

Decision of the Players' Status Chamber

passed on 10 October 2023

regarding a dispute concerning the transfer of
the player Moses Usor

BY:

Thulaganyo Gaoshubelwe (South Africa)
Single Judge of the Players' Status Chamber

CLAIMANT:

36 Lion Football Club, Nigeria
Represented by JMPPM Advogados

RESPONDENT:

SK Slavia Praha, Czech Republic

I. Facts of the case

1. On 31 March 2022, the Nigerian club 36 Lion Football Club (hereinafter: *Claimant*) and the Czech club Slavia Prague (hereinafter: *Respondent*) concluded an agreement (hereinafter: *Transfer Agreement*) regarding the definitive transfer of the player Moses Usor from the Claimant to the Respondent.
2. According to the Transfer Agreement, the Respondent undertook to pay the Claimant a sell on fee under the following conditions:

"In addition to the transfer fee and bonus fee, in case of the future transfer of the player's registration from Slavia to another new club, 36 Lion will be entitled to receive 15% of the amounts actually received by Slavia in connection with the transfer of the player to this another club exceeding the amounts paid or already due by Slavia to 36 Lion."

3. 18 January 2023, the player was loaned out by the Respondent to Austrian club LASK Linz, with an eventual purchase obligation (hereinafter: *the Sell-On Agreement*), for the following financial considerations:
 - EUR 250,000 as loan transfer fee by no later than 15 July 2023;
 - EUR 500,000 as fixed transfer fee instalment by no later than 15 February 2024;
 - EUR 250,000 as fixed transfer fee instalment by no later than 15 July 2024;
 - EUR 250,000 as fixed transfer fee instalment by no later than 15 February 2025;
 - EUR 250,000 as fixed transfer fee instalment by no later than 15 July 2025;
 - EUR 250,000 as fixed transfer fee instalment by no later than 15 February 2026

All amounts outlined above as gross.

4. Furthermore, the Sell-On Agreement stipulated as follows:

"For the avoidance of any doubt, all fees stipulated in the present article are inclusive of, if applicable, training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players. LASK is responsible for the distribution of the corresponding solidarity contributions to the respective training clubs, in accordance with the FIFA Regulations on the Status and Transfer of players."

5. At an unspecified time, the Respondent made payments of, in total, EUR 250,000 pertaining to the transfer fee under the Transfer Agreement concluded with the Claimant.
6. On 26 July 2023, the Claimant sent the Respondent an invoice of EUR 37,500, corresponding to 15% of the first instalment due to the Respondent under the Sell-On Agreement of EUR 250,000.

7. On 28 July 2023, the Claimant put the Respondent in default of payment of the amount of EUR 37,500 and granted a deadline of 10 days to remedy the alleged breach.
8. On 1 August 2023, the Respondent replied to said correspondence, arguing that it disagreed with the calculation of the Claimant. In this respect, the former argued that whilst it was due to receive EUR 1,750,000 as part of the compensation for the players transfer to LASK, of which the first instalment was EUR 250,000 as outlined above, both solidarity in the amount of EUR 70,000 and amounts paid as part of the original transfer agreement, in total EUR 250,000, must be deducted when making the pertinent calculation of 15%. Thus, according to the Respondent, the amount payable by 15 July 2023 was only EUR 30,643.
9. On 4 August 2023, the Claimant replied to the Respondent, insisting on the amount of EUR 37,500. A further deadline of 10 days was granted.
10. On 9 August 2023, the Respondent sent a correspondence to the Claimant, insisting on its own calculation of EUR 30,643, stating that the amount "*actually received*" as part of the first instalment is less than EUR 250,000 – i.e. the amount stipulated in the Sell-On Agreement – thus impacting the sell on fee actually due.
11. On the same day, the Claimant reiterated the contents of its previous default notice and requested payment until the deadline granted therein.
12. On 21 August 2023, the Respondent made a payment of EUR 30,643.

II. Proceedings before FIFA

13. On 21 August 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. In its claim, the Claimant held that it is entitled, by virtue of the Transfer Agreement, to 15% of any amounts received by the Respondent as a result of the subsequent transfer of the player from the Respondent to a third club.
15. According to the Claimant, as the first instalment the Respondent was due to receive as part of the Sell On Agreement amounted to EUR 250,000, the Claimant asserted that he was entitled to EUR 37,500, i.e. 15% thereof.
16. The Claimant also emphasised that the terminology "amounts actually received by the Respondent exceeding the amounts paid or already due by Slavia to 36 Lion" could under

no circumstances mean that any amounts paid as part of the Transfer Agreement must be deducted from the calculation of the sell on fee.

17. According to the Claimant, even if (quod non) the above clause was not clear, the Respondent was allegedly the one who drafted the Transfer Agreement, thus giving rise to the doctrine of *in dubio contra stipulatorem*.
18. The Claimant thus requested EUR 37,500, with no accompanying interest.

b. Position of the Respondent

19. In its reply, the Respondent argued that the Claimant's calculation is erroneous, as it fails to take account of the fact that the distinction "amounts actually received (...) exceeding the amounts paid or already due" results in deductions made from the principal amount based upon which the sell on fee is determined.
20. The Respondent specified that it had already paid the Claimant a fixed transfer fee of EUR 150,000, as well as two bonus fees of EUR 50,000, resulting in a total amount paid of EUR 250,000. Furthermore, the Respondent wished to point out that an amount of EUR 70,000 was deductible from the overall transfer fee under the Sell On Agreement, thus reducing the amount the Respondent was left with therefrom to EUR 1,430,000.
21. In light of said calculation, the Respondent argued that the following amounts are due to the Claimant:
 - EUR 30,643 as 15% of EUR 204,286 due on 15 July 2023;
 - EUR 61,286 as 15% of EUR 408,572 due on 15 February 2024;
 - EUR 30,643 as 15% of EUR 204,286 due on 15 July 2024;
 - EUR 30,643 as 15% of EUR 204,286 due on 15 February 2025;
 - EUR 30,643 as 15% of EUR 204,286 due on 15 July 2025;
 - EUR 30,643 as 15% of EUR 204,286 due on 15 February 2026.
22. The Respondent therefore outlined that it paid EUR 30,643 to the Claimant, thus having purportedly fulfilled its obligations under the Transfer Agreement.

c. Reaction of the Claimant to alleged payments

23. In its replica, the Claimant argued that, whilst it did receive the amount alleged by the Respondent on 21 August 2023, the initial calculation of EUR 37,500 should stand. Therefore, it insisted on receiving the remaining amount.

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 *Single Judge*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 21 August 2023 and submitted for decision on 10 October 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 dispute concerning the transfer of a Nigerian player, between a club from Nigeria and another club from the Czech Republic.
26. 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 August 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

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 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

28. His 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 a sell-on fee in connection to the permanent transfer of a player.
30. In this context, the Single Judge acknowledged that his task was to determine what the correct amount corresponding to the sell-on fee was and, by way of consequence, whether the Respondent had remitted said amount in accordance with its obligation under the Transfer Agreement and Sell On Agreement.
31. The Single Judge recalled the lines of reasoning presented by the parties, firstly the Claimant, according to whom the Respondent failed to remit the remaining amount of EUR 6,857 from the sell on fee due on account of the sale of the player to a third club, by virtue of the Transfer Agreement and Sell On Agreement. The Claimant insisted that there were no deductions specified in either agreement, and that thus the full amount due corresponded to EUR 37,500.
32. On the other hand, the Single Judge took note of the Respondent's submission, according to whom it has fulfilled its obligations as it had remitted EUR 30,643 on 21 August 2023, and that the Transfer Agreement specified that the sell on fee is calculated on the basis of "the actual amount received (...) exceeding the amounts paid or already due" to the Claimant. In light of this wording, the Respondent insisted that the fixed transfer fee, conditional bonus fee(s) and any further deductibles such as solidarity payments are to be considered when determining the sell on fee payable to the Claimant.
33. Prior to entering the analysis of the parties' respective submissions, the Single Judge recalled the wording of art. 13 par. 5 of the Procedural Rules, in accordance with which a party that asserts a certain fact also bears the burden of proving its veracity.
34. The Single Judge then revisited the wording of the provision which stipulated the obligation of paying a sell on fee to the Claimant in case of a subsequent transfer of the concerned player from the Respondent to a third club. The clause read as follows:

"In addition to the transfer fee and bonus fee, in case of the future transfer of the player's registration from Slavia to another new club, 36 Lion will be entitled to receive 15% of the amounts actually received by Slavia in connection with the transfer of the player to this another club exceeding the amounts paid or already due by Slavia to 36 Lion."
35. Having analysed the wording of said provision, the Single Judge firstly wished to address that, from an objective reading of the clause, neither the transfer fee nor the bonus fee should be considered deductible from the principal amount upon which the sell on fee is determined.

36. The Single Judge opined that it was clear that the above wording represented merely a reflection that, apart from a fixed transfer fee and conditional bonus fees resulting from said transfer, a sell on fee is payable in the eventuality that the player is transferred for an amount to a third club. In other words, the Single Judge firmly rejected the notion that the parties could have truly intended the transfer fee and conditional bonuses to be deductible for the sake of calculating the sell on fee when drafting the terms of the Transfer Agreement.
37. Having established this, the Single Judge turned to the question of deducting amounts payable on the basis of solidarity contributions. In this respect, the former considered that, whilst the Sell On Agreement specifies that the principal fee for the sale of the player to LASK is “inclusive of solidarity deductions”, it was silent on whether these deductions are made directly from the transfer fee payable by LASK to the Respondent, or subsequently to be reimbursed by the latter. It is, from solely the wording of the above clause, unclear whether or not the “amounts actually received” as a result of the player to the third club encompass solidarity deductions or not.
38. Furthermore, the Single Judge observed that the Respondent provided no proof of receipt of the actual amount received from LASK as a result of the transfer. The Single Judge equally wished to refer to the evidence available to him on TMS, as the file of the player’s transfer revealed that there is currently no allocation statement produced on the basis of said transfer, meaning that, at face value, the Respondent is in receipt of the full amount of EUR 250,000 and no solidarity being deducted yet.
39. Consequently, the Single Judge deemed that the Respondent, who carried the burden of proving that deductions may be made from the principal amount received to calculate the sell-on fee, had failed to meet the standard set by art. 13 par. 5 of the Procedural Rules.
40. Therefore, the Single Judge concluded that the Respondent was liable to pay the remaining amount of the sell on fee as required under the Transfer Agreement.
41. The first instalment of the player’s transfer fee under the Sell On Agreement amounted to EUR 250,000. Pursuant to the Transfer Agreement, the sell on fee due to the Claimant corresponded to 15% of the aforementioned transfer fee. Thus, the appropriate figure representing the first instalment of the sell on fee due to the Claimant was $EUR\ 250,000 \times 0.15 = EUR\ 37,500$.
42. The Single Judge recalled that the Respondent had remitted EUR 30,643, meaning that an amount of EUR 6,857 had still remained outstanding.
43. Consequently, and in conclusion, the Single Judge decided that the Respondent must pay, in accordance with the general legal principle of *pacta sunt servanda*, the outstanding amount of EUR 6,857 to the Claimant.

44. Lastly, in line with the Claimant's request and the general legal principle of *ne eat iudex ultra petita partium*, the Single Judge decided that no interest shall be applicable in the case at hand.

ii. Art. 12bis of the Regulations

45. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
46. To this end, the Single Judge confirmed that the Claimant put the Respondent in default of payment of the amounts sought, which had remained unpaid in their full amount for more than 30 days, and granted the club a 10-day deadline to cure such breach of contract.
47. Accordingly, the Single Judge confirmed that the Respondent had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
48. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. On account of the above and bearing in mind that this is the first offense by the latter within the last two years, the Single Judge decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
49. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

50. 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 his 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.
51. 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.

52. 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.
53. 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.
54. 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.

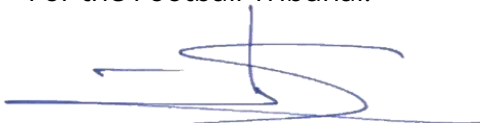
d. Costs

55. 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.
56. 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 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 5,000.
57. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 1,000 and concluded that said amount had to be paid by the Respondent in order to cover the costs of the present proceedings.
58. 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.
59. Lastly, the Single Judge concluded its 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 partially accepted.
2. The Respondent, SK Slavia Praha, must pay to the Claimant **EUR 6,857 as outstanding amount**.
3. Any further claims of the Claimant are rejected.
4. A warning is imposed on the Respondent.
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 1,000 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).

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