

# Decision of the Players' Status Chamber

passed on 9 November 2021

regarding a dispute concerning the transfer of the player Nahitan Nandez Acosta

**BY:**

**Sarah Ochwada (Kenya)**

**CLAIMANT / COUNTER-RESPONDENT:**

**CA Boca Juniors, Argentina**

Represented by José Luis Viridi

**RESPONDENT / COUNTER-CLAIMANT:**

**Cagliari Calcio SPA, Italy**

Represented by Alberto Porzio; Walter Marini; Paolo Marsilio

## I. Facts of the case

1. On 4 August 2019, the Argentinian club, CA Boca Juniors (hereinafter: *the Claimant/Counter-Respondent*), and the Italian club, Cagliari Calcio SPA (hereinafter: *the Respondent/ Counter-Claimant*) concluded a transfer agreement (hereinafter: *the agreement*) for the transfer of the player, Nahitan Michel Nandez Acosta (hereinafter: *the player*).
2. Pursuant to art. 3 of the agreement, the parties agreed to a transfer compensation fee of EUR 12,092,284 net, payable in two instalments as follows:
  - (a) EUR 3,542,284 payable on the date of which activities pursuant to article 6.2 of the agreement has been successfully completed ("*first instalment*"); and
  - (b) EUR 8,550,000 to be paid on 10 August 2020 ("*second instalment*")
3. The Claimant/Counter-Respondent indicated that it signed a Purchase and Assignment Contract of Claims (hereinafter: "*the assignment agreement*") in September 2019, through which it assigned to Internationales Bankhaus Bodensee A.G. (hereinafter: "*IBB*"), the right to receive the payment of the second instalment of the transfer fee.
4. According to the Claimant/Counter-Respondent on 10 September 2019, it duly notified the Respondent/Counter-Claimant of the assignment agreement as concluded.
5. However, the Respondent/Counter-Claimant failed to pay the second instalment. In this regard, various correspondence was exchanged between the Claimant/Counter-Respondent and Respondent/Counter-Claimant.
6. The Claimant/Counter-Respondent indicated that hereafter, the Respondent/Counter-Claimant made a partial payment in the amount of EUR 6,550,000 to IBB.
7. On 20 April 2021, the Respondent/Counter-Claimant was informed that IBB re-assigned to the Claimant/Counter-Respondent "*the collection rights over the remaining outstanding amount of EUR 2,000,000 plus interest*".
8. In the same correspondence, the Respondent/Counter-Claimant were requested to make payment of the amount of EUR 2,000,000 to the Claimant/Counter-Respondent , however to no avail.

## II. Proceedings before FIFA

9. On 29 June 2021, the Claimant/Counter-Respondent 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/Counter-Respondent

10. The requests for relief of the Claimant/Counter-Respondent, were that the Respondent/Counter-Claimant, pay to the Claimant/Counter-Respondent the:
  - (a) amount of EUR 2,000,000, plus 15% interest *p.a.* from 10 August 2020 until date of effective payment;
  - (b) interest of 5 % *p.a.* accrued on the amount of EUR 6,550,000, from 10 August 2020 to 4 November 2020; and
  - (c) legal expenses in the proceedings.
11. Additionally, the Claimant/Counter-Respondent requested that sanctions established in art. 12bis be imposed on the Respondent/Counter-Claimant.

#### b. Position of the Respondent/Counter-Claimant

12. According to the Respondent/Counter-Claimant, the Claimant/Counter-Respondent declared that it held 100% of the federative and economic rights of the player and that it is the sole owner of 100% of the federative and economics rights in relation to the player.
13. However, the Respondent/Counter-Claimant indicated that on 17 September 2019, it received a letter from Goal Services Consulting SA (hereinafter "*Goal SA*"), which letter, *inter alia*, stipulated that Goal SA is the "*sole legitimate owner of all Image Rights - collective and individual - of the player, as per the contract signed between the parties on 15 May 2017 and currently in force*".
14. The Respondent/Counter-Claimant indicated that after the aforesaid letter, a lawsuit was instituted by Goal SA before the Court of Cagliari against the Respondent/Counter-Claimant.
15. Moreover, during the aforesaid court proceedings, the Respondent/Counter-Claimant was informed that, on 2 August 2017, the Claimant/Counter-Respondent and Goal SA entered into an agreement by means of which:
  - (a) "*Goal SA, owner of the individual and collective image rights of the player, transferred to the Claimant the right to use and exploit the collective image rights of the Player himself;*
  - (b) *by transferring the player to another club, collective image rights would have revert to Goal SA*"
16. The Respondent/Counter-Claimant argued that the Claimant/Counter-Respondent never notified it of an "*alleged credit re-assignment, in spite of what was affirmed by Boca Juniors in the Claim, Cagliari Calcio never received the Notification of Assignment.*" Accordingly, the

*Claimant had lack of standing to sue and therefore the claim must be dismissed as its "inadmissible/unfounded/not suitable."*

17. According to the Respondent/Counter-Claimant at the time the agreement was concluded the Claimant/Counter-Respondent, never informed it of the fact that an agreement existed with a third party and accordingly it made the following "false statement" in the said agreement:

*"whereby Boca Juniors declared to Cagliari Calcio "that it holds 100% of the federative rights and economic rights of the Player", and in*

*art. 7 .2., whereby the Claimant declared and warranted to Cagliari Calcio that Boca Juniors "is the sole owner of the 100% of the federative and economics rights in relation to the Player and these said rights are not subject to any judicial measures etc"*

18. Furthermore, the Respondent/Counter-Claimant indicated that it suffered the following damages:

(a) Acquisition of the Player's collective image rights from Goal SA

- In this context the Respondent/Counter-Claimant indicated that *"the player's collective image rights, with the signing of the agreement, automatically reverted to Goal SA – the Respondent/ Counter-Claimant was forced to acquire from Goal SA the collective image rights and that the consideration agreed to with Goal SA amounted to an amount of EUR 250,000 plus VAT (if due) and a further amount of EUR 250,000 to be paid at the date of the definitive transfer of the player to a third club."*

(b) Salary increases for the player and other related cost

- According to the Respondent/Counter-Claimant, in light of this new scenario and in order to avoid a detriment of the economic value of the player, a new labour contract was entered into with the player on 20 June 2020, according to which the new remuneration of the player was increased to EUR 1,413,500.

(c) Player's sport agent fees

- The Respondent/Counter-Claimant indicated that it undertook to pay to the player's agent a fee in the amount of EUR 250,000.

(d) Legal cost

- The legal cost up till date hereof which the Respondent/Counter-Claimant spent on this matter amounts to EUR 230,000.

(e) Image damages

- Allegedly, the Respondent/Counter-Claimant suffered huge damages to its image in light of statements made to the media by the player and his agent.

19. In light of the damages suffered by the Respondent/Counter-Claimant, it indicated that the Claimant/Counter-Respondent must reimburse/indemnify it with the amount of EUR 2,000,000 plus 15% interest *p.a.*; in this regard, it referred to art. 7.2 of the transfer agreement.
20. In conclusion the Respondent/Counter-Claimant's request for relief from the PSC were as follows:
- (a) *"by preliminary ruling, to dismiss the claim as procedurally inadmissible/unfounded/not suitable, due to the lack of standing to sue;*
  - (b) *on the merit, ascertain and declare the breach of the Transfer Agreement, with particular reference to art. 7 .2., the damages suffered by the Respondent and, as a consequence, declare that no further amounts shall be paid by the Respondent to the Claimant and, should the amount suffered by the Respondent be deemed by the PSC to exceed EUR 2,000,00.00, order the Claimant to pay the excess.*
  - (c) *In any case, without any sanction, costs and expenses in relation to the proceeding for the Respondent."*

**c. Reply to the Counterclaim**

21. The Claimant/Counter-Respondent indicated that it did not accept any of the facts stated by the Respondent/Counter-Claimant in its reply.
22. In this regard, the Claimant/Counter-Respondent stated that it duly notified the Respondent/Counter-Claimant of the assignment agreement and furthermore that it was not obliged to declare the existence of the Collective Image Rights agreement that it signed with Goal SA nor its ownership of the image rights.
23. The Claimant/Counter-Respondent explained that the player's image rights was not part of the federative and economic rights transferred in the agreement.
24. The Claimant/Counter-Respondent therefore request that the counterclaim filed by the Respondent/Counter-Claimant be dismissed.

### III. Considerations of the Single Judge of the Players Status Chamber

#### a. Competence and applicable legal framework

25. 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 29 June 2021 and submitted for decision on 9 November 2021. Taking into account the wording of art. 34 of the October 2021 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.
26. 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. f) of the Regulations on the Status and Transfer of Players (August 2021 edition), he is competent to deal with disputes between clubs belonging to different associations.
27. 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 Player (August 2021 edition) and considering that the present claim was lodged on 29 June 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

28. 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

29. 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**

30. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties concluded a transfer agreement on 4 August 2019, for a transfer compensation fee of EUR 12,092,284 net payable in two instalments.
31. The Single Judge took note that the Claimant alleged that the Respondent/Counter-Claimant failed to pay the full second instalment and that it only made a partial payment in the amount of EUR 6,550,000 to IBB, the company to whom the Claimant/Counter-Respondent assigned its rights and obligations in the agreement.
32. The Single Judge acknowledged that the Claimant/Counter-Respondent further indicated that on 20 April 2021, the Respondent/Counter-Claimant was informed that IBB re-assigned to the Claimant/Counter-Respondent the collection rights over the remaining outstanding amount of the second instalment i.e. EUR 2,000,000 plus interest.
33. The Single Judge noted that the Respondent/Counter-Claimant, on its account, argued that it was not aware of the assignment agreement concluded between the Claimant/Counter-Respondent and a third-company, moreover that the Claimant/Counter-Respondent failed to declare that it was the 100% federative and economic rights holder in relation to the player, it therefore had to negotiate with another entity regarding the image rights of the player and on this account it suffered losses/damages.
34. The Single Judge further noted that the Claimant/Counter-Respondent indicated that the player's image rights was not part of the federative and economic rights transferred in the agreement and neither was it obliged to declare the actual ownership of these rights.
35. On analysis of the documentation on file, the Single Judge remarked that it would seem that the Respondent/Counter-Claimant was indeed aware of the assignment agreement concluded between the Claimant/Counter-Respondent and a third company as it effectively paid a portion of the second instalment to the said company on the basis of the assignment agreement.
36. Despite the arguments of the Respondent/Counter-Claimant, the Single Judge held that it appears evident that in the moment in which the Respondent/Counter-Claimant concluded the transfer agreement with the Claimant/Counter-Respondent, it had accepted to pay the amount of EUR 12,092,284 net as the transfer compensation based on the terms stipulated therein.
37. The Single Judge concluded that the Respondent/Counter-Claimant therefore had an obligation to comply with the terms of the transfer agreement.

## ii. Consequences

38. 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/Counter-Claimant and decided, that the Respondent/Counter-Claimant must fulfil its obligations in accordance with the general legal principle of "*pacta sunt servanda*".
39. The Single Judge held that the Respondent/Counter-Claimant is liable to pay to the Claimant/Counter-Respondent the total amount of EUR 2,000,000 corresponding to the balance of the second instalment of the transfer compensation fee, plus 5% interest *p.a.* as from the respective due dates until the date of effective payment.
40. Taking into consideration the Claimant/Counter-Respondent's request for interest at a rate of 15%, the Single Judge decided to there is no contractual basis to award the interest at the rate of 15% to the Claimant/Counter-Respondent, hence the Single Judge rejected the said request of the Claimant/ Counter-Respondent.
41. Additionally, the Single Judge remarked that the interest of 5% *p.a.* on the amount of EUR 6,550,000, claimed from 10 August 2020 to 4 November 2020; by the Claimant/Counter-Respondent shall be rejected on the basis that, the rights over the default interest were not assigned back to the Claimant/Counter-Respondent by IBB as detailed in its letter dated 20 April 2021. Hence the Single Judge held that the Claimant/Counter-Respondent in this regard lack the standing to sue.
42. As regards to the legal expenses claimed by the Claimant/Counter-Respondent, the Single Judge referred to art. 25 par. 8 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Players' Status Chamber. Consequently, the Single Judge decided to reject the Claimant/Counter-Respondent's request relating to legal expenses.
43. In continuation, the Single Judge decided that, on account of the above deliberations, in particular the fact that the Respondent/ Counter-Claimant was in breach of the transfer agreement, the counterclaim lodged by the Respondent / Counter-Claimant is rejected.

## iii. Compliance with monetary decisions

44. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24bis 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.

45. 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.
46. Therefore, bearing in mind the above, the Single Judge decided that the Respondent/Counter-Claimant must pay the full amount due (including all applicable interest) to the Claimant/Counter-Respondent within 45 days of notification of the decision, failing which, at the request of the Claimant/Counter-Respondent, 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/Counter-Claimant in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.
47. The Respondent/Counter-Claimant shall make full payment (including all applicable interest) to the bank account provided by the Claimant/Counter-Respondent in the Bank Account Registration Form, which is attached to the present decision.
48. 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. 24bis par. 8 of the Regulations.

#### **d. Costs**

49. 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.
50. In this regard, the Single Judge indicated that the claim of the Claimant/Counter-Respondent is partially accepted.
51. Consequently, the Single Judge concluded that the final cost in the proceedings in the amount of CHF 25,000 are to be paid by the parties to FIFA as follows:
  - (a) the amount of USD 10,000 to be paid by the Claimant/Counter-Respondent. In view of the fact that the Claimant/Counter- Respondent has already paid advance of costs, a further amount of USD 5,000 is to be paid by the Claimant/Counter-Respondent; and
  - (b) the amount of USD 15,000 to be paid by the Respondent/Counter-Claimant.

#### IV. Decision of the Single Judge of the Players Status Chamber

1. The claim of the Claimant/ Counter-Respondent, CA Boca Juniors, is partially accepted.
2. The counterclaim lodged by the Respondent/Counter-Claimant, Cagliari Calcio SPA is rejected.
3. The Respondent/Counter-Claimant, has to pay to the Claimant/Counter-Respondent, the amount of EUR 2,000,000, plus 5% interest *p.a.* as from 11 August 2020 until the date of effective payment.
4. Any further claims of the Claimant/Counter-Respondent are rejected.
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. 24bis 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/Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of 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/Counter-Respondent** in accordance with art. 24bis par. 7 and 8 and art. 24ter of the Regulations on the Status and Transfer of Players.
8. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the parties to FIFA as follows:
  - (a) the amount of USD 10,000 to be paid by the Claimant/Counter-Respondent. In view of the fact that the Claimant/Counter- Respondent has already paid advance of costs, a further amount of USD 5,000 is to be paid by the Claimant/Counter-Respondent; and
  - (b) the amount of USD 15,000 to be paid by the Respondent/Counter-Claimant.

For the Football Tribunal:



**Emilio García Silvero**  
Chief Legal & Compliance Officer

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**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).

**CONTACT INFORMATION**

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