

Decision of the Dispute Resolution Chamber

passed on 11 March 2021

regarding solidarity contribution for the transfer of the player Fabián Ruiz Peña

COMPOSITION:

Clifford J. Hendel (USA and France), Deputy Chairman

Tomislav Kasalo (Croatia), Member

Muzammil Bin Mohamed (Singapore), Member

CLAIMANT:

Real Betis Balompié, Spain

RESPONDENT:

SSC Napoli, Italy

I. FACTS OF THE CASE

Player: Fabián Ruiz Peña

Date of birth: 3 April 1996

Player passport: issued by the Real Federación Española de Fútbol (**RFEF**) on 8 August 2018

Season	Registration	Deregistration	Club	Category	Status
2002/2003	05.12.2002	30.06.2003	Los Palacios Villafranca E.F	4	Amateur
2003/2004	06.11.2003	30.06.2004	Los Palacios Villafranca E.F	4	Amateur
2004/2005	03.12.2004	30.06.2005	Los Palacios Villafranca E.F	4	Amateur
2005/2006	30.09.2005	30.06.2006	Real Betis Balompié SAD	1	Amateur
2006/2007	10.08.2006	30.06.2007	Real Betis Balompié SAD	1	Amateur
2007/2008	13.08.2007	30.06.2008	Real Betis Balompié SAD	1	Amateur
2008/2009	04.09.2008	30.06.2009	Real Betis Balompié SAD	1	Amateur
2009/2010	11.08.2009	30.06.2010	Real Betis Balompié SAD	2	Amateur
2010/2011	16.09.2010	30.06.2011	Real Betis Balompié SAD	2	Amateur
2011/2012	08.09.2011	30.06.2012	Real Betis Balompié SAD	1	Amateur
2012/2013	23.08.2012	30.06.2013	Real Betis Balompié SAD	1	Amateur
2013/2014	21.08.2013	30.06.2014	Real Betis Balompié SAD	1	Amateur
2014/2015	01.07.2014	16.07.2014	Real Betis Balompié SAD	2	Amateur
2014/2015	16.07.2014	24.09.2014	Real Betis Balompié SAD	2	Amateur
2014/2015	24.09.2014	30.06.2015	Real Betis Balompié SAD	2	Professional
2015/2016	19.08.2015	18.08.2016	Real Betis Balompié SAD	1	Professional
2016/2017	18.08.2016	27.12.2016	Real Betis Balompié SAD	1	Professional
2016/2017	27.12.2016	30.06.2017	Elche C.F. SAD	2	Professional
2017/2018	27.07.2017	16.05.2018	Real Betis Balompié SAD	1	Professional
2017/2018	25.04.2018	06.07.2018	Real Betis Balompié SAD	1	Professional

Sporting season: 1 July to 30 June of the following year (Spain)

Date of transfer(s): 13 July 2018, from Real Betis Balompié (Spain) to SSC Napoli (Italy)

Claimant club: Real Betis Balompié (Spain)

Respondent club: SSC Napoli (Italy)

Financial conditions: Clause 5.1 of the player's employment contract concluded with the Claimant, *i.e.* the buy-out clause:

*"5.1. Rescisión por voluntad unilateral del jugador:
Si durante el periodo de vigencia del presente contrato se planteara la extinción del mismo, por voluntad del JUGADOR, sin causa imputable al Club, el Real Betis Balompié tendrá derecho a percibir, bien directamente por parte del jugador o por un tercer club o sociedad anónima deportiva en su nombre, una indemnización de:*

- a) *TREINTA MILLONES DE EUROS (30.000.000.-€), para el caso de que el Club milite en Primera División en la temporada en curso en el momento de dicha extinción o para el caso en que, aun militando el club en Segunda División, las retribuciones del jugador previstas en el presente contrato no sufrieran reducción alguna por descenso de categoría, circunstancia que deberá comunicar el Club al jugador antes del 1 de julio de la temporada en la que el Club milite en Segunda División;*

[...]

El abono de las indemnizaciones arriba descritas serán requisito ineludible para la efectividad de dicha extinción, estándose a los responsables dl pago a lo dispuesto en el Artículo 16 del Real Decreto 1006/1985, de 26 de junio.

EL JUGADOR no podrá rescindir el presente CONTRATO, ni el CLUB autorizar la transferencia de su ficha federativa, ni ser contratado por el Club o entidad deportiva española o extranjera de clase alguna si previamente no se ha materializado íntegramente, el pago indemnizatorio aquí convenido".

Previous facts:

1. On 1 February 2018, the player and the Claimant concluded an employment contract (hereinafter: "*the employment contract*"), valid as from the date of signature until 30 June 2023.
2. As per clause 5.1 of the employment contract, and referring to the Spanish Real Decreto 1006/1985 of 26 June, which regulates the special labour relationship of professional athletes (hereinafter, "*the Real Decreto 1006/1985*"), the Claimant and the player included a buy-out clause which stipulated that in case of unilateral termination of the employment contract by the player, the latter had to pay the amount of EUR 30,000,000 to the Claimant.
3. On 4 July 2018, the Respondent deposited the total amount of EUR 30,000,000.80 in the Claimant's account.
4. According to the information contained in the Transfer Matching System (**TMS**) in the context of the player's transfer, on 11 July 2018, the Respondent uploaded a document entitled "*proof last end date*", dated 10 July 2018, by means of which the Claimant confirmed having received the payment of the buy-out fee from the Respondent adding that, as a result, the employment relationship with the player was terminated.
5. On 13 July 2018, the player joined the Respondent.

Claim and Response:

6. On 5 August 2020, the Claimant lodged a claim in front of FIFA claiming the payment of **EUR 1,275,000** as solidarity contribution in connection with the registration of the player with the Respondent. In addition, the Claimant requested the payment of 5% *p.a.* interest as from 6 August 2018 until the date of effective payment.

7. According to the Claimant, the Respondent had refused to pay the relevant amount of solidarity contribution arguing that *"the sum cashed [...] include[d] both the solidarity contribution and the training compensation eventually due to [the Claimant]"*.
8. The Claimant added that the Respondent had confirmed having paid the solidarity contribution to Elche CF.
9. The Claimant deemed having *"contributed to the education and training of the Player [...] just like Elche"* and, as such, it considered being equally entitled to receive a proportion of the solidarity contribution on the registration of the player with the Respondent.
10. The Respondent rejected the Claimant's claim arguing that, in line with the jurisprudence of the Dispute Resolution Chamber (**DRC**) and the Court of Arbitration for Sport (**CAS**), the movement of the player was to be considered as a transfer and the payment of the buy-out fee as the payment of the transfer compensation due in the context of such transfer.
11. The Respondent added that in accordance with the well-established jurisprudence of the DRC, the solidarity contribution is considered as being included in the transfer compensation and, therefore, no solidarity contribution was due to the Claimant.
12. From the Respondent's point of view, by accepting to include the amount of EUR 30,000,000 in the player's employment contract, the Claimant *"impliedly accepted that such amount was a net amount in the sense that also solidarity contribution should already be included in such amount"*.
13. The Respondent deemed that the Claimant should have specified in the player's employment contract that the amount of EUR 30,000,000 was not comprehensive of training compensation and/or solidarity contribution.
14. With regard to the amount of solidarity contribution paid to Elche CF, the Respondent sustained that *"[the Claimant] and Elche FC cover different position towards [the Respondent] in relation to the entitlement to receive solidarity contribution for the Player, the fact that the Respondent paid to Elche CF does not affect anyhow the present matter and the fact that [the Claimant] has no right to receive solidarity contribution in addition to the sum already cashed"*.

Replica:

15. The Claimant *inter alia* argued that during the negotiations for a possible transfer of the player, the Respondent had been informed *"that the solidarity contribution and training compensation was to be paid additionally and on top of the payment done"*.
16. The Claimant contested having agreed to receive the sum of EUR 30,000,000 net and argued having clearly required from the Respondent the payment of solidarity contribution and training compensation. The Claimant referred to an exchange of emails allegedly occurred between the parties prior to the transfer of the player and, in particular, to a draft of agreement that it would have sent to the Respondent on 25 June 2018. Said draft indicated the amount of EUR

- 31,500,000 as transfer compensation, broken down as follows: EUR 30,000,000, corresponding to the amount indicated in the buy-out clause and EUR 1,500,000 as solidarity contribution and training compensation.
17. The Claimant alleged that after having failed to *"to obtain [the Respondent's] acceptance to the transfer of the Player on the terms it had proposed [...]"*, the latter had *"resorted [...] trying to obtain the services of the Player by executing clause 5 of the Player's employment contract with the Claimant in accordance with article 16 of the Real Decreto 1006/1985, and so paying at La Liga headquarters on behalf of the Player EUR 30 million provided in his "[buy-out clause]"*.
 18. The Claimant added that the CAS jurisprudence is clear as to the fact that solidarity contribution is due on the payment of a buy-out fee.
 19. Additionally, the Claimant pointed out that in accordance with clause 5 of the player's employment contract, the amount of EUR 30,000,000 was to be paid *"in full"* in order to compensate the Claimant's loss of the player.
 20. In continuation, the Claimant underlined that *"the additional amount of EUR 75,000 paid to Elche"*, was an indication that the sum of EUR 30,000,000 could not be considered as a net amount. In this respect, the Claimant held that *"there is no legal or factual basis supporting the idea of considering the very same payment either net and gross, depending on the beneficiary clubs [...]"*.

Duplica:

21. The Respondent reiterated that solidarity contribution is to be considered included in the transfer compensation paid by the new club.
22. As regards the correspondence exchanged between the parties prior to the transfer of the player, the Respondent clarified that the Claimant had unilaterally amended the *"the amount fixed in the clause inserted in the Player's contract"* and included a higher amount as transfer compensation. The Respondent argued that because *"[the Claimant] raised certain substantial issues that were not shared by [the Respondent]"* it had *"decided to proceed otherwise"* (i.e. not to go through with the transfer and to pay the buy-out instead).
23. The Respondent contested having circumvented *"any rule"* pointing out that its decisions was *"rather [...] the expression of a different interpretation of the applicable rules of FIFA RSTP to the matter at hand"*.
24. Subsidiarily, and referring to the content of the player passport provided by the Claimant, the Respondent also highlighted that the Claimant *"would have right not to the 4,25% of the total compensation as claimed but to the 3,66% of the total compensation"*.

II. LEGAL CONSIDERATIONS

Applicable law: Regulations on the Status and Transfer of Players (**RSTP**): June 2018 edition.
Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (**Procedural Rules**): 2021 edition.

Jurisdiction: Yes, uncontested

Admissible: Yes, uncontested

Decision:

25. The Claimant is requesting the payment of EUR 1,275,000 as solidarity contribution in connection with the registration of the player with the Respondent, plus 5% *p.a.* interest as from 6 August 2018 until the date of effective payment.
26. In accordance with the jurisprudence of the CAS, what matters to determine the existence of a "transfer" under the FIFA RSTP is whether a particular player's move meets the following 4 requirements, which *in casu* both clubs acknowledged were met:
 - (i) The consent of the club of origin to the early termination of its contract with the player. This requirement was met when the Claimant signed the "*proof last end date*" of 10 July 2018 (*cf.* point I.4. above) and confirmed having received the payment of the buy-out fee from the Respondent adding that, as a result, the employment relationship with the player was terminated;
 - (ii) The willingness and consent of the club of destiny to acquire the player's rights. This requirement was met when the player was registered with the Respondent on a permanent basis;
 - (iii) The consent of the player to move from one club to the other. This requirement was met when the player signed an employment contract with the Respondent; and
 - (iv) The element of price or value of the transaction. *In casu*, the value of the transaction is determined by the sum of the EUR 30,000,000 received by the Claimant from the Respondent.
27. The DRC noted that the parties did not dispute that the payment of the buy-out fee by the Respondent to the Claimant is to be considered a "transfer" in the sense of art. 21 and art. 1 of Annex 5 of the FIFA RSTP.
28. As a result, it was deemed that the move of the player to the Respondent after the payment of the buy-out fee to the Claimant is to be considered a "transfer" in the sense of the RSTP.
29. The Respondent contested the allegation of the Claimant that the amount paid as buy-out fee was net of solidarity contribution and that solidarity contribution should be additionally paid to the latter.

30. Referring to its well-established jurisprudence, the DRC emphasized that in accordance with the provisions of art. 21 and Annexe 5 of the RSTP, the solidarity mechanism is applicable to any compensation paid by the new club on the basis of a buy-out clause contained in the employment contract of a player with his former club, as in the matter at hand.
31. Likewise, the Chamber referred to the jurisprudence of the DRC and the CAS, pursuant to which the wording of the RSTP does not prohibit that the amount specified in a transfer agreement (*in casu*, the buy-out specified in the player's employment contract) represents only 95% of the transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in conformity with the wording of art. 1 of Annexe 5 of the Regulations. The DRC considered that the same applies, by analogy, to the amount specified in the buy-out clause.
32. According to the DRC, only the payment of EUR 30,000,000 would trigger the buy-out of the player, *i.e.* the payment of EUR 30,000,000 minus the 5% of solidarity contribution would not result in the early termination of the player's employment contract.
33. As such, the amount of EUR 30,000,000 is indeed to be considered a net amount, which thus represents the 95% of the total compensation paid by the Respondent in connection with the transfer of the player from the Claimant to the Respondent. In light of the foregoing, and in line with art. 21 of the RSTP in combination with art. 1 of Annexe 5 of the RSTP, the Respondent shall bear the financial obligations pertaining to the solidarity contribution.
34. Hence, 5% shall be added over the net amount of the buy-out fee, *i.e.* EUR 30,000,000, to obtain said fee inclusive of solidarity contribution.
35. The amount obtained corresponds to EUR 31,578,947, of which 5% shall be deducted as solidarity contribution as per art. 21 and Annexe 5 of the RSTP, that is to say EUR 1,578,947.
36. According to art. 1 par. 1 of Annexe 5 of the RSTP, the Claimant is entitled to receive its proportion of the due solidarity contribution for the training and education provided to the player in accordance with the player passport of reference.
37. As per art. 1 par. 1 of Annexe 5 of the RSTP, the solidarity contribution for the seasons of a player's 12th, 13th, 14th and 15th birthday amounts to 5% of the total solidarity contribution.
38. As per art. 1 par. 1 of Annexe 5 of the RSTP, the solidarity contribution for the seasons of a player's 16th to 23rd birthday amounts to 10% of the total solidarity contribution.
39. If a player is registered for less than a year this amount is to be calculated on a *pro rata* basis (*cf.* art. 1 par. 1 of Annexe 5 of the RSTP).
40. Taking into account the time that the player was registered with the Claimant as indicated the player passport of reference, the Claimant is entitled to receive 75.87% of the solidarity contribution due, calculated on a *pro rata* basis as follows:

- for 323 days of the season of the player's 12th birthday (2007/2008). Therefore, the Claimant is entitled to receive 4.42% of the due solidarity contribution, *i.e.* 4.42% of EUR 1,578,947;
 - for 300 days of the season of the player's 13th birthday (2008/2009). Therefore, the Claimant is entitled to receive 4.11% of the due solidarity contribution, *i.e.* 4.11% of EUR 1,578,947;
 - for 324 days of the season of the player's 14th birthday (2009/2010). Therefore, the Claimant is entitled to receive 4.44% of the due solidarity contribution, *i.e.* 4.44% of EUR 1,578,947;
 - for 288 days of the season of the player's 15th birthday (2010/2011). Therefore, the Claimant is entitled to receive 3.95% of the due solidarity contribution, *i.e.* 3.95% of EUR 1,578,947;
 - for 297 days of the season of the player's 16th birthday (2011/2012). Therefore, the Claimant is entitled to receive 8.14% of the due solidarity contribution, *i.e.* 8.14% of EUR 1,578,947;
 - for 312 days of the season of the player's 17th birthday (2012/2013). Therefore, the Claimant is entitled to receive 8.55% of the due solidarity contribution, *i.e.* 8.55% of EUR 1,578,947;
 - for 314 days of the season of the player's 18th birthday (2013/2014). Therefore, the Claimant is entitled to receive 8.60% of the due solidarity contribution, *i.e.* 8.60% of EUR 1,578,947;
 - for 365 days of the season of the player's 19th birthday (2014/2015). Therefore, the Claimant is entitled to receive 10.00% of the due solidarity contribution, *i.e.* 10.00% of EUR 1,578,947;
 - for 317 days of the season of the player's 20th birthday (2015/2016). Therefore, the Claimant is entitled to receive 8.68% of the due solidarity contribution, *i.e.* 8.68% of EUR 1,578,947;
 - for 180 days of the season of the player's 21st birthday (2016/2017). Therefore, the Claimant is entitled to receive 4.93% of the due solidarity contribution, *i.e.* 4.93% of EUR 1,578,947;
 - for 294 days of the season of the player's 22nd birthday (2017/2018). Therefore, the Claimant is entitled to receive 8.05% of the due solidarity contribution, *i.e.* 8.05% of EUR 1,578,947;
 - for 73 days of the season of the player's 23rd birthday (2018/2019). Therefore, the Claimant is entitled to receive 2.00% of the due solidarity contribution, *i.e.* 2.00% of EUR 1,578,947.
41. In view of the above, the Claimant would be entitled to receive solidarity contribution in the amount of **EUR 1,197,947.37** (75.87% of the 5% solidarity contribution due over the total amount of EUR 31,578,947).
42. Taking into account the request of the Claimant as well as the jurisprudence of the DRC, the Claimant is entitled to receive 5% interest *p.a.* as of the 31st day of the registration of the player with the Respondent on a definitive basis, *i.e.* as of 13 August 2018, until the date of effective payment.
43. No procedural costs are payable (*cf.* arts. 17 par. 1 and 18 par. 1 of the Rules Governing the Procedure of the Players' Status Committee and Dispute Resolution Chamber).
44. Art. 24 bis is applicable.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Real Betis Balompié, is partially accepted.
2. The Respondent, SSC Napoli, shall pay to the Claimant EUR 1,197,947.37 as solidarity contribution, plus 5% interest *per annum* as from 13 August 2018 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Claimant shall immediately inform the Respondent of the bank account to which the Respondent must pay the due amount (including all applicable interest).
5. The Respondent shall provide evidence of full payment to chhelpdesk@fifa.org. If applicable, the evidence shall be translated into an official FIFA language (English, French, German, Spanish).
6. If the due amount (including all applicable interest) is not paid by the Respondent **within 45 days** as from notification of the bank account details, 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 and for the maximum duration of three entire and consecutive registration periods.
 2. The ban will be lifted immediately, and prior to its complete serving, following confirmation that the due amount (including all applicable interest) has been received by the Claimant.
 3. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
7. No procedural costs are payable (*cf.* arts. 17 par. 1 and 18 par. 1 of the Rules Governing the Procedure of the Players' Status Committee and Dispute Resolution Chamber).

For the Dispute Resolution Chamber:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

Pursuant to article 58 paragraph 1 of the FIFA Statutes, this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification.

NOTE RELATED TO 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 20 of the Procedural Rules).

CONTACT INFORMATION:**Fédération Internationale de Football Association**

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