

Decision of the Players' Status Chamber

passed on 8 February 2022

regarding a dispute concerning the transfer of the player John Jairo Cifunte Vergara

BY:

Natalia Chiriac (Moldova)

CLAIMANT:

Pyramids FC, Egypt

Represented by Rolf Müller

RESPONDENT:

Universidad Catolica, Ecuador

Represented by Andrés Holguín

I. Facts of the case

1. On 20 December 2018, the Egyptian club, Pyramids FC (hereinafter: *the Claimant*), and the Ecuadorian club, Universidad Catolica (hereinafter: *the Respondent*) concluded a transfer agreement (hereinafter: *the agreement*) regarding the permanent transfer of the player, John Jairo Cifuentes Vergara (hereinafter: *the player*) from the Respondent to the Claimant.
2. Pursuant to article 3 of the agreement the parties agreed to a transfer compensation fee of USD 5,000,000, to be paid by the Claimant in two instalments as follows:
 - (a) USD 3,000,000 to be paid by 31 December 2018
 - (b) USD 2,000,000 to be paid by 30 July 2019
3. What is more, the transfer agreement contains the following clause:

“This amount inclusive of solidarity contribution and the training compensation in accordance with FIFA RSTP.”
4. On 10 February 2021, the Claimant informed the Respondent of a claim for solidarity contribution in the amount of USD 89,125 and asked the Respondent to settle and pay the respective amount to the Claimant.
5. On 2 June 2021, the Claimant was ordered by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber to pay to the club CD Juventud Minera, Ecuador (hereinafter: *Minera*) an amount of USD 89,125 as solidarity contribution under case ref. nr. TMS 6333.
6. On the 15 July 2021, the Claimant sent the aforesaid decision to the Respondent and asked the Respondent, to settle the amount (i.e. USD 89,125) directly with Minera, or to reimburse the amount to the Claimant.
7. On 27 July 2021, the Claimant sent a letter, received from Minera with its bank details to the Respondent and asked the Respondent again to make the payment to Minera.
8. On 9 August 2021, the Claimant sent a final reminder to the Respondent to make the said payment to Minera.
9. On the same day, the Respondent informed the Claimant that it has contacted Minera to reach a payment agreement and will inform the Claimant once a payment arrangement has been reached.
10. On 16 August 2021, the Respondent informed the Claimant that Minera provided two counterproposals to the Respondent, which would be decided on the following day

11. On 20 August 2021, the Respondent's legal representative sent a further email update to the Claimant, stipulating the following:

"I had a meeting with Juventud Mineira's attorney this week. He granted me another week to reach an agreement. They need my help in a case they have filed and pending the success of a diligence I have next week they will give us 7 months to pay the whole debt."

12. On 2 September 2021, the Claimant informed the Respondent that the deadline to make the payment as per FIFA decision ref. nr. TMS 6333 would expire on 3 September 2021, as such, the Claimant would have to make the payment in order to avoid any sanction or ban. Thus, and as per the transfer agreement of the player concluded between the Respondent and the Claimant, the Respondent was asked to reimburse the Claimant with the paid amount and applicable interest until the date of payment, however to no avail.

II. Proceedings before FIFA

13. On 2 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

14. According to the Claimant, as per the terms of the agreement, the Respondent received the full transfer sum of USD 5,000,000, without deduction of 5% as solidarity contribution.
15. The Claimant argued that with the non-payment of the solidarity contribution to the claiming former clubs of the player, the Respondent had breached the transfer agreement.
16. The requests for relief of the Claimant, were the following:
- (a) *that the Respondent shall be obligated to pay to the Claimant USD 146,700 with interest of 5% on USD 89,125 from 2 September 2021, alternatively 22 September 2021, and on USD 57,575 from the 22 September 2021.*
 - (b) *Alternatively, the Respondent shall be obligated and to pay to the Claimant the amount of USD 89,125 with an interest of 5 % from 2 September 2021, alternatively 22 September 2021.*
 - (c) *the costs and compensations shall be imposed to the Respondent.*

b. Position of the Respondent

17. In its reply to the claim, the Respondent stipulated the following:

"The right of Juventud Minera to demand the solidarity contribution for the transfer of Cifuentes expired in full on December 20, 2020, a fact that the Claimant should have alleged and did not do."

The payment that Pyramids accepted and made was improper and should never have been made, therefore the damage was not caused by the Respondent, on the contrary, it was Pyramids' negligence what caused this payment as a result of a lack of defense on an expired claim.

As a defendant in case TMS 6333 it was Pyramids' obligation to defend the case and they did not.

In this case, the negligence and lack of diligence from Pyramids cannot be rewarded, since they did not defend the case as it should, having at hand a very valid resource such as the expiration of the period that Juventud Minera had to file the lawsuit."

18. In this regard, the Respondent requested that the reimbursement request from the Claimant of USD 89,125 be rejected and *"that it be decided that this payment should have been avoided by the plaintiff if they had filed any kind of defense, instead of accepting a payment that it was not theirs to accept."*
19. Furthermore, the Respondent indicated that *"two years to file any claim for an improper payment or a reimbursement of the amounts already paid expired on December 31, 2020 and July 30, 2021."* According to the Respondent, *"the generating event is the transfer of Cifuentes and the payments, unlike the request for reimbursement of the payment made to Juventud Minera that is generated from a FIFA decision, the claim for US \$ 57,575 was generated when Pyramids paid the defendant the value of the transfer without withholding the solidarity contribution as required by article 1 of annex 5 of the Regulation."*
20. In conclusion, the Respondent requested that the Claimant's claim be rejected *"for not having just cause and as there are no more training clubs for the player."*

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

21. First of all, the Players Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 2 November 2021 and submitted for decision on 8 February 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.
22. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. f) of the Regulations on the Status and Transfer of Players (August 2021 edition), she is competent to deal with the

matter at stake, which concerns a contractual dispute between clubs belonging to different associations.

23. At this point, the Single Judge referred to art. 23 par. 3 of the Regulations (edition August 2021), which stipulates that the decision-making bodies of FIFA shall not hear any dispute if more than two years have elapsed since the facts leading to the dispute arose. The application of this time limit shall be examined ex officio in each individual case.
24. The Single Judge noted that, in the present case, the Claimant *inter alia* requested the reimbursement of solidarity mechanism in relation to the transfer of the player which took place on 20 December 2018 for a transfer fee of USD 5,000,000, which was payable in two instalments as follows:
 - (a) USD 3,000,000 to be paid by 31 December 2018 (hereinafter: *the first instalment*);
 - (b) USD 2,000,000 to be paid by 30 July 2019 (hereinafter: *the second instalment*).
25. From the information available on file and on TMS, the Single Judge observed that Minera claimed its share of solidarity mechanism from the Claimant in relation to the said transfer of the player under TMS case reference number 6333. The Single Judge further observed that the Claimant, on 10 February 2021, during the submission phase of the claim in TMS case reference number 6333 requested the reimbursement of the specific solidarity contribution from the Respondent.
26. The Single Judge, therefore deemed that in order to assess if the claim is barred by the statute of limitations, she shall abide by the jurisprudence of the Football Tribunal. She thus underlined that the date (giving rise to the dispute) to consider whether the claim falls under the statute of limitations shall be determined by taking into account the date of the Claimant's request for the reimbursement of the solidarity contribution from the Respondent during the TMS proceedings, which seems to be 10 February 2021. The Single Judge underlined that the Claimant provided sufficient evidence in support, accordingly the said request interrupted the time limit of two years, which means that only the relevant amount(s) prior to 10 February 2021 is affected by the statute of limitations.
27. In *casu*, taking the above into account the Single Judge decided that only the first instalment which was due on 31 December 2018 would be time-barred and that the second instalment, which was due by 31 July 2019, is not affected by the statute of limitations and is thus not time-barred.
28. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she 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 2 November 2021, the August 2021 edition in force on the date of claim edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

29. 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 she 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

30. Her 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 she will refer only to the facts, arguments and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

31. The foregoing having been established, the Single Judge referred to art. 21 and art. 1 of Annexe 5 of the Regulations, which stipulates that

“if a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution (...)”

32. Additionally, the Single Judge referred to the well-established jurisprudence of the Football Tribunal with regard to cases in which the player’s new club does not withhold 5% of the agreed transfer compensation when paying such transfer compensation, but nevertheless is asked to distribute solidarity contribution to the player’s training clubs. According to the said jurisprudence, the player’s new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training and education in strict application of art. 21 and art. 1 and art. 2 of Annexe 5 of the Regulations.
33. Turning to the specific details of the matter at hand, the Single Judge noted that the Claimant provided conclusive documentary evidence, on the basis of which it could established that it made payment of the amount of the said solidarity contribution to the player’s former club, Minera as per the contents of decision TMS case reference number 6333. Moreover, the Single Judge observed that the Claimant paid the full amount of solidarity contribution to the Respondent, instead of withholding 5%, and that it thus would be entitled to request the

reimbursement of the part of the solidarity contribution that it paid to Minera, which was not to be considered time-barred.

ii. Consequences

34. Having stated the above, in application of the principle of *pacta sunt servanda*, the Single Judge considered that in light of the fact that the only the second instalment is not time-barred, i.e. the amount of USD 2,000,000, which is the equivalent of 40% of the total transfer fee, the amount of USD 35,650 shall be awarded to the Claimant. Said amount corresponds to 40% of the amount of USD 89,125, which was the full amount of the solidarity contribution the Claimant had to pay to Minera under TMS case reference number 6333.
35. In accordance with the constant practice of the Football Tribunal, the Single Judge decided to award to the Claimant interest on the above amount at the rate of 5% *p.a.* as of date of claim, i.e. 2 November 2021, until the date of effective payment.
36. Furthermore, the Single Judge decided to reject the Claimant's request in relation to the additional amount of USD 57,575, on the basis that the said amount is not linked to a direct claim for solidarity contribution. Moreover, the Claimant was not able to demonstrate that it was already sentenced to pay said amount as solidarity contribution to former clubs of the player.

iii. Compliance with monetary decisions

37. 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.
38. 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.
39. 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.

40. 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.
41. 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

42. 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.
43. Taking into account that the claim of the Claimant has been partially accepted, 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.
44. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of CHF 15,000 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 Players Status Chamber

1. The claim of the Claimant, Pyramids FC, is partially accepted insofar it is admissible.
2. The Respondent, Universidad Catolica, has to pay to the Claimant, the amount of USD 35,650 as outstanding amount plus 5% interest *p.a.* as from 2 November 2021 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 art. 24 of the Regulations on the Status and Transfer of Players 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 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 made by the end 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 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
7. The final costs of the proceedings in the amount of USD 15,000 are to be paid by the Respondent to FIFA.

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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777