

# **Decision of the Players Status Committee**

passed on 18 May 2021

regarding a contractual dispute concerning the player Jack Harper

**BY:**

**Stefano La Porta** (Italy), Single Judge of the PSC

**CLAIMANT:**

**Brighton and Hove Albion FC, England**

**RESPONDENT:**

**Malaga FC, Spain**

## I. Facts

1. On 30 December 2016, Brighton Hove and Malaga CF concluded a transfer agreement for the transfer of the player Jack Harper from Brighton to Málaga.
2. Clause 2.2 of the contract stipulated the following:  
*"2.2 Should the Player's registration be transferred on a permanent basis by Malaga at any time in the future then Malaga will pay to Brighton 12.5% (twelve and a half per cent) of any transfer fee received by Malaga (deducting the amount corresponding to solidarity contribution) up to a maximum sum of €750,000 (seven hundred and fifty thousand euros)\_  
If applicable, payment will be made by Malaga within 30 working days as from the moment Malaga receives the transfer fee of a third club, if the payment is made in several instalments by the third club, the payment to Brighton will be made in proportion to those instalments."*
3. On 20 March, Málaga and the Spanish club, Getafe CF, concluded an agreement with the following contents:  
*"En virtud del presente contrato el MÁLAGA CLUB DE FUTBOL, SAD se compromete a desistir de su facultad de renovación sobre el contrato de trabajo con el JUGADOR D. JACK HARPER a efectos de que éste pueda suscribir un contrato con el GETAFE CLUB DE FÚTBOL, S.A.D., al ser agente libre.  
(...)  
El GETAFE abonará al MÁLAGA CF, por el desistimiento de la facultad de renovación sobre el contrato del JUGADOR y siempre que el JUGADOR sea contratado por GETAFE como agente libre con fecha de efectos del 1 de Julio de 2019, la cantidad de UN MILLÓN QUINIENTOS MIL EUROS (1.500.000 €) más IVA."  
Free translation into English:  
*"By means of this contract, MÁLAGA CLUB DE FUTBOL, SAD undertakes to waive its right to extend the employment contract of PLAYER JACK HARPER in order to enable him to sign a contract with GETAFE CLUB DE FÚTBOL, S.A.D., as he is a free agent.  
(...)  
GETAFE shall pay to MÁLAGA CF, for the waiver of the option to extend the contract of the PLAYER and provided that the PLAYER is hired by GETAFE as a free agent with an effective date of July 1, 2019, the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (€1,500,000) plus VAT."**
4. In this respect, the aforementioned agreement stipulated the following:
  - a) *En el supuesto que el Jugador Ivan Alejo se reincorpore a la disciplina del GETAFE en la temporada 2019-2020:*
    - *QUINIENTOS MIL EUROS (500.000 €) antes de o el 31 de agosto de 2019*
    - *QUINIENTOS MIL EUROS (500.000 €) antes de o el 31 de agosto de 2020*
    - *QUINIENTOS MIL EUROS (500.000 €) antes de o el 31 de agosto de 2021*
    - *El IVA de esta operación se pagara el día 15 del mes siguiente a la fecha de emisión de la factura*Free translation into English:
    - a) *In the event that the Player Ivan Alejo rejoins the discipline of GETAFE in the 2019-2020 season:*
      - *FIVE HUNDRED THOUSAND EUROS (€500,000) before or on August 31, 2019.*

- FIVE HUNDRED THOUSAND EUROS (€500,000) on or before August 31, 2020
- FIVE HUNDRED THOUSAND EUROS (500,000 €) on or before August 31, 2021.
- The VAT for this operation shall be paid on the 15th day of the month following the date of issue of the invoice.

5. On 1 July 2019, the player transferred from Málaga to the Spanish club, Getafe CF.
6. On 15 July 2020, the legal advisor of Málaga sent a letter to Brighton, indicating the following: *"Clause 2.2.: Player's registration has not been permanently transferred by Malaga. The contract that linked Malaga and the Player ended on 30 June 2019, so from that day on the player became a free agent.~"*
7. On 3 March 2021, the Claimant lodged a claim before FIFA and requested the payment of EUR 187,500 pursuant to the sell on-fee, plus applicable interest.
8. Subsidiarily, and on the event that that the final instalment of EUR 500,000 has not yet been paid to Malaga by Getafe, Brighton requested the following:
  - a) *immediately pay Brighton the sum of EUR 125,000 (based on 12.5% of the EUR 1,000,000 fee that Malaga should have already received from Getafe) together with interest at the appropriate rate and costs; and*
  - b) *a further sum of EUR 62,500 (12.5% of the final EUR 500,000 instalment) within 30 working days after Malaga receives the final instalment in accordance with Clause 2.2 of the Transfer Agreement together with interest at the appropriate rate and costs.*
9. According to the Claimant, the Player's move from Malaga to Getafe on 1 July 2019 was unquestionably a transfer of the Player's registration on a permanent basis. In the opinion of the Claimant, *"any decision to the contrary will set a very dangerous precedent in that it would potentially allow clubs in the future to circumvent the operation of a sell-on clause by artificially engineering a free transfer of a player through the waiving of contractual renewal rights or otherwise."*
10. In its reply to the claim, the Respondent explained that the contractual relationship between Málaga and the player ended on 30 June 2019.
11. However, the Respondent acknowledged that it had the possibility to extend the player's contract until 30 June 2022, but that it preferred to not do so. Hence, Málaga explained that made decision to waive the right to extension that he had in exchange for compensation for the loss of the club's assets.
12. Within this context, Málaga admitted that it concluded a contract with Getafe on 20 March 2020.
13. In this respect, Málaga explained that it did not received any transfer fee or money from Getafe CF for its registration of the player, but that it *"received compensation from Getafe for the withdrawal of the right to renewal included in the tenth clause of the Player contract."*
14. In relation to the sell-on clause, Málaga considered that *"the correct thing would be to make a literal interpretation of the transfer agreement signed between Malaga and Brighton"*.

## II. Considerations of the Players' Status Committee

1. First of all, the Single Judge of the PSC (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the Single Judge of the PSC referred to art. 3 par. 1 of the Procedural Rules and emphasised that, in accordance with art. 24 par. 1 in combination with art. 22 of the Regulations on the Status and Transfer of Players, the Single Judge of the PSC is competent to deal with disputes between clubs belonging to different associations.
3. In continuation, the Single Judge of the PSC analysed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present matter. In this respect, the Single Judge of the PSC confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering the date when the claim was lodged, the January 2021 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.
4. With the above having been established, the Single Judge of the PSC entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the Single Judge of the PSC emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Single Judge of the PSC first noted that, on 30 December 2016, Brighton Hove and Málaga CF concluded a transfer agreement for the transfer of the player Jack Harper from Brighton to Málaga, which included the following sell-on clause:  
  
*2.2 Should the Player's registration be transferred on a permanent basis by Malaga at any time in the future then Malaga will pay to Brighton 12.5% (twelve and a half per cent) of any transfer fee received by Malaga (deducting the amount corresponding to solidarity contribution) up to a maximum sum of €750,000 (seven hundred and fifty thousand euros)\_*
6. Subsequently, the Single Judge took into account that the Claimant lodged a claim against the Respondent on the basis of the aforementioned clause, noting that on 1 July 2019, the player transferred from Málaga to the Spanish club, Getafe CF.
7. On the other hand, the Single Judge analyzed the Respondent's statement of defense, according to which the contractual relationship between Málaga and the player ended on 30 June 2019 and that, consequently, the player transferred to Getafe CF out of contract.

8. Nevertheless, the Single Judge also noted that the Respondent acknowledged that it had the possibility to extend the player's contract until 30 June 2022, but that it preferred to not do so. Hence, Málaga explained that it made a decision to waive the right to extension that he had in exchange for compensation for the loss of the club's assets. The Single Judge noted that, in application of the aforementioned decision, Málaga and Getafe CF agreed upon the following:

*"GETAFE shall pay to MÁLAGA CF, for the waiver of the option to extend the contract of the PLAYER and provided that the PLAYER is hired by GETAFE as a free agent with an effective date of July 1, 2019, the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (€1,500,000) plus VAT."*
9. In view of the above, the Single Judge understood that the main legal issue at stake is to determine whether the sell-on clause agreed upon Brighton Hove and Malaga CF is applicable to the arrangement made between Málaga and Getafe concerning the player, insofar it does not appear to be, *stricto sensu*, a transfer agreement between two clubs.
10. In this respect, when observing the sequence of events involving the transfer of the player from Málaga to Getafe, the Single Judge noted that, indeed, it was not constructed around a proper transfer agreement. Nevertheless, in the view of the Judge, the aforementioned transfer, *de facto*, had similar effects to a transfer constructed on the basis on agreement, including the payment of a very significant amount of EUR 1,500,000. In the opinion of the Judge, when assessing the applicability of the aforementioned sell-on fee, the *de facto* elements concerning the subsequent transfer of the player shall take precedence over more formalistic (*de iure*) elements.
11. As a result, the Single Judge understood that, regardless of its legal structuring, *de facto*, the player transferred from Málaga to Getafe in a manner that complies with the sell-on requirements of the agreement concluded between Brighton Hove and Málaga CF, since it resulted in a transfer that included a significant amount paid by the player's new club to his former club (i.e. by Getafe to Málaga). The Single Judge underline that this interpretation allows to take into account taking new circumstances into account without departing from the contractual intent.
12. After establishing the foregoing, the Single Judge went on the specific calculation of the payable sell-on fee.
13. In this respect, the Single Judge noted that Málaga CF acknowledged that the payments agreed upon with Getafe were applicable as follows:
  - FIVE HUNDRED THOUSAND EUROS (€500,000) before or on August 31, 2019.
  - FIVE HUNDRED THOUSAND EUROS (€500,000) on or before August 31, 2020
  - FIVE HUNDRED THOUSAND EUROS (500,000 €) on or before August 31, 2021.
14. Nevertheless, considering the present date, the Single Judge understood that only the first two instalments were already due, i.e. EUR 500,000 on August 31, 2019 and EUR 500,000 on August 31, 2020. Hence, the Single Judge could only award said amount as presently due.

15. Moreover, taking into account that the contract between the parties stipulated a sell-on fee of 12.5 of any transfer fee, the Single Judge calculated that the Claimant is entitled to the total amount of EUR 125,000, detailed as follows:
  - EUR 62,500 for the first instalment (i.e. 12.5% of EUR 500,000);
  - EUR 62,500 for the second instalment (i.e. 12.5% of EUR 500,000);
16. Consequently, in strict application of the principle of *pacta sunt servanda*, the Single Judge of the PSC established that the Respondent has to pay to the Claimant, the total outstanding amount of EUR 125,000.
17. In continuation, the Single Judge of the PSC referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Dispute Resolution Chamber relating to disputes regarding solidarity mechanism costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings.
18. In view of the above, the Single Judge decided to impose the payment of CHF 15,000 by the Respondent.
19. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the Single Judge of the PSC decided to award 5% interest p.a. over said amount as from the due dates.
20. Furthermore, taking into account the previous considerations, the Single Judge of the PSC referred to par. 1 and 2 of art. 24bis 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.
21. In this regard, the Single Judge of the PSC pointed out 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 and for the maximum duration of three entire and consecutive registration periods.
22. Therefore, bearing in mind the above, the Single Judge of the PSC decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the 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 effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
23. Finally, the Single Judge of the PSC 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. 3 of the Regulations.

### III. Decision of the Players' Status Committee

1. The claim of the Claimant, Brighton and Hove Albion FC, is partially accepted.
2. The Respondent, Malaga FC, has to pay to the Claimant, the amount of EUR 125,000, plus interest as follows:
  - 5% interest p.a. over the amount of EUR 62,500 as from 1 September 2019 until the date of effective payment;
  - 5% interest p.a. over the amount of EUR 62,500 as from 1 September 2020 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
5. Pursuant to article 24bis of the [Regulations on the Status and Transfer of Players](#) if full payment (including all applicable interest) is not paid **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 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 paid by the end of the of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with article 24bis paragraphs 7 and 8 of the [Regulations on the Status and Transfer of Players](#).
7. The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent to FIFA (cf. note relating to the payment of the procedural costs below).

For the Players Status Committee:



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

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## NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 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 20 of the Procedural Rules).

## CONTACT INFORMATION:

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