

Decision of the Players' Status Chamber

passed on 3 March 2022

regarding a contractual dispute concerning the player Papa Alioune Ndiaye

BY:

Castellar Guimaraes Neto (Brazil)

CLAIMANT:

Stoke City Football Club, England
Represented by Chris Laird

RESPONDENT:

Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi, Turkey
Represented by Duygu Yaşar

I. Facts of the case

1. On 20 December 2019, the English club Stoke City Football Club (hereinafter *the Claimant*) and the Turkish club Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi (hereinafter *the Respondent*) concluded a temporary transfer agreement (hereinafter *the Transfer Agreement*) concerning the temporary transfer of the player Papa Alioune Ndiaye (hereinafter *the Player*) from the Claimant to the Respondent (jointly referred to as the *Parties*) until 30 June 2020.

2. Therein, the Claimant and the Respondent (hereinafter jointly referred to as *the Parties*) agreed upon, *inter alia*, the following financial conditions:

Clause 2 of the Transfer Agreement:

*"(...) guaranteed sum of **£150,000** (...) payable on 1st March 2020"* (emphasis added)

Clause 3 of the Transfer Agreement:

*"(...) in the event that Trabzonspor fails to qualify for the UEFA Champions League or UEFA Europa League group stages for 2020/2021 season, then Trabzonspor shall pay to Stoke City a further contingent sum of **£100,000** (...) payable on 30th June 2020"* (emphasis added)

Clause 4 of the Transfer Agreement:

*"(...) in the event that the Player is not fielded in 10 Turkish Super Lig matches for Trabzonspor even if he is fit and not suspended, then Trabzonspor shall pay to Stoke City a further contingent sum of **£100,000** (...) payable on 30th June 2020."*

Clause 5 of the Transfer Agreement provided for an option right of the Respondent to acquire the Player on permanent basis.

Clause 6 of the Transfer Agreement:

"In the event that Trabzonspor do not serve an Option Notice pursuant to clause 5 above then Trabzonspor agrees to pay to Stoke City, subject to any deductions to be made pursuant to clause 7, further contingent sums as follows:

*(a) The sum of **£850,000** (...) on 30th June 2020 in the event that Trabzonspor have qualified for the UEFA Champions League group stages for season 2020/2021, payable by 31st August 2020; or*

*(b) The sum of **£100,000** (...) on 30th June 2020 in the event that Trabzonspor have qualified for the UEFA Europa League group stages for season 2020/2021, payable by 31st August 2020."* (emphasis added)

3. On 25 June 2020, the Parties signed an amendment to the Transfer Agreement (hereinafter *the Amendment*), where they agreed to extend the Transfer Agreement until 31st July 2020.

4. Furthermore, the Parties agreed to amend the financial conditions as follows:

Clause 3 of the Transfer Agreement:

*“IN the event that Trabzonspor fails to qualify for the UEFA Champions League or UEFA Europa League group stages for 2020/2021 season, then Trabzonspor shall pay to Stoke City a further contingent sum of **£100,000** (...) payable on either:*

- i. 31st August 2020, or;*
- ii. within 14 days from when such qualification failure is confirmed, whichever is the later.”*
(emphasis added)

Clause 4 of the Transfer Agreement:

*“IN the event that the Player is not fielded in 10 Turkish Super Lig matches for Trabzonspor even if he is fit and not suspended, then Trabzonspor shall pay to Stoke City a further contingent sum of **£100,000** (...) payable on 31st July 2020.”* (emphasis added)

Clause 6 of the Transfer Agreement:

“In the event that Trabzonspor do not serve an Option Notice pursuant to clause 5 above then Trabzonspor agrees to pay to Stoke City, subject to any deductions to be made pursuant to clause 7, further contingent sums as follows:

- (a) The sum of £850,000 (...) in the event that Trabzonspor have qualified for the UEFA Champions League group stages for season 2020/2021, or;*
- (b) The sum of **£100,000** (...) in the event that Trabzonspor have qualified for the UEFA Europa League group stages for season 2020/2021*
- (c) Any payment under this clause shall be payable on either:*
 - iii. 31st August 2020, or;*
 - iv. within 14 days from when such qualification is confirmed, whichever is the later.”*
(emphasis added)

5. The Respondent did not exercise its option right to acquire the Player at the end of the season 2019/2020.
6. Whilst the Respondent, by virtue of its domestic success at the end of the season 2019/2020, qualified for the aforesaid UEFA competitions, it was prevented from participating in the 2020/21 editions of the competitions due to a sanction imposed by the UEFA Club Financial Control Body Adjudicatory Chamber on 3 June 2020.
7. On 10 November 2020, the Claimant sent an invoice to the Respondent, requesting the payment of £100,000, corresponding to *“Contingent loan fee in accordance with Clause 3 of the Temporary Transfer Agreement dated 21st December 2019 (failing to qualify for group stages of UEFA Champions League and/or UEFA Europa League for 2020/21 season)”*.
8. On 12 November 2020, the Respondent objected to the invoice: *“Trabzonspor qualified for the UEFA Champions League for 2020/2021 season as it finished the Turkish Super League in the*

second place. However, the Club could not participate it, as a result of the UEFA CFCB decision excluding Trabzonspor from one UEFA club competition for which the Club might qualify in the 2020/21 and 2021/22 seasons.”

9. Further letters were exchanges between the Parties regarding the said invoice.
10. On 11 February 2021, the Claimant replied explicitly to the letter of 12 November 2020:

“Whilst we do not necessarily accept that Trabzonspor did, in fact, qualify for the 2020/21 UEFA Champions League due to the fact that the UEFA CFCB decision to exclude Trabzonspor had already been made prior to the conclusion of the 2019/20 season, it is not particularly relevant in this case because Trabzonspor did not qualify for the group stages of the competition and so the conditional fee set out in clause 3 of the Loan Agreement is payable.”
11. On 4 March 2021, the Respondent sent a letter to the Claimant, arguing that it is not liable to make any payments since *“Trabzonspor was prevented from participating in UEFA competitions in 20/21 season by UEFA as a result of a sanction”* and that Clause 3 of the Transfer Agreement merely indicates two possibilities leading to liabilities of the Respondent: *“(i) failing to qualify for Champions League or (ii) failing to qualify for UEFA Europa League Group Stages for 20/201 season i.e., failing to qualify for the Champions’ League Group Stages has nothing to do with this clause.”*
12. On 21 October 2021, the Claimant sent another letter to the Respondent, requesting the payment of GBP 100,000 in accordance with Clause 6(b) of the Transfer Agreement or, alternatively, in accordance with Clause 3 of the Transfer Agreement.
13. In the above-mentioned letter, the Claimant argued that the Respondent qualified for the Europa League Group Stage for the purposes of Clause 6(b) of the Transfer Agreement, simply based on its sporting results (winning the Turkish Cup) and the applicable UEFA Regulations and the Access List. What is more, the Claimant argued that participation in the UEFA competition was not a pre-requisite for Respondent’s liability under the said Clause.
14. Furthermore, in the alternative, the Claimant asserted that the Respondent was liable to pay the same amount in any event *“in case of a failure to qualify”*. The Claimant was therefore always *“guaranteed to receive at least £100,000 by way of an additional compensation.”*
15. No payment was made by the Respondent to the Claimant.

II. Proceedings before FIFA

16. On 20 December 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

17. In its claim, the Claimant requested the amount of GBP 100,000, corresponding to the liabilities under the Transfer Agreement.

18. In line with its previous correspondences quoted above, it argued that the Respondent is liable to make such payment under Clause 6(b) of the Transfer Agreement.

19. The Claimant purported that in line with the UEFA Regulations and Access List table *“it is clear that the winner of the Turkish Cup competition qualifies for a place in the Europa League Group Stage.”*

20. In view of the above, the Claimant concluded that *“the Respondent’s victory in the Turkish Cup Competition meant it ‘qualified’ for the UEFA Europa Group Stages for the season 2020/21 for the purpose of clause 6(b) and accordingly this triggered its liability thereunder.”*

21. Finally, the Claimant argued that participation in the UEFA competition was not a pre-requisite for Respondent’s liability under the said Clause.

22. In the alternative, shall the Claimant’s position be found to be wrong, *“insofar as the Respondent did not ‘qualify’ for the Europa League Group Stage by virtue of its Turkish Cup victory for the purposes of the Agreement”*, then the Claimant asserted that the Respondent is nevertheless liable to pay an additional fee of GBP 100,000 pursuant to Clause 3 of the Transfer Agreement.

23. In a thorough interpretation of the said clause, the Claimant was of the opinion that the wording of Clause 3 of the Transfer Agreement clearly refers *“to a failure to qualify for the group stage of either of the UEFA competitions.”*

24. The Claimant supported its allegations as follows:

“This is the only interpretation that gives business efficacy to the Agreement and effects the parties’ intentions.”

“The plurality and lack of capitalisation of ‘group stages’ (there being only one group stage in each of the referenced competitions), the absence of distinct numbering (as the Respondent added in its letter of 4 March 2020) and the fact that the group stages of these competitions are a measure used consistently throughout the Agreement (including the relevant clause 6), leaves no room for doubt that the clause is to be read as referring to the Champions’ League group stage.”

25. The Claimant concluded that *“Clause 3 essentially provided a guaranteed minimum additional fee for the Claimant.”*

b. Position of the Respondent

26. The Respondent rejected the claim of the Claimant.

27. First of all, with regard to application of Clause 6(b) of the Transfer Agreement, the Respondent argued that it *“finished the Super league in the 2nd place hence qualified for the UEFA Champions League. A team cannot qualify for both the UEFA Champions League and the UEFA Europe League based on the results of the domestic championship.”*

28. In view of the above, it concluded that it did not qualify for the group stages of the UEFA Europa League.

29. Concerning its participation in the UEFA Champions League, the Respondent asserted that it could not participate to the UEFA Champions League, as a result of the UEFA CFCB decision of 3 June 2020.

30. With regard to the application of Clause 3 of the Transfer Agreement, the Respondent was of the opinion that based on the wording of the said clause, *“if the Respondent fails to finish the Super league in the top 3 places or fails to win the Cup, it must make a further contingent payment according to the clause i.e., the ‘group stages’ only cover UEFA Europe League.”*

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

31. 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 20 December 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.

32. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 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 dispute with an international dimension between two clubs belonging to different associations, i.e. an English club and a Turkish club.

33. Finally, 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 20 December 2021, the August 2021 edition of said regulations (hereinafter the *Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

34. 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, he 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

35. 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

36. The foregoing having been established, the Single Judge moved to the substance of the matter, acknowledging that the Parties dispute the payment of certain financial obligations by the Respondent as *per* the Transfer Agreement.
37. In this context, the Single Judge acknowledged that the heart of the dispute lies in one particular point, i.e. if the conditions triggering the payment of a contingent transfer fee of GBP 100,000 were fulfilled.
38. In this respect, the Single Judge took note that whereas the Claimant argued that that the Respondent indeed qualified to the UEFA Europa League, the Respondent was of the opinion that it:
- “qualified for the UEFA Champions League for 2020/2021 season as it finished the Turkish Super League in the second place.”*
- “However, the Club could not participate it, as a result of the UEFA CFCB decision excluding Trabzonspor from one UEFA club competition for which the Club might qualify in the 2020/21 and 2021/22 seasons.”*
39. Furthermore, the Single Judge noted that the same line of argumentation was exchanged between the Parties several times during the period November 2020 until 21 October 2021.

40. Whereas it is disputed, which UEFA competition the Respondent in fact qualified to, the Single Judge deemed that due to the limitation of the claim to GBP 100,000, this issue can be left open (*ne eat iudex ultra petita partium*).
41. Nonetheless, the Single Judge was of the opinion that the Respondent indeed qualified to UEFA competition, even if it was not able to participate therein.
42. In this respect, the Single Judge concluded that the participation in said competition was not a pre-requisite to the respective entitlement and stressed that the exclusion of the Respondent from the UEFA Competition is something in Respondent's scope of actions and should not, in any event, be used as an excuse not to fulfil its financial liabilities.

ii. Consequences

43. Having stated the above, the Single Judge turned his attention to the question of the consequences.
44. In view of the foregoing and bearing in mind the basic legal principle of *pact sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Single Judge ruled that the Respondent shall be held liable to pay the Claimant the contingent transfer fee of GBP 100,000, deriving from the Transfer Agreement concluded between the Parties.

iii. Compliance with monetary decisions

45. 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 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.
46. 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.
47. 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.
48. 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.

49. 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

50. 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.

51. Taking into account that the claim of the Claimant has been accepted to a considerable extent, the Single Judge concluded that the Respondent shall bear the costs of the current proceedings before FIFA. 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. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to USD 15,000.

52. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 15,000 and concluded that said amount has to be paid by the Respondent.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Stoke City Football Club, is accepted.
2. The Respondent, Trabzonspor Sportif Zatiirim ve Futbol Isletmeciligi, has to pay to the Claimant, the outstanding amount of GBP 100,000.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. 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.
5. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 art. 25 of the Regulations on the Status and Transfer of Players.
6. The final costs of the proceedings in the amount of USD 15,000 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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