

Decision of the Players' Status Chamber

passed on 6 November 2023
regarding a dispute concerning the transfer of
the player Fausto Mariano Vega

BY:

Jesús Arroyo (Spain), Single Judge of the PSC

CLAIMANT:

Asociación Atlético Argentinos Juniors, Argentina

Represented by SENN, FERRERO, ASOCIADOS, SPORTS & ENTERTAINMENT, S.L.P.

RESPONDENT:

Sport Club Corinthians Paulista, Brazil

Represented by Mr Sergio Ventura Engelberg and Mr Fabio Sader

I. Facts of the case

1. On 22 July 2022, the parties concluded an agreement over the permanent transfer of the player, Fausto Mariano Vera from the Claimant to the Respondent (hereinafter: *the transfer agreement*). In accordance with clause 2.1 of the transfer agreement, the Respondent undertook to pay to the Claimant the amount of USD 3,450,000 net (clause 11 of the contract specifies that the payments contained in the transfer agreement are net) as transfer compensation, as follows:
 - USD 1,650,000 net by 1 July 2023;
 - USD 1,800,000 net by 1 July 2024.
2. In accordance with clause 6 of the transfer agreement, the parties agreed that, should the Respondent fail to make the payment of the first instalment of the transfer compensation by its due date, the remaining value of the transfer compensation would immediately fall due (acceleration clause). In addition, the parties agreed, also under clause 6 of the transfer agreement, that – in case of default of payment – the Respondent would have to pay to the Claimant a default interest at the rate of 5% per month, *i.e.* 60% *per annum*.
3. By means of its letter dated 4 July 2023, the Claimant put the Respondent in default of payment in the amount of USD 1,650,000 net, corresponding to the first instalment of the transfer compensation, urging the Respondent to immediately proceed with the payment of said amount, to no avail.
4. Thereafter, on 19 and 23 July 2023, the Claimant sent new default notices to the Respondent, this time requesting the Respondent to proceed with the payment of the full transfer compensation cf. clause. 6 of the transfer agreement.
5. On 15 September 2023, the Claimant sent a final notice to the Respondent, thereby urging the latter, again, to proceed with the payment of the transfer compensation and the contractually agreed default interest, granting the Respondent a deadline of 10 days to do so, to no avail

II. Proceedings before FIFA

a. Position of the Claimant

6. On 28 September 2023, the Claimant lodged a claim against the Respondent before FIFA, requesting to be awarded the full amount of the transfer compensation in the amount of USD 3,450,000, plus 5% interest per month or, subsidiary, interest of 18% *p.a.*, as from 2 July 2023 until the date of effective payment.

7. In its claim, the Claimant held that despite having validly entered into the transfer agreement, the Respondent has constantly failed to respect it, even after having been put in default of payment by the Claimant.
8. In addition, the Claimant argued that it even offered the Respondent different alternatives for the Respondent to pay the amount due in a more favourable manner, via credit cession, but that the Respondent failed to accept said offers.

b. Position of the Respondent

9. In its reply, the Respondent argued, *inter alia*, the following:
 - That the Respondent acknowledges being in default of payment of the first instalment of the transfer compensation.
 - That the second instalment of the transfer compensation is not yet due.
 - That *"forcing Corinthians to pay the full amount of USD 3,450,000 in this moment could place the Respondent in a very difficult financial situation, not only by the fact that Corinthians has several financial commitments, such as tax and salary payment, but also because the acceleration clause might represent an abusive penalty."*

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

10. 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 28 September 2023 and submitted for decision on 6 November 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.
11. 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 Players' Status Chamber is competent to deal with the matter at stake, which concerns disputes between clubs belonging to different associations.

12. 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 28 September 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

13. 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

14. 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

15. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that it remained undisputed that the parties freely entered into the transfer agreement, which clause 6 is clear when stating that, in case of non-payment, the Respondent would automatically be in default of payment and the full amount of the transfer compensation would fall due. In this respect, the Single Judge observed that, in its reply, the Respondent argued that the acceleration of the obligation to proceed with the payment of the second instalment of the transfer compensation constitutes a penalty that is excessive.
16. In this respect, the Single Judge wished to emphasize that – in principle and in accordance with the jurisprudence of the Football Tribunal – the acceleration of subsequent payments upon the non-payment of an amount previously due as principal is a practice traditionally recognized and considered proportionate, insofar as it constitutes a security in benefit of the creditor, since it encourages the debtor party to respect its financial obligations towards the creditor party.

17. The above being said, the Single Judge underscored that the argument of the Respondent that the acceleration of the second instalment of the transfer compensation constitutes a penalty that is to be considered excessive shall be rejected, as the acceleration of subsequent payments that were contractually due (even if originally foreseen as payable at a later stage) cannot be considered as a financial penalty that can be moderated, but as an early maturity of the principal amount due, which – *in casu* – is proportionate, in view of the lack of payment of the first instalment of the transfer compensation and in light of what was specifically agreed between the parties under clause 6 of the transfer compensation within their autonomy of the will (*pacta sunt servanda*).
18. As for the default interest of 5% per month requested by the Claimant (60% *p.a.*), the Single Judge determined that said *petitum* shall be rejected, insofar as such interest rate exceeds the maximum permitted by the jurisprudence of the Football Tribunal (18% *p.a.*). Thus, the Single Judge concluded that the contractually agreed default interest needs to be reduced to 18% *p.a.* and granted as from the date following the due date of the first instalment of the transfer compensation, as contractually agreed.

ii. Consequences

19. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent and decided that the Respondent shall be ordered to pay to the Claimant the amount of USD 3,450,000 as outstanding remuneration, corresponding to the outstanding transfer compensation, by virtue of application of the legal principle *pacta sunt servanda*.
20. In addition, taking into consideration the Claimant's request as well as the jurisprudence of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 18% *p.a.* on the outstanding amounts as from 2 July 2023 until the date of effective payment.

iii. Compliance with monetary decisions

21. 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.
22. 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.

23. 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.
24. 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.
25. 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

26. 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.
27. 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 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 25,000.
28. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 20,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
29. Lastly, the DRC 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, Asociación Atlética Argentinos Juniors, is accepted.

2. The Respondent, Sport Club Corinthians Paulista, must pay to the Claimant the following amount(s):

 - **USD 3,450,000** as **outstanding remuneration**, plus 18% interest *p.a.* as from 2 July 2023 until the date of effective payment.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.

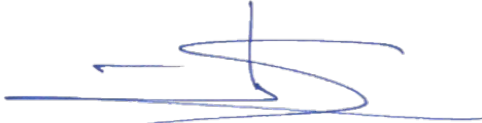
4. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new 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.

5. 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.

- The final costs of the proceedings in the amount of **USD 20,000** 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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