

Decision of the Single Judge of the Players Status Chamber

passed on 3 March 2022

regarding a contractual dispute concerning the player Gonzalo Nicolas
Martinez

BY:

Castellar Guimarães (Brazil), Single Judge of the PSC

CLAIMANT:

Atlanta United FC, USA

Represented by Mr Penri Jones

RESPONDENT:

Al Nassr, Saudi Arabia

Represented by Muñoz & Arias Sports Lawyers

I. Facts of the case

1. On 4 September 2020, the Major League Soccer (MLS) and the Saudi club, Al Nassr (hereinafter: *Respondent* or *Al Nassr*) concluded an agreement (hereinafter: *transfer agreement*) regarding the definitive transfer of the player Gonzalo Nicolas Martinez (hereinafter: *player*) from Atlanta United FC (hereinafter: *Claimant* or *Atlanta*) to the Saudi club.
2. The Preamble of the transfer agreement, *inter alia*, establishes: *"Whereas 100% of the economic and federative rights arising out of the MLS Player Contract are owned by MLS and the Player is currently playing for Atlanta United Football Club, a member club of the MLS"*.
3. According to the transfer agreement, the Respondent undertook to pay to the MLS a transfer fee of USD 16,000,000, payable as follows:
 - USD 4,875,000 within 10 calendar days;
 - USD 5,362,500 until 1 October 2021;
 - USD 5,362.500 until 1 October 2022.
4. Art. 2.6 of the transfer agreement reads as follows: *"In the event that Al Nassr (i) fails to make any payment due to MLS under this agreement by the due date for the payment or (ii) fails to make any required notification to MLS under this Transfer Agreement by the date specified herein, then with respect to (i) and (ii), interest shall accrue on any overdue amount(s) at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from (x) the date of default until the actual date of payment of the overdue amount(s) with respect to (i) and (y) the last date by which Al Nassr was required to provide notification until the actual date of payment of the overdue amount(s) with respect to (ii). Al Nassr shall pay the interest together with the overdue amount(s)."*
5. Art. 8.5 of the transfer agreement holds: *"It is further acknowledged and agreed by Al Nassr that in addition to MLS, the MLS Team [Atlanta] shall have the right and standing to enforce the terms of this Transfer Agreement for and on behalf of MLS and itself, including, but without limitation, enforcing the terms of this Transfer Agreement against Al Nassr in any proceedings commenced before any competent body, including FIFA and the CAS"*.
6. On 1 November 2021, the MLS put the Respondent in default and requested payment of USD 5,362,500, corresponding to the second instalment of the transfer fee, within 10 days.
7. On 14 November 2021, the Respondent replied to the MLS and explained that it will shortly acquire a new sponsor and then settle the debt.

II. Proceedings before FIFA

8. On 25 November 2021, 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

9. Atlanta lodged a claim against the Respondent in front of FIFA and requested payment of USD 5,362,500, corresponding to the second instalment of the transfer fee, plus interest of USD 40,402.40 and USD 734.59.

10. In its claim, the Claimant held that the second instalment resulting from the transfer agreement remained outstanding, even after the default notice.

11. Atlanta United FC held that, even though the agreement was signed by the MLS, art. 8.5 of the transfer agreement empowers it to claim such amount in front of the SJ PSC.

12. Furthermore, the Claimant held that art. 12bis shall be applied.

b. Position of the Respondent

13. In its reply, the Respondent contested that the Claimant has standing to sue in the present matter.

14. In this context, the Saudi club argued that Atlanta United FC is not a party to the agreement and that payment shall be made to the MLS according to the transfer agreement.

15. Therefore, the Respondent concludes that Atlanta United FC is not entitled to receive payments from the Respondent and the claim shall be declared inadmissible.

16. As to the substance, the Respondent held that it shall not be held liable to pay the second instalment since no *"well-documented invoice"* was received.

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

a. Competence and applicable legal framework

17. 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 25 November 2021 and submitted for decision on 3 March 2022. 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.
18. 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 the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
19. 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 (August 2021 edition), and considering that the present claim was lodged on 25 November 2021, the August 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
20. In addition, the Single Judge noted the argument of Al Nassr that Atlanta allegedly lacked standing to sue and that the claim shall therefore be declared inadmissible. In this context, the Single Judge wished to clarify that the legal concept of standing is a matter of substance and thus shall be addressed accordingly. Therefore, whether or not Atlanta has standing to sue is a matter that pertains to the merits of this dispute.

b. Burden of proof

21. 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

22. 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 it 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

23. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties have a dispute arising from the transfer agreement and the payment of its transfer fee.

24. In this context, the Single Judge acknowledged that his task was to determine whether the Claimant has standing to sue and if so, if the claimed amounts had in fact remained unpaid by the Respondent and in the affirmative, whether the latter had a valid justification for not having complied with its financial obligations.

25. First of all, the Single Judge addressed the issue about the standing to sue of Atlanta. In this context, he was confident that, having found that the MLS acted as an agent of Atlanta, with the corresponding consequence that Atlanta was to be deemed as a contractual party, it became evident that Atlanta had standing to sue.

26. In addition to the above, the Single Judge also found it important to outline the contents of clause 8.5 of the transfer agreement: *"It is further acknowledged and agreed by Al Nassr that in addition to MLS, the MLS Team [Atlanta] shall have the right and standing to enforce the terms of this Transfer Agreement for and on behalf of MLS and itself, including, but without limitation, enforcing the terms of this Transfer Agreement against Al Nassr in any proceedings commenced before any competent body, including FIFA and the CAS"*.

27. Such contractual clause is clear, in the Single Judge's opinion: Atlanta is empowered to enforce the transfer agreement on its own, moreover due the assessment that the contract is entered into by the initiative of Atlanta and not the MLS itself.

28. Based on the foregoing, the Bureau confirmed that Portland also has standing to sue.

29. As to the substance, the Single Judge took notice that it remained undisputed that the Respondent failed to remit the claimed second instalment of the transfer fee.

30. The Single Judge rejected the Respondent's argument that no invoice was sent, as the Respondent received a default notice on 1 November 2021.

ii. Consequences

31. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the transfer agreement, *i.e.* USD 5,362,500.
32. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest on said amount at the rate of 5% p.a. as of 2 October 2021 until the date of effective payment.

iii. Compliance with monetary decisions

33. 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.
34. To this end, the Single Judge confirmed that the Respondent was put in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
35. 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.
36. 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 club within the last two years, the Single Judge decided to impose a warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
37. 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.
38. 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.

39. 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.
40. 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.
41. 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.
42. 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

43. Finally, the Single Judge referred to art. 25 par. 2 of the Procedural Rules, according to which in proceedings before the Players' Status Chamber including its Single Judge, costs in the maximum amount of USD 25,000 are levied and according to which the costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.
44. Taking into account that the responsibility of the failure to comply with the payment of the amount as agreed in the transfer agreement can entirely be attributed to the Respondent and that the claim of the Claimant has been entirely accepted, the Single Judge concluded that the Respondent has to bear the entirety of costs of the current proceedings before FIFA.
45. 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 25,000.
46. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 22,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.

IV. Decision of the Single Judge of the PSC

1. The claim of the Claimant, Atlanta United FC, is partially accepted.
2. The Respondent, Al Nassr, has to pay to the Claimant, the following amount(s):
 - USD 5,362,500 as outstanding amount plus 5% interest p.a. as from 2 October 2021 until the date of effective payment.
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 (August 2021 edition), 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 22,000 are to be paid by the Respondent to FIFA (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).

CONTACT INFORMATION

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