

Decision of the Players' Status Chamber

passed on 13 October 2023

regarding a contractual dispute concerning
the player Ramiro Vaca Ponce

BY:

Javier VIJANDE PENAS (Argentina), Chairperson
Jesús ARROYO (Spain), member
Castellar GUIMARÃES NETO (Brazil), member

CLAIMANT:

Club The Strongest, Bolivia

RESPONDENT:

Beerschot V.A., Belgium

I. Facts of the case

1. On 12 August 2021, Club The Strongest and Beerschot V.A. concluded a contract for the transfer of the player from the former to the latter.
2. Following, art. 2.1 of the contract, Beerschot agreed to pay to The Strongest, the total amount of USD 150,000, as follows:
 - USD 120,000 upon the player's registration at the Belgian FA;
 - USD 30,000 on 1 July 2022.
3. On 17 September 2021, Beerschot paid USD 120,000 to the bank account of Ms Esmelca Mamani Tantani, who worked as the club's accountant.
4. On 13 October 2021, the Claimant sent a notice to the Respondent, indicating to pay the second instalment (USD 30,000) to the following account:
*"BANK OF AMERICA, N.A.
MIAMI, FL- U.S.A.
Swift : BOFAUS3M
ABA 026009593
Beneficiary Bank of Bolivia
BANCO MERCANTIL SANTA CRUZ S.A., BOLIVIA
Swift : MERBBOLXXXX
Beneficiary Info of Banco Mercantil Santa Cruz:
Account Number : 4066845407
Full Name or Enterprise Name: RAMIRO VACA PONCE"*
5. On 11 July 2022, the Claimant sent an email to the Respondent, asking to pay the transfer fee "directly to the player".
6. On 15 July 2022, the Respondent replied to the Claimant, rejecting to pay the transfer fee to the player, *"as this is against all RBFA and FIFA Regulations and therefore illegal."*
7. The Respondent further provided the Claimant with " Client Identification Questionnaire", in compliance with the applicable Anti Money Laundering (AML) and Terrorist Financing Act.
8. On 27 September 2022, the Claimant provided a new bank account, as follows:
HECTOR RAMIRO MONTES BERNAL – 4011073625 Mercantil Santa Cruz SA, Bolivia
MERBBOLXXXX.
9. On 4 October 2022, the Respondent sent a reminder to fulfill the required documents regarding Anti-Money Laundering (AML).

10. On 25 October 2022, the Claimant sent the following message to the Respondent:

- “1. When your Club made the first payment regarding Ramiro Vaca’s transfer, you paid that share on a former Club employee’s account, and you didn’t show any objection about it.*
- 2. Due to the change of the Club’s president, the one and only official account number for any Bank deposit is Hector Ramiro Montes Bernal’s one.*
- 3. Due to the requirements mentioned in your last e-mail, it is imposible for us to send you the Bank Certification and guarantees asked, as any single deposit is made to Hector Ramiro Montes Bernal’s account and not to the Club’s one.”*

II. Proceedings before FIFA

11. On 6 April 2023, Club The Strongest lodged a claim before the FIFA Football Tribunal for outstanding payment and requested the amount of USD 30,000, corresponding to the instalment due on 1 July 2022, plus a fine of USD 5,000.

12. The club further requested 5% interest p.a. as from 2 July 2022.

13. In its claim, the club provided a Bank Account Registration Form (BARF) in favour of “Club The Strongest Hector Montes (Presidente) – Banco Mercantil Santa Cruz MERBBOLXXX 4011032393.

14. The club provided a power of attorney dated 3 August 2022, by means of which Mr Hector Ramiro Montes Bernal is authorized, *inter alia*, to the following:

“Sus acciones y derechos, administre y maneje todos los bienes, intereses y negocios sociales y mercantiles de todo tipo, con las más amplias facultades de administración y manejo en general en especial realice toda clase de operaciones bancarias ante instituciones bancarias, locales, nacionales e internacionales, abrir y mantener cuentas corrientes y/o cajas de ahorro y realizar cuantos actos sean necesarios al objeto indicado.

Al efecto, sus incidencias y emergencias le confieren con las facultades generales del mandato y las especiales de apersonarse ante autoridades bancarias y financieras de esta plaza, operar con todos los Bancos, instituciones financieras, públicas, privadas o mixtas locales o extranjeras; abrir, manejar y cerrar cuentas bancarias de depósitos y crédito en moneda local o extranjera; retirar chequeras, girar cheques contra dichos fondos o contra cualesquier fondos en ese momento depositados de cualquier modo y con sujeción a cualesquier condiciones o por un periodo determinado, o contra cualesquier depósitos que pudiera hacerse en el futuro en cualquier tipo de moneda en nombre o a la orden de la Institución; otorgar recibos, aprobar u objetar estados de cuenta; aceptar, firmar, girar, suscribir, endosar, descontar, avalar, cobrar cheques, cobrar y protestar letras de cambio, pagarés, vales, títulos, bonos, acciones, cartas de porte, hojas de ruta y otros documentos comerciales, otorgarlos en custodia y retirar los mismos total o parcialmente, acciones y derechos, presentar testimonios, memoriales, certificados, hacer depósitos de dinero, retirarlos y girar sobre ellos, girar,

aceptar, endosar cheques, percibir dineros, cobrar cheques; percibir dineros firmar y suscribir minutas, escrituras públicas, documentos privados, certificaciones de firmas, estipular convenios y contratos de todo tipo, fijando precios, plazos, montos, amortizaciones, formas de pago, remuneraciones, compensaciones, con la limitación de que para la obtención de préstamos de dinero, préstamos bancarios, líneas de crédito y otras operaciones bancarias a nombre del club se requerirá autorización expresa del Directorio y de la Asamblea General de Asociados, así como para recibir y dar inmuebles del club en comodato, firmar los contratos y documentos correspondientes, firmar y representar a la Institución”

Free translación into English:

“Its shares and rights, administer and manage all assets, interests and corporate and commercial business of all kinds, with the broadest powers of administration and management in general, in particular to carry out all kinds of banking operations with local, national and international banking institutions, to open and maintain current accounts and/or savings banks, and to carry out all acts necessary for the aforementioned purpose.

To this effect, its incidences and emergencies confer upon it the general powers of the mandate and the special powers to appear before banking and financial authorities of this market, operate with all banks, financial institutions, public, private or mixed, local or foreign; open, manage and close bank accounts for deposits and credit in local or foreign currency; draw cheques, draw cheques against such funds or against any funds then on deposit in any manner and subject to any conditions or for any period, or against any deposits that may hereafter be made in any currency on behalf of or to the order of the Institution; issue receipts, approve or object to statements of account; accept, sign, draw, subscribe, endorse, discount, guarantee, cash cheques, cash and protest bills of exchange, promissory notes, vouchers, securities, bonds, shares, bills of lading, waybills and other commercial documents, give them into custody and withdraw the same in whole or in part, shares and rights, present testimonials, memorials, certificates, make deposits of money, withdraw them and draw on them, draw, accept, endorse cheques, collect monies, cash cheques; to receive money, to sign and subscribe minutes, public deeds, private documents, certifications of signatures, to stipulate agreements and contracts of all kinds, fixing prices, terms, amounts, amortisations, forms of payment, remunerations, compensation, with the limitation that in order to obtain money loans, bank loans, credit lines and other banking operations in the name of the Club, express authorisation shall be required from the Board of Directors and the General Assembly of Members, as well as to receive and give Club property on loan, sign the corresponding contracts and documents, sign and represent the Institution.”

15. In its reply, the Respondent acknowledged that it did not pay the claimed amount, due to the following:

- Three different account numbers have already been provided, one being that of the ex-player in question and one the private bank account of the president of Club the Strongest. The club argued that making any payment in favour of any of these accounts, is illegal. In addition, regarding the third account number, the Respondent argued that a bank statement has still not been submitted as proof that this is effectively the account of Club The Strongest.

- Beerschot argued that it has not received all the required anti-money laundering documents fully completed from Club The Strongest.

16. In his replica, the Claimant expressed its surprise, as it argued that the contract did not require the fulfilment of any condition or formal requirement.

17. The Claimant argued that it is unable to use its institutional bank account, as a result of legal proceedings arising from its previous management.

18. In its duplica, the Respondent argued that allowing the president's bank account to act as the club's bank account is contrary to Article 7, c) Annex 3 FIFA RSTP, as clubs are required to have their own bank account and to ensure that their own bank account details are valid and always kept up to date.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

1. First of all, the Players' Status Chamber (hereinafter also referred to as *Chamber* or *PSC*) 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 6 April 2023 and submitted for decision on 9 October 2023. Taking into account the wording of art. 34 of the October 2022 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.
2. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. f) of the Regulations on the Status and Transfer of Players (October 2022 edition), the Players' Status is competent to deal with the matter at stake, which concerns a contractual dispute with an international dimension between a Bolivian club and a Belgian club.
3. Subsequently, the Chamber 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 (October 2022 edition), and considering that the present claim was lodged on 6 April 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. The Chamber 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 Chamber 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. Admissibility

5. Before entering into the substance of the matter, the Chamber deemed necessary to verify whether the claim of the Claimant complied with all the requirements established in art. 18 par. 1 of the Procedural Rules. *Inter alia*, the Chamber underlined that, following art. 18 par. 1 e) of the Procedural Rules, it is mandatory for a party lodging a claim before the FIFA

Football Tribunal, to provide *“the details of a bank account registered in the name of the claimant on a signed copy of the Bank Account Registration Form”*.

6. On this note, the Chamber observed that, in the present matter, the Claimant provided a copy of the Bank Account Registration Form (BARF) in favour of *“Club The Strongest Hector Montes (Presidente) – Banco Mercantil Santa Cruz MERBBOLXXX 4011032393.”*
7. The Chamber understood that the bank account number provided by the club belongs to its president, and not to the institution itself. Thus, unlike the requirements of art. 18 par. 1 e), the Chamber understood that the Claimant failed to provide a bank account number belonging to the club itself. As a result, the claim of the Claimant would be, in principle, inadmissible, as it failed to comply with one of the fundamental requirements outlines in art. 18 par. 1 e) of the Procedural Rules.
8. Nevertheless, in accordance with the principle of *in dubio pro actione*, and in order to not hinder the Claimant’s rights, the Chamber went on to examine whether the Claimant’s claim is, despite this formal error, admissible. Indeed, the Chamber understood that the procedural rules in this case need to be interpreted in a way that favours the right of a party to bring a case before FIFA, on the basis that members of the football family should not be denied their right to justice because of formal or technical errors.
9. Therefore, the Chamber went on to analyse if the bank account of Mr Hector Montes as provided by the Claimant could be potentially construed as a bank account operating for the Bolivian club, The Strongest.
10. Within this context, the Chamber first noted that the dispute at stake stems from the fact that the Respondent refused to pay the second instalment of the transfer price agreed between the parties for the player Ramiro Vaca Ponce, amounting to USD 30,000, on the grounds that making any payment in favour of said account would be illegal as per the applicable Anti Money Laundering (AML) and Terrorist Financing Act, as well as against o Article 7, c) of the Annex 3 of the FIFA Regulations, as clubs are required to have their own bank
11. With the aforementioned perspective in mind, the Chamber went on to analyse, in accordance with art. 13 par. 4 of the Procedural Rules, the financial information provided by the Claimant in the TMS.
12. After verifying the information in TMS, the Chamber observed that, in its account, the Claimant indicated the following information:

Bank details for training compensation and solidarity contribution only

Bank name	PIREAEUS BANK
IBAN	GR8801717840006784128065426
SWIFT	PIRBGAA
Country	Greece
Branch name	CENTRAL

13. Given the information about an apparent bank account located in Greece in favour of the club, the Chamber invited the FIFA Administration, on the date of its meeting, to request the club, The Strongest, to provide additional insights about said account.
14. The Chamber noted that, on 11 October 2023, that the Club The Strongest replied to said request and denied having any knowledge of said Greek account. In particular, the club claimed in this request that the only valid account is the one belonging to its president.
15. As a result, the Chamber could only observe that, from the information on file as well as from the evidence available in TMS, the relationship between the club and the various listed accounts that are mentioned in this matter are too erratic and therefore it inspires little confidence about the legitimacy of the provided information. Indeed, the Chamber noted that it is unreliable for the club to list a Greek account in the TMS and then claim to be unaware of it and delete it from the system. Furthermore, in the view of the Chamber, the fact that the club only insists on its president's account (as an individual person) also raises legitimacy issues.
16. The Chamber deemed it to be important to recall that, according to Art. 6, para. 2, lit. i) of Annex 3 of the Regulations, TMS users are obliged to ensure that the information entered the system is accurate. Furthermore, according to Art. 9 para. 3 of the Procedural Rules, authorized representatives are obliged to tell the truth and to act in good faith in all proceedings. In addition, and as mentioned before under art. 18 par. 1 lit. e) of the Procedural Rules, the bank form indicating the club's account is mandatory, which is a circumstance that did not happen in the present matter.
17. Therefore, the Chamber understood that there is little transparency on behalf of the Claimant and its management with respect to its finances and bank accounts, thus implying that there are reasonable doubts about the hypothetical existence of activities that may pretend the circumvention of legal liabilities in Bolivia. In other terms, the Chamber understood that the Respondent's concerns to pay the transfer fee in the specified account, are fully reasonable and legitimate.

18. As a consequence of the above, the Chamber concluded that it cannot support the payment of amounts to an account for which there are reasonable doubts as to its compliance with the applicable financial and FIFA regulations. The Chamber emphasized that the Claimant's banking information is not compliant with minimal financial compliance standards that should be expected from a professional club.
19. The foregoing having been said, the Chamber nevertheless wished to emphasize that the claimed amount of USD 30,000, payable on 1 July 2022, remains nevertheless due by the Respondent to the Claimant, and invited the parties to arrange a payment solution that is in line with national and international financial compliance standards.
20. Therefore, the Chamber decided that the claim of the Claimant inadmissible, as it does not comply with the formal requirements of Art. 18 of the Procedural Rules, since the bank form is in the name of the president as a natural person, and the Claimant did not prove to the comfortable satisfaction of the Chamber that said account legitimately belongs to the club.

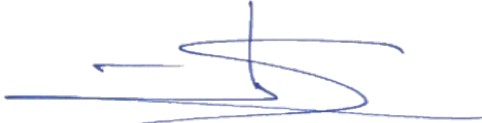
d. Costs

21. Finally, the Chamber 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 Chamber 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.
22. Taking into account that the claim of the Claimant is inadmissible, the Chamber concluded that the Claimant shall bear the costs of the current proceedings. 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. However, given the exceptional circumstances concerning the potential admissibility of the Claimant, the Chamber deliberately decided to significantly reduce the costs of the proceedings to a minimum amount, with the aim of facilitating the Claimant's access to the grounds of the decision. Consequently, the Single Judge concluded that the amount of costs of the proceedings shall correspond to USD 1,000.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Club The Strongest, is inadmissible.
2. The final costs of the proceedings in the amount of USD 1,000 are to be paid by the Claimant to FIFA. Considering that the Claimant already paid said sum at the beginning of the proceedings, no further amount is due (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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