

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 24 November 2015,

by

Geoff Thompson (England)

Single Judge of the Players' Status Committee,

on the claim presented by the club,

Club A, country B

as Claimant

against the club,

Club C, country D

as Respondent

regarding a contractual dispute between the parties
relating to the Player E

I. Facts of the case

1. On 20 April 2012, the club from country B, Club A (hereinafter: *the Claimant*), and the club from country D, Club C (hereinafter: *the Respondent*), signed a transfer agreement (hereinafter: *the agreement*) for the transfer of the Player E (hereinafter: *the player*) from the Claimant to the Respondent.
2. Art. 2.3.2. of the agreement stipulates that the Respondent will pay to the Claimant the amount of EUR 5,800,000, as follows:
 - EUR 2,300,000 by 1 July 2012 at the latest;
 - EUR 760,000 by 10 July 2013 at the latest;
 - EUR 760,000 by 15 December 2013 at the latest;
 - EUR 760,000 by 10 July 2014 at the latest;
 - EUR 760,000 by 15 December 2014 at the latest;
 - EUR 460,000 by 10 July 2015 at the latest.
3. Art. 4.2 of the agreement stipulates that *"In case of untimely or incomplete execution by the Club [the Respondent] of any of the payments under the present Agreement, the Club [the Respondent] shall be obliged to additionally pay to [the Claimant] a penal clause of 10% of the respective unpaid amount as well as a fine (financial penalty) of 1% of the amount due per each month (30 days) of the delay of such payment."*
4. On 5 August 2015, the Claimant lodged a claim in front of FIFA against the Respondent stating that the latter, despite a reminder sent on 21 July 2015, had failed to pay the amount of EUR 460,000 that fell due on 10 July 2015.
5. As a result, the Claimant requested the following payments:
 - EUR 460,000 concerning the payment due on 10 July 2015;
 - EUR 46,000 concerning the "penal clause" as per art. 4.2 of the agreement;
 - *"an additional agreed financial penalty of 1% of the amount due per each month of delay of such payment, according to art. 4.2 of the agreement (...)"*;
 - CHF 5,000 paid as the advance of costs.
6. In reply to the claim lodged against it, the Respondent indicated that it encountered financial difficulties since the second semester of 2013 due to *"claims presented by the Treasure Department of country D, a force majeure event which ultimately and illegally blocked its credits. (...) These claims are related to very old tax debts of the Respondent with the Federal Revenue of country D, caused by mismanagement of previous executive boards."* The Respondent explained that the debts as well as the risk of the "block" were not known to the club's board at the time it concluded the agreement with the Claimant.

7. Furthermore, the Respondent indicated that it had been negotiating with the Federal Revenue of country D, that “*decisions have been signed in October 2014 which authorized the immediate subdivision of the debt*” and that it expects that in 2016 it can restart its financial movement normally. In view of the foregoing, the Respondent requested the suspension of the procedure until December 2016, granting a new deadline to pay the amount due to the Claimant.
8. The Respondent further stated that the current situation is one of *force majeure* and that it already paid more than 75% of the transfer fee, which should be taken into account as a mitigating factor.
9. Finally, the Respondent requested that the penalty fee is rejected, or in the alternative, mitigated since it has reached a level of excessiveness. Also, the Respondent finds that the 12% interest rate should be rejected in light of the circumstances of the case.

II. Considerations of the Single Judge of the Players’ Status Committee

1. First of all, the Single Judge of the Players’ Status Committee (hereinafter: *the Single Judge*) analysed which edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) were applicable to the matter at hand. In this respect, he referred to art. 21 of the Procedural Rules as well as to the fact that the present matter was submitted to FIFA on 5 August 2015. Therefore, the Single Judge concluded that the 2015 edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players is applicable as to the substance of the matter. In this respect, he referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players and, on the other hand, once again to the fact that the claim was lodged in front of FIFA on 5 August 2015. In view of the foregoing, the Single Judge concluded that the 2015 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the case at hand.
3. Furthermore, the Single Judge confirmed that, based on art. 3 par. 1 and 2 of the Procedural Rules in connection with art. 23 par. 1 and 3 as well as art. 22 lit. f) of the Regulations, he was competent to deal with the present matter since it concerned a dispute between clubs affiliated to two different associations.
4. The competence of the Single Judge and the applicable regulations having been established, and entering into the substance of the matter, the Single Judge started by acknowledging the above-mentioned facts as well as the

arguments and the documentation submitted by the parties. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence that he considered pertinent for the assessment of the matter at hand.

5. First of all, the Single Judge took note that the Claimant maintained that it is entitled to receive EUR 460,000 from the Respondent, indicating that the Respondent had not yet paid the instalment of the transfer compensation that fell due on 10 July 2015.
6. Equally, the Single Judge noted that the Claimant deemed that in accordance with art. 4.2 of the transfer agreement, it was entitled to a penalty fee corresponding to 10% of the amount of EUR 460,000 as well as interest at a rate of 1% per month of delay.
7. Moreover, the Single Judge observed that, in its reply, the Respondent did not dispute that a debt existed towards the Claimant, but that, due to its financial situation, it had not yet been able to comply with its financial obligations towards the Claimant. In particular, the Single Judge observed that the Respondent held that it was unable to pay the Claimant as a result of *"claims presented by the Treasure Department of country D, a force majeure event which ultimately and illegally blocked its credits. (...) These claims are related to very old tax debts of the Respondent with the Federal Revenue of country D, caused by mismanagement of previous executive boards."* As such, the Respondent requested i) to suspend the proceedings until December 2016, ii) to reject or alternatively mitigate the penalty fee, and iii) to reject the Claimant's request for interest.
8. As to the Respondent's request to suspend the proceedings until December 2016, the Single Judge decided to reject this request. In doing so, the Single Judge put particular emphasis on the fact that in the previous 3 disputes between the Claimant and the Respondent regarding the same transfer agreement (cf. case ref. XXXX, case ref. XXXX and case ref. XXXX) the Respondent had indicated that it would be able to pay the Claimant in November 2013 and February 2015, however to no avail.
9. In continuation, and having examined the argumentation put forward by the Respondent, the Single Judge concluded that the Respondent did not provide any valid argument that would justify the non-payment of the last instalment of the transfer compensation. The Single Judge observed that the Respondent acknowledged that its current situation is a result of old tax debts and mismanagement of its previous boards, *i.e.* behaviour and actions of the Respondent itself, albeit allegedly by the persons formerly in control of the Respondent. However, the Single Judge determined that the result of actions of the Respondent itself can clearly not constitute a situation of *force majeure*, not even if these actions were done by previous boards, as alleged by the

Respondent. Hence, the Single Judge considers that the situation the Respondent finds itself in, is not beyond its control.

10. What is more, and as indicated on previous occasions, the Single Judge finds that, in any case, the Claimant's rights cannot be affected by the financial situation of the Respondent.
11. On account of the above, the Single Judge held that in accordance with the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent has to fulfill its contractual obligations towards the Claimant. Therefore, the Single Judge held that the Respondent has to pay the Claimant the amount of EUR 460,000.
12. In continuation, the Single Judge addressed the remaining two requests of the Claimant, namely, its request for a penalty fee corresponding to 10% of the last installment of the transfer compensation as well as its request for interest at a rate of 1% per month, *i.e.* 12% per annum.
13. In this context, the Single Judge observed that both the penalty fee as well as the interest rate are stipulated in the transfer agreement. In this regard, the Single Judge did not consider the penalty fee nor the interest rate excessive or disproportionate. In particular, the Single Judge deems it irrelevant for the application of the penalty fee and the interest rate that the Respondent holds that it has already paid 75% of the total transfer compensation. In fact, the Single Judge rather takes into account that the Respondent has repeatedly failed to meet its obligations under the transfer agreement signed between the parties. As a result, the Single Judge decided to accept both requests of the Claimant.
14. As a consequence of the foregoing consideration, the Single Judge determined that i) the Respondent has to pay to the Claimant the amount of EUR 46,000 as a penalty fee corresponding to 10% of the last installment of the transfer compensation, and ii) that the Respondent has to pay to the Claimant interest at the rate of 12% *p.a.* on the amount of EUR 460,000 as from 11 July 2015 until the date of effective payment.
15. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the Players' Status Committee including its Single Judge, costs in the maximum amount of CHF 25'000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings (cf. art. 18 par. 1 of the Procedural Rules).
16. In respect of the above, and taking into account that the Claimant is the successful party in the present proceedings, the Single Judge concluded that

the Respondent has to bear the full costs of the current proceedings before FIFA.

17. Furthermore and 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. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings is EUR 506,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
18. In conclusion, taking into account the degree of success as well as that the Respondent had already been held liable for three earlier breaches of the same transfer agreement (case ref. XXXX, XXXX and XXXX), the Single Judge of the Players' Status Committee determined the costs of the proceedings to the amount of CHF 25,000, which shall be borne by the Respondent.

III. Decision of the Single Judge of the Players' Status Committee

1. The claim of the Claimant, Club A, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 460,000 plus 12% interest *p.a.* on said amount as from 11 July 2015 until the date of effective payment.
3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. The Respondent has to pay to the Claimant the amount of EUR 46,000 as a penalty fee, **within 30 days** as from the date of notification of this decision.
5. In the event that the amount due to the Claimant in accordance with the above-mentioned number 4. is not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will apply as of the expiry of the stipulated time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
6. Any further claim lodged by the Claimant is rejected.
7. The final costs of the proceedings, amounting to CHF 25,000, are to be paid by the Respondent **within 30 days** of notification of the present decision as follows:
 - 7.1. The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case nr. XXXX:

UBS Zurich

Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

- 7.2. The amount of CHF 5,000 has to be paid directly to the Claimant.
8. The Claimant is directed to inform the Respondent directly and immediately of the account number to which the remittances are to be made in accordance with the above points 2., 4. and 7.2. and to notify the Single Judge of the Players' Status Committee of every payment received.

Note relating to the motivated decision (legal remedy):

According to article 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne - Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Single Judge of the
Players' Status Committee:

Markus Kattner
Acting Secretary General

Encl. CAS directives