

Decision of the Players' Status Chamber

passed on 22 June 2023

regarding a contractual dispute concerning
the player Yira Collins SOR

BY:

Christina LABRIE (USA), Single Judge

CLAIMANT:

Club 36 Lion Football Club, Nigeria

Represented by Pedro Macieirinha

RESPONDENT:

FC Baník Ostrava, a.s., Czech Republic

Represented by Berlin Sports Law

I. Facts of the case

1. On 5 February 2021, the Nigerian club, 36 Lion Football Club (hereinafter: *the Claimant*) and the Czech club, FC Baník Ostrava, a.s. (hereinafter: *the Respondent*) concluded a transfer agreement (hereinafter: **the first agreement**) regarding the definitive transfer of the Nigerian player, Yira Collins Sor (hereinafter: *the player*) from the Claimant to the Respondent.

2. Clause 2 of the first agreement reads as follows:

“CONSIDERATION AND BONUSES

2.1 In consideration for the transfer of 100% (one hundred per cent) of the Player’s federative and economic rights, FC BANIK undertakes to pay LION FC 45% of the benefits or percentage that FC BANIK gets from the future transfer of Mr. Collins Sor.

2.1.1. FC BANIK undertakes to pay LION FC half (50%) of the benefits or percentage that FC BANIK gets from the third transfer of Mr. Collins Sor.

2.1.2 The transfer contract includes the settlement of all types of payments associated with the player’s involvement in the parent club, such as training compensation or similar payments that FC BANIK should pay.

*2.2. All the payments due by FC BANIK under this Agreement shall be made to the following bank account upon issuance of a regular invoice:
(...)”*

3. Clause 3 of the first agreement reads as follows:

“TAXATION AND OTHERS

3.1 The Parties agree that (i) all payments due to the LION FC from FC BANIK under this Agreement shall be inclusive of all and any applicable taxes and/or any other applicable changes, and that (ii) FC BANIK shall accordingly not be required to pay LION FC any further sums in respect of such taxes or charges.

3.2 LION FC hereby agrees and declares that all fees here stipulated and agreed upon in this agreement are inclusive of all training compensation fees, transfer fees and or solidarity fees. For avoidance of any doubt, LION FC will not have any further rights to claim any fees of any nature related to player, except for its right to the appropriate percentage of any future transfer from FC BANIK to any other club.”

4. On an unspecified date, the Respondent and the Czech club SK Slavia Praha - fotbal a.s. (hereinafter: *SK Slavia*) concluded a transfer agreement regarding the transfer of the player from the Respondent to SK Slavia (hereinafter: **the second agreement**).

5. Under the second agreement, SK Slavia undertook to paid to the Respondent CZK 20,900,000 as a transfer fee net of solidarity contribution, which could be further increased by a maximum of CZK 5,000,000 depending on the performances of the player. The payment of the transfer fee was agreed as follows:

- CZK 5,500,00 due by 28 February 2022.
- CZK 5,500,00 due by 30 October 2022.
- CZK 5,500,00 due by 28 February 2023.
- CZK 4,400,00 due by 30 October 2023.

6. Article IV.1 of the second agreement reads as follows:

“ The contracting parties further agreed that in the event of any transfer and any loan of a Player from SK Slavia to a third club, [the Respondent] shall be entitled to 19% of the fine difference between (1) the fb transfer amount (without VAT) that SK Slavia will receive for any transfer or any hosting of the Player until the third oak after deducting solidarity payments and (ii) the amount of CZK 40,000,000 increased by other conditional payments according to Article III. of this contract, on the payment of which SK Slavia created the [the Respondent]year and which were paid to SK Slavia [the Respondent] in accordance with this contract. Maturity of the amount/amounts calculated/calculated according to this paragraph only 14 days from the day of proper issuance! tax document, with the fact that [the Respondent] is entitled to issue such a tax document no earlier than the fifteenth day after SK Slavia, in accordance with the second sentence of the following paragraph 2, has fulfilled its obligation to inform [the Respondent] about the payments received.”
(Translation provided by the Claimant)

7. On 28 December 2022, SK Slavia and the Belgian club KRC Genk (hereinafter: *Genk*) concluded a transfer agreement regarding the definitive transfer of the player from SK Slavia to Genk (hereinafter: **third agreement**).

8. Clause 3.1.2 of the third agreement reads as follows:

“The Fixed Transfer Fee is payable according the following payment instalments:

- 2.200.000,00 € (in words: two million two hundred thousand Euros), payable within 15 (fifteen days) from the Issue of the Player's ITC In favour of KRC Genk;
- 2.200.000,00 € (In words: two million two hundred thousand Euros), payable ultimately on January 31st 2024;
- 2.100.000,00 € {in words: two million one hundred thousand Euros), payable ultimately on January 31st 2025.”

9. On 27 February 2023, the Respondent received from SK Slavia the payment of CZK 8,415,605.66, corresponding to the sell-on fee stated in the second agreement, considering that Genk paid SK Slavia the first instalment in accordance with the third agreement.

10. On 1 March 2023, the Claimant issued an invoice to the Respondent in the amount of CZK 4,207,802.83 related to the payment dated 27 February 2023 by SK Slavia, in accordance with clause 2.1.1 of the first agreement.
11. By correspondence dated 3 March 2023, the Claimant put the Respondent in default of payment of CZK 4,207,802.82 related to the payment dated 27 February 2023 by SK Slavia in accordance with clause 2.1.1; setting a 10 days' time limit in order to remedy the default.
12. By correspondence dated 8 March 2023, the Respondent provided the Claimant with the amounts due to the latter in line the first agreement and requested it to verify them. According to the Respondent, the Claimant would be entitled to a total amount of CZK 10,015,018.75 (payable in 3 instalments) corresponding to the sell-on fee received by the Respondent regarding the transfer of the player from SK Slavia to Genk. The Respondent further added that the Claimant would be entitled to CZK 3,477,523 as payment of first instalment.
13. By e-mail, on 15 March 2023, the Claimant replied to the Respondent the following:

"[...] Our lawyer will write [the Respondent] another letter on the invoice 2,475,000.CZK dated on 28/02/2023. It is your simple responsibility to send us a receipt as proof of payment but you said no and [the Claimant] don't know why [the Respondent] did that this time. The time limit of 10 days is over because today is 15th of March 2023 for the payment of 28/02/2023.

Through our lawyer, [the Claimant] will begin to ask for interest of 5% rate as from 28/02/2023 until effective payment is made [...]"

14. On the same date, 15 March 2023, the Respondent replied to the Claimant the following:

"[...] as [the Respondent] informed [the Claimant] we already sent the 3rd payment on your account.

[the Respondent] want to remind [the Claimant] again that the invoice for your part of benefits from third transfer is incorrect and we wait for the correct invoice [...]"

15. On the same date, 15 March 2023, the Claimant replied to the Respondent the following:

"[...] [the Claimant] implore [the Respondent] to send us the telex copy or the swift copy because that is the standard.

Just like [the Claimant] sent [the Respondent] the invoice of 2,475,000 CZK, [the Respondent] are also obliged to send the swift copy, the telex copy or the receipt to us. [the Claimant] cannot just go into the bank without the proof of payment. That is also how the banking system is in Nigeria.

If recall, [the Respondent] sent the last two payments receipt to us and the funds were credited in 48 hours. Now it is over 48 hours and [the Claimant] are waiting.

Our lawyer will write FIFA get the clarification of the 3rd transfer from Slavia to Genk and communicate with [the Respondent] and [the Respondent] lawyer soon [...]".

II. Proceedings before FIFA

16. On 21 March 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

17. According to the Claimant, it is entitled to the payment of the sell-on fee of the the sell-on fee received by the Respondent regarding the transfer of the player from SK Slavia to Genk, in accordance with clause 2.1.1 of the first agreement.

18. In accordance with the Claimant, the Respondent received payment of the sell-on fee in accordance with the second agreement in the amount of CZK 8,415,605.55, from this amount, the Claimant added that it is entitled to 50% in line with the first agreement. To corroborate the payment of the mentioned amount, the Claimant provided as evidence a bank invoice of CZK 8,415,605.55 from SK Slavia to the Respondent.

19. The Claimant requested the following relief:

*"a) to condemn the Respondent Club to pay to the Claimant Club the amount of 4,207,802.82CZK, plus interest at 5% rate since 1 March 2023 until effective payment;
b) all according to the "Professional Player's Contract" and Declaration of Trust signed by the parties, the FIFA Statutes and regulations, taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport".*

b. Position of the Respondent

20. In its reply, the Respondent contested the admissibility of the claim, as the claim did not contain a signature in accordance with art. 18 of Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*) and mentioned that in some parts of the claim, the Claimant referred to a party that is not involved in the present case.

21. As to the merits, the Respondent first stated that no amounts can be deemed payable to the Claimant as the mandatory prerequisite under clause 2.2 of the first agreement was not met, considering that the Respondent has not yet received a regular invoice with the correct amount due up to the date of its reply.

22. As to the amounts received by SK Slavia, the Respondent clarified that the net amount received from SK Slavia was CZK 6,955,046. The Respondent indicated that the amount of

CZK 1,460,559.66 corresponded to value-added tax (VAT) that are not converted into benefits to the Respondent, but it was rather an amount paid to the State authorities and provided as evidence the invoice sent by SK Slavia. Therefore, according to the Respondent the amount to be paid to the Claimant shall be CZK 3,477,523 (50% of CZK 6,955,046).

23. Additionally, the Respondent stated that *"the Claimant itself acknowledges that the VAT and any taxes payable by the Respondent in Czech Republic are not to be taken into consideration for its entitlement. Indeed, when the Claimant invoiced the Respondent to receive its previous entitlements, i.e., the ones pursuant to clause 2.1 of the Agreement triggered by Transfer 1, it did not take into consideration the VAT and taxes that were included in the invoice issued by the Respondent to Slavia"*.
24. The Respondent further argued that requesting the amount of 50% of the gross amount violates *"the principle of venire contra factum proprium, as, in fact, it had already previously acknowledged and accepted that all its entitlements under the Agreements are calculated over the net amounts received by the Respondent, without the taxes that are not considered benefits for this purpose"*.
25. As a consequence, because the mandatory requirement of clause 2.2 of the first agreement was not met, i.e., the issuance of a regular invoice, the Respondent submits that no amounts are payable to the Claimant and the claim shall be rejected on the merits.
26. Subsidiarily, if the Players' Status Chamber considered that the amount is due, *"it shall not be higher than [CZK] 3,477,523, which corresponds to 50% of the [CZK] 6,955,046 net effectively received by the Respondent from Slavia following the Player's transfer to Genk, i.e., the benefits gotten by the Respondent"*.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

27. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *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 21 March 2023 and submitted for decision on 22 June 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.
28. 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.
29. 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 21 March 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
30. Finally, the Single Judge observed that the Respondent contested the admissibility of the claim considering that the claim of the Claimant was not signed, and the Claimant in its claim referred to third parties. On this point, the Single Judge noted that the Claimant provided with the signed claim upon the request of FIFA general secretariat and the parties were clearly established in the claim. Therefore, the Single Judge concluded that the objection of the Respondent on this point was rejected.

b. Burden of proof

31. 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 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

32. 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

33. 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 payment of the sell-on fee due by the Respondent to the Claimant.

34. In brief, while the Claimant considered that it is entitled to the payment of CZK 4,207,802.82 as sell-on fee in accordance with clause 2.1.1. of the first agreement. The Respondent considered that no amounts can be deemed payable as the mandatory prerequisite under clause 2.2 of the first agreement was not met. In case it is found that such amount is due, the Respondent added that the VAT shall be deducted, and the amount to be paid, if any, should be CZK 3,477,523.

35. In this context, the Single Judge acknowledged that his task was to determine whether any amount is due by the Respondent to the Claimant, and, in the affirmative, how much it amounts to.

36. In view of the foregoing, the Single Judge observed the following:

- (1) In accordance with clause 2.1.1 and clause 3 of the first agreement, the Claimant shall be entitled to 50% of the net benefits or percentage of a future transfer with a third club.
- (2) The player was transfer to a third club, i.e., SK Slavia, and in accordance with the second agreement the Respondent shall receive 19% of the sell-on fee less CZK 40,000,000 in connection with a future subsequent transfer of the player.
- (3) In accordance with the third agreement, the player was transferred from SK Slavia to Genk and the gross transfer fee was EUR 6,500,000, payable in 3 instalments.
- (4) On 27 February 2023, the Respondent received from SK Slavia the amount of CZK 8,415,605.66 corresponding to the sell-on fee stated in the second agreement, considering that Genk paid SK Slavia the first instalment in accordance with the third agreement.

37. On this basis and considering such “chain” of sell-on fees, the Single Judge determined that the Claimant is contractually entitled to receive from the Respondent the 50% of the sell-on fee received by the Respondent from SK Slavia, in light of the player’s transfer from the latter to Genk.
38. The Single Judge in continuation observed that the Respondent claimed that a deduction of the VAT payment shall apply, however, the Single Judge further observed that the Respondent provided untranslated evidence of the invoice issued by the Respondent. Thus, the Single Judge concluded that the Respondent failed to meet its burden of proof, and therefore no deductions could be accepted in this respect.
39. Additionally, and in accordance with clause 2.2 of the first agreement, the Single Judge recalled that the payment is subject to the issuance of the invoice, which was issued on the invoice dated 1 March 2023 by the Claimant. Moreover, and in any event, the Single Judge indicated that the obligation of the Respondent to pay said amount started as from the date of reception of the payment by SK Slavia and the issuance of an invoice is an accessory condition which shall not prevent the Respondent to pay the Claimant.
40. In view of the foregoing, the Single Judge concluded that in line with the principle *pacta sunt servanda* the Respondent is liable to pay to the Claimant 50% of CZK 8,415,605.66, amounting to CZK 4,207,802.83.
41. Lastly, taking into consideration the Claimant’s request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the Claimant interest on CZK 4,207,802.83 at the rate of 5% p.a. as of 1 March 2023 until the date of effective payment.

ii. Compliance with monetary decisions

42. 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.
43. 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.

44. 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.
45. 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.
46. 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.

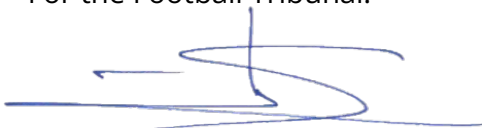
d. Costs

47. 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.
48. Taking into account that the claim of the Claimant has been fully accepted, the Single Judge concluded that the Respondent shall bear the costs of the current proceedings before FIFA. 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 20,000.
49. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 17,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
50. 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, 36 Lion Football Club, is accepted.
2. The Respondent, FC Baník Ostrava, a.s., must pay to the Claimant the following amount:
 - **CZK 4,207,802.83 as outstanding remuneration** plus 5% interest *p.a.* as from 1 March 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 17,000 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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