

# Decision of the Players' Status Chamber

passed on 7 December 2023

regarding a contractual dispute concerning  
the player Famara Diedhiou Alanyaspor

**BY:**

**Javier Vijande Penas, Argentina**

**CLAIMANT:**

**Alanyaspor, Türkiye**  
Represented by Sami Dinc

**RESPONDENT:**

**Granada CF, Spain**  
Represented by Daniel Muñoz Sirera

## I. Facts of the case

1. The parties to the dispute are the Turkish club, Alanyaspor (hereinafter: *the Claimant*), and the Spanish club, Granada CF (hereinafter: *the Respondent*). The Claimant and the Respondent are hereinafter jointly referred to as the *Parties*.
2. On 19 January 2023, the Parties entered into a *Temporary Loan Transfer Agreement* (hereinafter: *the transfer agreement*) regarding the temporary transfer of the professional football player, Mr. Famara Diedhiou (hereinafter: *the player*).
3. According to clause 7 the transfer agreement:
  - a. if the Respondent achieved promotion to the First Division of *LaLiga* at the end of the Spanish football season of 2022/2023, the temporary transfer of the Player would automatically be converted into a permanent one.
  - b. Payment Obligations: in the case of a permanent transfer, the Respondent should pay to the Claimant a total of EUR 500,000 net (hereinafter: *the Transfer Fee*) in two equal instalments, namely EUR 250,000 by 31 August 2023 and EUR 250,000 by 31 January 2024.
4. In accordance with clauses 5.1, 7.3, 7.5, 7.9, and 7.11 of the transfer agreement:
  - a. All payments due to the Claimant were net of bank expenses, taxes, levies, and the like, and the FIFA Solidarity Contribution payment should be made by the Respondent in addition to the compensation fees determined in the transfer agreement, without any deduction on the Transfer Fee, except for the portion due to the Claimant.
  - b. In case the Respondent failed to pay any amounts in full and/or in part on their due dates at the latest, the Respondent should be liable to pay to the Claimant a penalty of 15% of the due and unpaid amounts for each breach.
5. The Respondent achieved promotion to the First Division of *LaLiga* at the end of the Spanish football season 2022/2023.
6. On 26 June 2023, the Claimant sent a letter to the Respondent via e-mail informing them of the condition met and the obligation to pay the Transfer Fee.
7. On 31 August 2023, the Claimant sent a letter to the Respondent informing them that the due date of the first instalment of the Transfer Fee was 31 August 2023.
8. On the same day, the Respondent replied to the Claimant and stated that “[t]he payment has been correctly charged to this month's bank remittances”.

9. On 4 September 2023, the Claimant sent another e-mail to the Respondent stating that the payment was not made and requested the Respondent to send the swift confirmation of the wire transfer regarding the first instalment of the Transfer Fee.
10. On 7 September 2023, the Claimant sent a first default notice to the Respondent in which it requested the payment of the first instalment of the Transfer Fee, a penalty of 15% of the overdue amount, in the total amount of EUR 287,500, in addition to default interests at the rate of 5% p.a., within seven days from the receipt of the said correspondence.
11. On 11 September 2023, a partial payment in the amount of EUR 249,973 was made by the Respondent to the Claimant.
12. On 12 September 2023, the Claimant sent a second default notice to the Respondent in which it requested the payment of the penalty of 15% of the overdue amount, in the total amount of EUR 37,500 within seven days from the receipt of the said correspondence.

## **II. Proceedings before FIFA**

13. On 24 October 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**

14. The Claimant argued that the Respondent failed to fulfil the contractual obligations outlined in the transfer agreement, to the effect that the Respondent was supposed to pay EUR 500,000 upon conversion of the temporary transfer of the player to a permanent one (*i.e.*, if they achieved promotion to the First Division of LaLiga at the end of the football season of 2022/2023). The Claimant asserted that the condition was met, but the Respondent failed to make the payments correctly.
15. Accordingly, and while recognizing that a partial payment has been performed, the Claimant requested FIFA to order the Respondent to pay the overdue and unpaid amount of EUR 37,960.22 with its 5% p.a. interest starting from 11 September 2023 until the date of effective payment, corresponding to the balance of the first instalment of the Transfer Fee plus the penalty under the same contract.
16. The Claimant also requested that the judicial costs and the attorneyship fees that the Claimant has incurred be paid by the Respondent.

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

17. In its reply, the Respondent held as follows:

- a. *Full compliance with the payment of the first instalment of the Transfer Fee:* the Respondent argues that they fully complied with their obligation to pay the first instalment. They claim that any delay in processing the payment was not attributable to them, but to their banking institution, which was outside of their control.
  - b. *No breach of contractual obligations:* the Respondent asserts that they did not breach their contractual obligations under the transfer agreement. They argue that any delay in the receipt of the first instalment by the Claimant was due to circumstances beyond their control and, therefore, they should not be held responsible.
  - c. *Penalty is excessive and disproportionate:* in the event that the Players' Statuts Chamber does not agree with the above arguments, the Respondent contends that the penalty is manifestly excessive and disproportionate. They argue that it should be substantially reduced in accordance with art. 163 para. 3 of the Swiss Code of Obligations (SCO), which allows for the reduction of excessively high penalties at the court's discretion.
  - d. *No severe violation of the transfer agreement:* the Respondent argues that any delay in the receipt of the first instalment by the Claimant does not constitute a severe violation of the transfer agreement that would justify the imposition of the penalty.
  - e. *Non-Intentional failure to comply with payment:* the Respondent reiterates that they complied with the payment of the first instalment on the due date, and any delay in the receipt of the payment by the Claimant was beyond their control.
  - f. *Financial situation of the Respondent:* the Respondent argues that the penalty is unreasonable and clearly exceeds the admissible amount considering their financial position. They argue that the penalty should be reduced to zero due to its disproportionality to the facts.
  - g. *No entitlement to default interests:* the Respondent argues that the Claimant is not entitled to default interests over the first instalment, the amount of €27.00, or the penalty, as they complied with their payment obligations and any delay was not their fault.
18. It is to be noted that in support of its position, the Respondent has filed a bank declaration stating that due to an unspecified "incident", the payment order was not processed. By the same token, the Respondent has filed bank statements which however do not indicate the beneficiary and/or what the transfer described therein refer to.
19. The Respondent's request for relief was as follows:
- "To admit the Answer filed by [the Respondent].*  
*To dismiss in full the claim filed by [the Claimant] against [the Respondent].*

*On the alternative to Request No. 2, to decide that [the Respondent] is not liable to facilitate the payment of €27,00 (twenty-seven Euros) regarding the First Instalment to [the Claimant]”.*

### **III. Considerations of the Players’ Status Chamber**

#### **a. Competence and applicable legal framework**

20. 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 24 October 2023 and submitted for decision on 7 December 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.
21. 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), he is competent to deal with the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
22. 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 24 October 2023, the said edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

23. 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, he 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**

24. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, he started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, he 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

25. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that this is a claim for outstanding remuneration regarding an unpaid portion of the Transfer Fee plus the corresponding penalty, as well as interests.
26. On this note, the Single Judge started by underlying that the parties do not dispute that the payment obligation arose as the Respondent was promoted to the first division at the end of the Spanish season 2022/2023. Equally, the Single Judge highlighted that it is also not in dispute that the transfer of the player was converted from temporary to permanent. What the parties in fact dispute is whether the Respondent has timely complied with its payment obligation under the transfer agreement, and the consequences that follow.
27. In this respect, the Single Judge deemed it fundamental that under the transfer agreement, the Transfer Fee was agreed upon net of solidarity contribution, taxes, levies, banking retentions, and the like. The wording of clauses 5.1, 7.3, 7.9 and 7.11 of the transfer agreement indeed cast no shadow over this conclusion (emphasis added by the Single Judge):

*"5.1. The Parties accept and undertake that **the FIFA solidarity contribution payments in favour of the right owner third parties** in accordance with the FIFA [Regulations on the Status and Transfer of Players] regarding the transfer of the player **are not included in the transfer compensation determined in the article 7** and [the Respondent] shall be liable to make the FIFA solidarity contribution payments to the right owner clubs **in addition to the below-mentioned amounts (i.e. without making deductions)**, except for any portion of the solidarity contribution to which [the Claimant] may be entitled to, which the parties expressly agree that it shall be deemed as included in the Transfer Fee. (...)*

*7.3. In case the abovementioned Permanent Transfer Condition is met, in consideration of the permanent transfer of the player's registration to [the Respondent], [the Respondent] agrees to pay to [the Claimant] the sum of FIVE HUNDRED THOUSAND EUROS (500.000,00€) **net of solidarity contribution bank expenses and all kind of Spanish taxes, levies, etc.** (hereinafter: the "Transfer Fee") according to the following payment schedule: (...)*

*7.9. The amount payable by [the Respondent] to [the Claimant] hereunder (Transfer Fee) **is exclusive** of any FIFA training compensation under article 20 and Annex 4 of the FIFA [Regulations on the Status and Transfer of Players] and any FIFA solidarity contribution under article 21 and Annex 5 of the FIFA [Regulations on the Status and Transfer of Players] payable to [the Claimant] by [the Respondent] in respect of the player (...).*

*7.11. [The Respondent] shall be responsible for any tax payable in Spain on any sum(s) falling due under this agreement, **which must be considered net and exclusive of any taxes costs and or levies** other than the FIFA solidarity contribution and FIFA training compensation referred to in the FIFA regulations".*

28. To this effect, the Single Judge confirmed that the Claimant has presented clear evidence that it paid EUR 249,973, which has also been confirmed by the Respondent in its submissions. Therefore, the Single Judge determined that EUR 27.00 is still outstanding to date, which already lead him to conclude that the Respondent failed to honour its contractual obligations.
29. In contrast to the above, the evidence filed by the Respondent is, in the Single Judge's view, unclear in that it consists of (a) a bank declaration stating that due to an "incident" (which is not specified) the payment order requested by the Respondent was not processed, and (b) bank statements seemingly from the Respondent's account which do not indicate the beneficiary and/or what any of the transfers listed therein refer to.
30. Accordingly, and while the burden of proof lied with the Respondent to demonstrate that it had complied with the contractual obligations, the Single Judge found that that the Respondent did not meet such burden. On this note, he recalled that after being placed in default, if the Respondent knew that the payment had not been properly made, it was the Respondent's duty to ensure that the monies were transferred to the Claimant within the additional grace period of 7 days granted by the latter.
31. In fact, it was the Single Judge's view that it was necessary for the Respondent to be more diligent, and thus have requested payment well in advance to allow sufficient time for it to be processed and forwarded to the Claimant, while it in fact made the payment after the deadline agreed upon in the transfer agreement had already expired. By making a payment order on the last day of its contractual deadline, the Single Judge found that the Respondent ran the risk of being in default if the payment was not correctly processed, as it was the case.
32. Along these lines, the Single Judge underscored that it is common in the industry of football, and in the banking industry in general, that payments between two countries take a few business days to be processed, on account of documentation checks and bureaucratic steps which are normal or even expected in light of the necessity of the banking system to verify the validity and legality of the concerned money transfer. However, these steps are usually undertaken in a swift fashion, which is not at all comparable to the unusual additional time required to process the relevant payments in the matter at hand, which reportedly took place due to an unclear and unproved "incident". That being the case, the Single Judge highlighted that it was for the Respondent to have, quite simply, factored the processing time of an international payment in its financial planning to comply with the transfer agreement. Having failed to do so, the Single Judge found that the Respondent cannot now argue its own tort, let alone benefit from it.
33. In light of the fact that the Respondent failed to diligently perform its obligation under the transfer agreement, namely, to timely pay the entirety of the first instalment of the Transfer Fee without any deduction of any kind, the Single Judge concluded that the Respondent has breached the transfer agreement and therefore the consequences set therein must be triggered in line with the principle *pacta sunt servanda*.

34. In accordance with the aforementioned general legal principle, the Single Judge decided that the Respondent is liable to pay to the Claimant the following amounts, together with the corresponding interests per the transfer agreement:
- a. EUR 27.00 net as the outstanding portion of the first instalment of the Transfer Fee plus 5% p.a. as from 1 September 2023 until the date of effective payment.
  - b. Interest of 5% p.a. on the late payment of EUR 249,973 as from 1 September 2023 until 11 September 2023.
  - c. EUR 37,500 net as contractual penalty. The Single Judge remarked that no interest shall apply over this amount per the legal principle *ne bis in idem*.

#### ii. Compliance with monetary decisions

35. 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.
36. 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.
37. 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.
38. 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.
39. 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

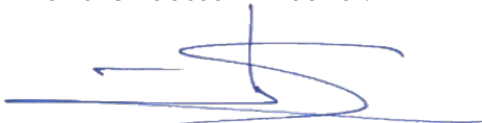


40. With respect to the costs, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
41. In continuation, the Single Judge referred to art. 25 par. 1 and 2 of the Procedural Rules, according 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.
42. Taking into account that the claim of the Claimant has been accepted to a considerable extent, 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 5,000.
43. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 5,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
44. 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, Alanyaspor, is partially accepted.
2. The Respondent, Granada CF, must pay to the Claimant the following amount(s):
  - a. EUR 27.00 net plus interest of 5% p.a. as from 1 September 2023 until the date of effective payment.
  - b. Interest of 5% p.a. on the amount of EUR 249,973 as from 1 September 2023 until 11 September 2023.
  - c. EUR 37,500 net as contractual penalty.
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 5,000 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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