player was contractually entitled to 10% percent of the transfer fee received by the Respondent in connection with the CABJ Transfer, by virtue of the terms of the Collective Bargaining Agreement which is in force in the USA between MLS and the MLS Players' Association.

20. The Respondent provided its own calculation, as follows:

A. Amounts received from Boca Juniors	Reason:
USD 3,285,000	Transfer fee
Subtotal:	
USD 3,285,000	
Amounts paid	
a. USD 2,500,000	Transfer fee
b. USD 1,541,666.67	Settlement agreement
c. USD 328,500	CBA Payment
Subtotal (a+b+c):	
USD 4,370,166.67	
TOTAL (A-B)	
1,085,166.67	

21. Given the above table, the Respondent considered that no surplus was generated, and therefore no sell-on fee is due.
22. In relation to the sell-on clause, the Respondent considered that an objective reading of the provision can only lead to the conclusion that that the Respondent is entitled to deduct from any transfer fee received by it in connection with the Future Transfer, all fees and costs incurred by it in order to: i) acquire the Player's registration; and ii) dispose of the Player's registration.
23. In the opinion of the Respondent, the applicable clause has been deliberately drafted in an open-ended and all-encompassing manner (expressly including all fees and costs in connection with the Respondent's acquisition and disposal of the Player's registration), because the parties did not know at the time of entering into the Transfer Agreement what costs it would be required to incur upon the potential future transfer and the Respondent wanted to ensure that it was not left out of pocket.
24. As to the interpretation of the clause, the Respondent referred, *inter alia*, to the CAS Award 2016/A/4790, according to which "*in accordance with Swiss law, where the mutual intention of the parties cannot be ascertained from the wording of a clause alone, interpretation is to be carried out in accordance with the principle of good faith and by reference to what a reasonable man would objectively have understood the disputed provision to mean.*"
25. In his *replica*, the Claimant insisted that it complied with the procedural requirements of art. 12 bis RSTP.
26. The Claimant considered that the Respondent was in bad faith in relation to its duty of information.
27. According to Independiente, the payments to the player based on the settlement agreement cannot be considered a deductible cost, since only costs directly related to the transfer of the player should be considered as such.
28. Independiente considered that the principle of *in dubio contra stipulatorem* shall be taken into account.
29. Independiente accepted, however, the 10% deduction paid to the player in accordance with the collective bargaining agreement.
30. Hence, Independiente amended its claim as follows:
- | Transaction | Amount (USD) |
|---|--------------|
| A. Transfer from Independiente to Inter Miami | 2,500,000 |
| B. Transfer from MLS to Boca Juniors | 3,285,000 |
| C. 10% entitled to the player | 328,500 |
| D. Surplus (B-A-C) | 456,500 |
| E. 50% of Surplus (50% of D) | 228,500 |
31. In its *duplica*, the Respondent insisted in its previous arguments.

32. In particular, the Respondent asserted that the costs of the settlement agreement can be deducted as a cost incurred in the disposal of the Player's registration. The Respondent insisted that said amounts were due to facilitate the player's transfer and should be considered as a cost incurred in the disposal of the player's registration, not as an employment cost.
33. The Respondent insisted that no overdue payables are due to the Claimant and requested the dismissal of the claim, as well as the payment of the procedural costs by Independiente.

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 *the Judge* or *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 15 June 2023 and submitted for decision on 15 August 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.
2. Subsequently, the 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 (March 2022 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns a disputes between clubs belonging to different associations.
3. Subsequently, the Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she 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 15 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

4. The 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 Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it 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. Her competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Judge emphasised that in the following considerations she will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

6. The Single Judge noted that the matter at stake concerns a claim for a sell-on fee consisting in 50% of *"of the excess (...) of the initial guaranteed and conditional transfer fees received directly by MLS from the Future Transfer (...) over the total of: (a) all sums paid and/or due to be paid to the Club under this Agreement; and (b) all fees and costs incurred by MLS in the acquisition and disposal of the registration of the Player."*
7. On this note, the Single Judge also observed that the parties do not contest that the conditions triggering the sell-on are due. However, the Single Judge also observed that the Respondent considered that no excess occurred since it argued that it paid USD 1,541,666.67 to the player for the termination of its employment contract. In the opinion of the Respondent, this amount shall be considered within the scope of the applicable sell-on clause, i.e. as *"all fees and costs incurred by MLS in the acquisition and disposal of the registration of the Player"*.
8. As a first remark, the Judge noted that the aforementioned clause refers to costs *"related to the acquisition and disposal of the registration of the player"*.
9. In this regard, the Judge wished to point-out that, in the usual football practice, transfer costs are expenses directly related to the acquisition of a player's registration, including transfer fees, taxes, agent fees, and other ancillary costs incurred during the transfer process. These expenses are directly associated with the player's movement from one club to another.
10. On the other hand, the Judge also highlighted that labour costs refer to the player's salaries, bonuses, and other remuneration paid to the player during the course of his employment with a club. These costs compensate the player for his services on the field and are not directly tied to the transfer process.
11. Therefore, while keeping this distinction in mind, labour costs, which are due to remunerate the player for his work, should not be included in a calculation that fundamentally relates to transfer costs. In the opinion of the Judge, the relevant clause fundamentally covers transfer fees, in the sense that was explained above.
12. Indeed, the Judge observed that employment relationship between the player and the club is separate from the transfer process itself, and the labour costs associated with it should not be considered into the sell-on fee calculation.
13. In this regard, the amounts agreed to be paid by the Respondent to the player as per the settlement agreement fundamentally represent the amounts he would have received should the labour contract had expired under its normal term (i.e. for the seasons 2022 and 2023, the player would have earned USD 1,600,000, while the settlement agreement is valued in approx. USD 1,567,666.67). The Judge considered this to be an indicator of the employment-related nature of the settlement agreement. In other word, the sums mentioned in the settlement agreement appear to be labour costs.

14. Therefore, in the opinion of the Judge, the settlement agreement payments made by the club (via MLS) to the player, as part of the employment relationship termination, should not be considered deductible costs for the sell-on fee calculation. These payments are related to labour costs and do not fall under the scope of expenses that the sell-on fee intends to cover. As a result, the Single Judge considered that Respondent's argument cannot be followed and the costs mentioned in the settlement agreement cannot be deducted.
15. Subsequently, the Judge moved on to consider the Respondent's allegation that it deducted 10% by virtue of the local Collective Bargaining Agreement (CBA).
16. In relation to said deduction, the Judge observed that the Claimant acknowledged that this deduction was legitimate, and therefore she accepted the Respondent's argument in this regard. Nevertheless, the Single Judge wished to emphasize that that, although payable to the player, this is not an employment-related fee.
17. In view of the above, the Single Judge analysed the information on file and the position of the parties, and concluded that the calculation provided by the Claimant in his *replica* appears to be correct, in accordance with the following table:

Transaction	Amount (USD)
A. Transfer from Independiente to Inter Miami	2,500,000
B. Transfer from MLS to Boca Juniors	3,285,000
C. 10% entitled to the player	328,500
D. Surplus (B-A-C)	456,500
E. 50% of Surplus (50% of D)	228,500

18. In view of the above, the Single Judge established that the Claimant is in principle entitled to USD 228,500. Such fee is to be paid in the proportion of the instalments foreseen in the *Miami-Boca Transfer Agreement*. Given that this agreement foresees the amount of USD 3,285,000, payable as follows, the Judge understood that it is necessary to understand the relative proportion of each instalment:

Installment Due Date	Amount (USD)	Percentage of Total Amount
28 February 2022	1,139,000	34.67%
31 August 2022	416,650	12.70%
28 February 2023	1,194,500	36.40%
31 August 2023	534,850	16.32%
Total	3,285,000	100.00%

19. Subsequently, and following the applicable agreement, the Single Judge decided to distribute the awarded amount of USD 228,500 following said percentages. In addition, the Single Judge noted that said amounts were due 30 days after the listed dates.

20. All in all, the Single Judge established the following table, which summarizes and clarified the final due amount:

Due Dates	Percentage of Total Amount	
30 March 2022	34.67%	USD 79,153.95
30 September 2022	12.70%	USD 29,011.50
30 March 2023	36.40%	USD 83,206.00
30 September 2023	16.32%	USD 37,128.55
Total	100.00%	USD 228,500.00

21. However, in relation to the aforementioned table, the Single Judge wished to clarify that, at the date of its decision, the amount of USD 37,128.55, due on 30 September 2023, is premature.
22. Therefore, the Single Judge observed that only the three first instalments as listed in the table can be awarded, for a total sum of USD 191,381.45.
23. Hence in application of the principle of *pacta sunt servanda*, the Single Judge established that the Respondent shall pay to the Claimant the outstanding amount of USD 191,381.45.
24. In addition, taking into account the request of the Claimant as well as the longstanding jurisprudence of the Football Tribunal in this regard, the Judge decided to award 5% interest p.a. over said amount as from the due dates.

ii. Compliance with monetary decisions

25. 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.
26. 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.
27. 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.

28. 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.
29. 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.

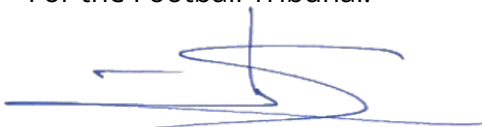
d. Costs

30. 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.
31. Taking into account that the claim of the Claimant has been accepted to a considerable extent, the Single Judge concluded that the costs of the proceedings before FIFA shall be split between the parties. According to Annexe A 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.
32. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 25,000 and concluded that said amount has to be paid by the parties in order to cover the costs of the present proceedings, in the following manner: USD 5,000 payable by the Claimant and USD 20,000 payable by the Respondent.
33. Lastly, the Judge concluded her 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, CA Independiente, is partially accepted.
2. The Respondent, Inter Miami CF, must pay to the Claimant the following:
 - **USD 191,381.45 as outstanding amount** plus interest *p.a.* as follows:
 - 5% interest p.a. over the amount USD 79,153.95 of as from 31 March 2022 until the date of effective payment;
 - 5% interest p.a. over the amount USD 29,011.50 of as from 30 September 2022 until the date of effective payment;
 - 5% interest p.a. over the amount USD 83,206 of as from 31 March 2023 until the date of effective payment;
3. Any further amount is premature.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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.
7. 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.
8. 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 due.
 - b) USD 20,000 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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