

Decision of the Dispute Resolution Chamber

passed on 28 July 2023

regarding an employment-related dispute concerning
the player John Steven Mendoza Valencia

BY:

Angela COLLINS (Australia)

CLAIMANT:

John Steven Mendoza Valencia, Colombia
Represented by Evandro Luis Rezende Forte

RESPONDENT:

Ceará Sporting Club, Brazil

I. Facts of the case

1. On 27 February 2021, the Colombian player John Steven Mendoza Valencia (hereinafter: the Claimant or the player) and the Brazilian club Ceará Sporting Club (hereinafter: the Respondent or the club) concluded a "Instrumento Particular de Pré- Contrato de Trabalho de Atleta Profissional de Futebol e Outras Avenças" (hereinafter: *the Pre-Contract*).

2. Art. 2 of the Pre-Contract reads as follows:

2.1. The Future Sports Contract must be signed as required by CBF, in compliance with the special legislation that governs the activity of professional football players and the regulations of FIFA and CBF, containing the following conditions:

2.2.

I - MONTHLY REMUNERATION: to be paid by CEARÁ or authorized third parties, including salaries and image rights of a civil nature, directly and/or made possible through external sponsors, the PLAYER will receive the gross value of R\$ 300,000.00 in the period that begins on 10.03.2021 until 31.12.2021;

II - MONTHLY REMUNERATION: to be paid by CEARÁ or authorized third parties, including salaries and image rights of a civil nature, directly and/or made possible through external sponsors, the PLAYER will receive the gross value of R\$ 320,000.00 in the period that begins on 01.01.2022 until 31.12.2022;

III - MONTHLY REMUNERATION: to be paid by CEARÁ or authorized third parties, including salaries and image rights of a civil nature, directly and/or made possible through external sponsors, the PLAYER will receive the gross value of R\$ 340,000.00 in the period that begins on 01.01.2023 until 31.12.2023;"

IV – The PLAYER will be entitled, as a bonus for signing the Special Sports Work Contract, to the amount of R\$ 3,239,000.00, being the amount of R\$ 1,239,000.00 due upon signature of the Special Sports Employment Contract, and the remainder divided into 5 (five) equal installments of R\$ 400,000.00 each, with maturities on 09.30.2021, 12.31.2021, 03.31.2022, 09.30.2022, 12.31.2022. In the event of definitive assignment of the athlete to another sports association before the expiration of the last installment, that is, 12.31.2022, the installments due will remain automatically settled, and this title will no longer be due to the PLAYER.

3. On 3 March 2021, the parties and the company Speed Sports20 Ltda (hereinafter: *the Contracted*) entered into the "Contrato de Cessão de Uso de Imagem" (hereinafter: *the IR Agreement*)

4. Art. 8 of the IR Agreement reads as follows:

cession of rights and authorization for the exclusive use of the image of the PLAYER, the amount of R\$ 120.000,00, to be paid until the 30th (thirty) day of the following month to the cession of the image, in the period that starts in 10.03.2021 to 31.12.2021.

08.1 The CONTRACTOR will pay to the CONTRACTED, monthly, for the cession of rights and

authorization for the exclusive use of the image of the PLAYER, the amount of R\$ 128,000.00, to be paid until the 30th (thirty) day of the following month to the cession of the image, in the period that starts in 01.01.2022 to 31.12.2022.

08.2 The CONTRACTOR will pay to the CONTRACTED, monthly, for the cession of rights and authorization for the exclusive use of the image of the PLAYER, the amount of R\$ 136,000.00, to be paid until the 30th (thirty) day of the following month to the cession of the image, in the period that starts in 01.01.2023 to 31.12.2023."

5. Art. 9 of the IR Agreement reads as follows:

9. The CONTRACTED shall be entitled to receive R\$ 3,329,000.00 as payment for the signing on fee of the contract, to be paid as follows:

(i) R\$ 1,239,000,00 when the PLAYER signs the Special Sports Employment Contract with CEARÁ;

(ii) R\$ 2,000,000.00 in five equal instalments of R\$ 400,000.00 each, to be paid on 30.09.2021, 31.12.2021, 31.03.2022, 30.09.2022 and 31.12.2022."

6. On 8 March 2021, the parties signed the "Contrato Especial de Trabalho Desportivo" valid for a term as from 10 March 2021 until 31 December 2023 (hereinafter: *the Employment Contract*).

7. Art. 1 of the Employment Contract reads as follows:

1. MONTHLY SALARY REMUNERATION

a) The player's monthly remuneration for the period between 10.03.2021 and 31.12.2021 will be the amount of R\$ 180,000;

b) The player's monthly remuneration for the period between 01.01.2022 and 31.12.2022 will be the amount of R\$ 192,000;

c) The player's monthly remuneration for the period between 01.01.2023 and 31.12.2023 will be the amount of R\$ 204,000;"

8. On 8 December 2022, the Claimant, the Respondent and the company Speed Sports20 Ltda concluded an image rights termination agreement (hereinafter: *the Termination Agreement*).

9. The Termination Agreement reads *inter alia* as follows:

WHEREAS:

a) The parties, based on the legally stipulated precepts, entered into an image use agreement on 3 March 2021.

b) Due to the transfer of the PLAYER to another sports club, the parties wish to terminate the mentioned agreement of image use.

[...]

2. Considering the termination of the Contract for the Assignment of Image Use of the PLAYER, the CONTRACTOR and the CONTRACTED, the CONTRACTOR and the CONTRACTED have signed the present agreement for the payment of overdue debts owed by the CONTRACTOR to the CONTRACTED party, under the following terms and conditions:

3. As a result of the end of the contract, the contracting parties agree to the obligation of the CONTRACTOR to pay the CONTRACTED the amount of R\$ 400,000.00 to be paid in a single instalment due on 15/12/2022, occasion in which, having the referred payment, the parties, from one part to the other, give a full, complete and irrevocable release of the terms of the Contract for the Assignment of Image Use, and there is nothing more to claim from the accomplishment of the mentioned contract, not being able to charge it in any action or even any procedural procedure against each other. It is also understood that this Term shall be interpreted as an extrajudicial agreement granting the full discharge, for both parties, of all other obligations relating to the contract of use of the image of Mr John Steven Mendoza Valencia.

[...]

5. In case of delay in payment defined in clause 3 above more than 5 (five) days, the CONTRACTED shall notify the CONTRACTOR when it will be due a fine of 2% (two per cent), interests of 1% per month calculated pro rata die, and indexation by the IGP-M of FGV until the date of payment.”

10. On 26 December 2022, the Claimant sent a default notice to the Respondent requesting the payment of BRL 1,218,406.34 within 5 days.

II. Proceedings before FIFA

11. On 14 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

12. On 14 June 2023, the Claimant lodged a claim in the following terms.

13. The Claimant sustains that the IR Contract “is nothing more than a complementation of the remuneration that the Club undertook to pay to the Player exactly and only during the period under which the latter undertook to provide services as professional football player”.

14. The Claimant underscores that the provisions of the Pre-contract foresee the payment of the Claimant’s remuneration via two different instruments: (a) the Employment Contract; and (b) the Image Contract.

15. when the Parties sign the Employment Contract, the Image Contract and, afterwards, the Termination Agreement they simply confirm the intention of the Parties which had already been consolidated when they signed the Precontract.

16. The Claimant refers to the FIFA Commentary and concludes that the Employment Contract and the IR Contract fully comply *"with most of the provisions listed above: (a) same parties; (b) similar remuneration; (c) same duration; and (e) interdependency between them."*
17. Regarding the two contracts, the Claimant emphasises that:
- The remuneration is *"strictly connected"* as per the terms of the Pre-Contract
 - The remuneration under the IR Contract constitutes 40% of the player's total remuneration.
 - Art. 9 of the IR Contract contains a sign on fee
 - Both contracts have the same duration and had been terminated with the player's transfer to Santos
18. The Claimant concludes that *"all contracts referred above were developed because and due the labour relationship that for while existed between the Parties. Within these circumstances, it is undisputed that the provisions set out in the Image Contract and, subsequently, the Termination Agreement are employment-related, which means that the members of the FIFA DRC have jurisdiction to hear any dispute arisen from them"*.
19. The Claimant claims that he has not been paid the amount as per the Termination Agreement and he is entitled to the amount and the contractual penalty stated therein.
20. The Claimant filed the following requests for relief:
- FIRST – To uphold the present claim in full;*
- SECOND – to confirm that the Club breached the Termination Agreement;*
- THIRD – To order the Club to pay the Player BRL 400,000 (four hundred thousand Brazilian reais), plus default interest at a rate of 1% (one per cent) monthly from 16 December 2022 until the effective date of payment;*
- FOURTH – To order the Club to pay the Player BRL 8,000 (eight thousand Brazilian reais) due as a penalty, plus default interest at a rate of 1% (one per cent) monthly, from 16 December 2022 until the effective date of payment;*
- FIFTH – To open the proceedings regarding the present dispute and notify the Club immediately; and*
- SIXTH – To confirm that the ongoing proceedings are free of any costs.*

b. Position of the Respondent

21. Despite being invited to submit its position, the Respondent failed to reply to FIFA.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

22. First of all, the Single Judge (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 14 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 Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
23. 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. b) of the Regulations on the Status and Transfer of Players (May 2023), she is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Colombian player and a Brazilian club.
24. Subsequently, the Single 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 14 June 2023, the same edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

25. 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.

c. Admissibility

26. The Single Judge noted that the present matter involves several contractual agreements, in particular, the Pre-Contract, the IR Agreement, the Employment Contract and the Termination Agreement.
27. In this regard, the Single Judge recalled that, as a general rule, if there are separate agreements, the DRC tends to consider the agreement on image rights as such and does not have the competence to deal with it. However, such conclusion might be different if specific elements of the separate agreements suggest that it was in fact meant to be part of the actual employment relationship. In the case at hand, such elements appear to exist since the different agreements are intimately intertwined. Firstly, the remuneration agreed in the Pre-Contract, matches the amounts to be paid under the Employment Contract and the IR Agreement. Secondly, the Employment Agreement and the IR Agreement have the same duration, and both were terminated concomitantly.

28. Based on the above, the Single Judge determined that all agreements between the parties are to be considered part of the employment relationship, and thus that all documents should be entertained together, and the claim is therefore admissible.

d. Merits of the dispute

29. Her 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.

i. Main legal discussion and considerations

30. Preliminarily, the Single Judge established that the Respondent, for its part, had failed to present its response to the claim of the Claimant, in spite of having been invited to do so. Consequently, the Single Judge deemed that the Respondent had renounced to its right of defence and, thus, had accepted the allegations of the Claimant.

31. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Claimant request the payment of certain financial obligations by the Respondent as per the Termination Agreement.

32. In this context, the Single Judge acknowledged that her task was to determine, based on the evidence presented by the parties, whether the claimed amounts 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. The Single Judge underscored that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, the Single Judge noted the Respondent has failed to reply to the claim and challenged the Claimant's allegations.

34. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Termination Agreement, namely BRL 400,000 which was payable on 16 December 2022 based on art. 3 of the aforementioned contract.

35. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 1% per month 16 December 2022 until the date of effective payment.

36. Furthermore, the Single Judge confirmed that the parties had agreed a penalty clause in art. 5 of the Termination Agreement. In this respect, the Single Judge deemed that the said clause is fair and proportionate considering the circumstances of the case and shall therefore be applied. Consequently, the Single Judge decided that the Respondent shall pay BRL 8,000 as contractual penalty plus default interest at a rate of 1% per month from 16 December 2022.

ii. Compliance with monetary decisions

37. 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 her 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.
38. 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.
39. 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.
40. 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.
41. 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.

e. Costs

42. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which "*Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent*". Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
43. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.
44. Lastly, the Single Judge concluded her deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, John Steven Mendoza Valencia, is partially accepted.
2. The Respondent, Ceará Sporting Club, must pay to the Claimant the following amount(s):
 - **BRL 400,000 as outstanding amount** plus default interest at a rate of 1% per month from 16 December 2022 until the effective date of payment;
 - **BRL 8,000 as contractual penalty** plus default interest at a rate of 1% per month from 16 December 2022 until the effective date of 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. 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 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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