

# Decision of the Players' Status Chamber

passed on 17 July 2023

regarding a contractual dispute concerning  
the player Malcom Filipe Silva De Oliveira

**BY:**

**Thulaganyo GAOSHUBELWE (South Africa), Single Judge**

**CLAIMANT:**

**FC Barcelona, Spain**

**RESPONDENT:**

**FC Zenit St Petersburg, Russia**

## I. Facts of the case

1. On 1 August 2019, the Spanish club FC Barcelona (hereinafter: the *Claimant*) and the Russian club FC Zenit St Petersburg (hereinafter: the *Respondent*) concluded a transfer agreement (hereinafter: *the Agreement*) by means of which the services of the Brazilian player Malcom Filipe Silva de Oliveira (hereinafter: *the Player*) was transferred on a permanent basis from the Claimant to the Respondent.
2. Pursuant to clause 3.2.2.2. (i) of the Agreement, the Parties agreed a contingent transfer compensation (hereinafter: *the Qualification Bonus*) subject to the following conditions:

### *"3.2.2. Contingent transfer compensation*

*In addition to the Fixed Transfer Fee, the [Respondent] will pay to FC BARCELONA, by way of contingent transfer compensation, the maximum aggregate sum of FOUR MILLION NINE HUNDRED THOUSAND (4.900.000 €) EUROS payable in accordance with the amounts and what is set out below. For purposes of the Agreement, Contingent Transfer Compensation shall mean Appearance bonus, Qualification Bonus and Title/Performance Bonus as described below.*

*[..]*

### *3.2.2.2. Qualification Bonus*

*i. FOUR HUNDRED NINETY THOUSAND (490.000 €) each time the [Respondent] either effectively participates or has obtained, by means of its sporting results, the right to participate in the UEFA Champions League Group Stage, PROVIDED that the Player appears for the [Respondent] on the match list in 50% or more of the matches played in the Russian championship (RPL) of the season which leads the [Respondent] to the UEFA Champions League Group Stage.*

*[..]*

*[..]*

*Should any of the above and below mentioned payments not be paid in due time, the [Respondent] shall also be liable to pay statutory interest of 5% per annum over the outstanding amounts until full and final payments and this without the need of a formal notice by FC BARCELONA.*

*[..]"*

3. In February 2022, the Russian Federation launched an armed invasion in Ukraine.
4. On 2 May 2022, the UEFA Executive Committee excluded Russian clubs from participating in the 2022/2023 edition of the UEFA Champions League.

5. At the end of the 2021/22 sporting season, the Respondent ranked 1<sup>st</sup> in the Russian Premier League (RPL). In this context, the Player participated in 24 official matches with the Respondent's team, i.e., more than 50% of the total of the games played during the season.
6. On 14 September 2022, the Claimant's representatives contacted the Respondent asking when the overdue payables under clause 3.2.2.2. (i) of the Agreement would be paid. The Claimant argued that since the Respondent won the RPL, it would in principle be entitled to participate in the UEFA Champions League Group Stage.
7. On 15 September 2022, the Respondent replied that the conditions established under the abovementioned clause had not been fulfilled since the UEFA Executive Committee confirmed the ongoing effect of the suspension of Russian representative clubs from participation in UEFA competitions due to the war in Ukraine.
8. On 17 April 2023, the Claimant sent the Respondent a default notice granting a final deadline of 10 days to pay the outstanding amount of EUR 490,000 in addition to the relevant interest.
9. On 26 April 2023, the Respondent replied that it did not obtain the effective right to participate in the 2022/23 UEFA Champions League Group Stage. Thus, in the Respondent's view, clause 3.2.2.2. (i) of the Agreement had not been fulfilled and the amount of EUR 490.000,00 was not due to the Claimant.

## **II. Proceedings before FIFA**

10. On 9 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**

11. According to the Claimant, the Respondent failed to comply with its contractual obligations.
12. In particular, the Claimant argued that the Respondent met the requirement for the payment of the Qualification Bonus stipulated under the Agreement, namely as (i) the Respondent team effectively qualified to the UEFA Champions League Group Stage at the end of the season 2021/2022 and (ii) the Player appeared on the relevant match list in 50% or more of the matches played in the RPL during the same season in which the Respondent obtained the qualification to the UEFA Champions League Group Stage.
13. In this context, the Claimant stated that it is irrelevant the fact that UEFA Executive Committee excluded the Respondent from the UEFA Champions League, namely as the

said disqualification occurred as extraordinary measure and was not related to the sporting performance of the Respondent.

14. Accordingly, the Claimant argued that the Respondent *"has obtained, by means of its sporting results, the right to participate in the UEFA Champions League Group Stage"*, hence it shall pay the Claimant the relevant bonus as in line with the wording of the Agreement.
15. In this respect, the interpretation of the clause 3.2.2.2. (i) of the Agreement by the Claimant is that the payment obligation does not derive exclusively from the effective participation of the Respondent in the UEFA Champions League Group Stage but also by simply obtaining the right to participate by means of the sporting merit. Thus, in the Claimant's view, the Qualification Bonus payment is triggered either if one of the abovementioned condition has been met and not cumulatively.
16. In conclusion, the Claimant demanded the payment of EUR 490,000 by the Respondent, plus 5% interest as from the 45<sup>th</sup> day following the qualification event, i.e., 14 June 2022.

#### **b. Position of the Respondent**

17. In its reply, the Respondent contested the Claimant's arguments by stating that the scope of the clause stipulated by the parties regarding the Qualification Bonus was indeed to grant the Claimant an opportunity to participate in the revenues that the Respondent would have received from UEFA when reaching the UEFA Champions League Group Stage.
18. In this respect, the Respondent argued that it would have never agreed to the payment of the Qualification Bonus to the Claimant if unable to participate in the UEFA Champions League Group Stage, as only through an actual participation in the mentioned competition the Respondent would have obtained the referred financial benefits.
19. Furthermore, the Respondent argued that UEFA Executive Committee passed the relevant decision to exclude all Russian clubs from its competitions way before the Respondent had qualified for any UEFA competition during the season 2021/2022, hence the Respondent has never obtained the right to participate to the UEFA Champions League Group Stage as from the beginning.
20. Accordingly, the Respondent stated that the conditions set under clause 3.2.2.2. (i) of the Agreement have never been triggered, hence the Qualification Bonus never became due.
21. In the Respondent's view, this interpretation of the Agreement shall be preferred as the relevant clause was drafted by the Claimant, hence the principle *"contra proferentem"* shall apply.
22. In this context, the Respondent also invoked the principle of estoppel in relation to the conduct held by the Claimant, since the latter waited for 7 months before replying to the

Respondent's letter where it was expressly stated that the conditions for the payment of the Qualification Bonus had not been met, hence the Respondent's position appeared as accepted by the Claimant.

23. In view of 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**

24. 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 9 May 2023 and submitted for decision on 17 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.
25. 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.
26. 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 9 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**

27. 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**

28. 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**

29. 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 Qualification bonus of EUR 490,000.
30. 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.
31. 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 490,000 as rewarding bonus for the qualification of the Respondent to the UEFA Champions League Group Stage and upon the condition that the Player had appeared on the relevant match list in 50% or more of the matches played in the RPL during the same season in which the Respondent had obtained the said qualification.
32. In continuation, the Single Judge noted that according to clause 3.2.2.2. (i) of the Agreement, the relevant bonus would be payable *“each time the [Respondent] either effectively participates or has obtained, by means of its sporting results, the right to participate in the UEFA Champions League Group Stage”*.
33. In this context, the Single Judge recalled that the parties also dispute the interpretation of the mentioned clause, namely on whether this shall be interpreted as subjecting the relevant bonus to the actual participation of the Respondent to the competition, or merely to the acquisition by the latter of the right to participate in such competition by means of sporting merit.
34. In respect to the interpretative quarrel, 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 observe 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.

35. 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, subjecting the payment of the aforementioned bonus to the effective participation of the Respondent to the relevant competition. In the Single Judge's view, this is in line with the scope typically assigned to such clauses, i.e., to allow the releasing club to benefit from the positive sporting results that their former player procured to the engaging club. The Single Judge recognizes that the sporting achievements of the player might have a different impact when parties agree upon conditional bonuses related to earning titles, but this was not the case of the Qualification Bonus.
36. Accordingly, the Single Judge determined that even if in the case at stake the clause was not sufficiently clear, having the new club (i.e., the Respondent) been prevented from participating to the relevant competition and having obtained no benefits thereto connected, the essential condition set under 3.2.2.2. (i) of the Agreement was not triggered, hence the Qualification Bonus would not be payable. The Single Judge found that deciding differently would be against the purpose of the Qualification Bonus, in that the Respondent would be obliged to share an economical profit which it never obtained in the first place.
37. Furthermore, the Single Judge wished also to emphasize that the Respondent held no liability for the fact of being excluded from the UEFA Champions League, namely as it was consequence of a decision passed by a third body -the UEFA Executive Committee- and taken in relation to facts not directly ascribable to the Respondent (*i.e.*, the war in Ukraine).
38. With the above in mind, the Single Judge decided that the claim of the Claimant shall be rejected.

#### **d. Costs**

39. Finally, the Single Judge referred to art. 25 par. 1 and 2, as well as Annexe 1, of the Procedural Rules, according to which in disputes between clubs, costs in the maximum amount of USD 25,000 are levied.
40. 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.
41. Taking into account that the claim of the Claimant has been rejected, 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 Claimant in order to cover the costs of the present proceedings.

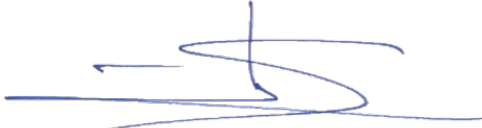
42. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties



#### **IV. Decision of the Players' Status Chamber**

1. The claim of the Claimant, Fútbol Club Barcelona, is rejected.
2. The final costs of the proceedings in the amount of **USD 25,000** 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 20,000 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**

Fédération Internationale de Football Association  
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland  
[www.fifa.com](http://www.fifa.com) | [legal.fifa.com](http://legal.fifa.com) | [psdfifa@fifa.org](mailto:psdfifa@fifa.org) | T: +41 (0)43 222 7777