

Decision of the Single Judge of the Players' Status Committee

passed on 11 September 2019,

by

Mr 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 in connection with overdue payables

I. Facts of the case

1. On 4 July 2018, the club of Country B, Club A (hereinafter: *the Claimant*) and the club of Country D, Club C (hereinafter: *the Respondent*) signed a transfer agreement regarding the transfer of the player, Player E (hereinafter: *the player*), from the Claimant to the Respondent.
2. In accordance with the transfer agreement, the Respondent undertook to pay to the Claimant *inter alia* a transfer fee of EUR 600,000, payable in three instalments, the first of EUR 200,000 due on 30 September 2018, the second of EUR 200,000 due on 30 April 2019, and the third of EUR 200,000 due on 30 September 2019.
3. Furthermore, article 16 of the transfer agreement stipulates the following: *“Any breach of the payments stipulated under Titel 4 [s. point 2] (...) will lead to a penalty payment due by [the Respondent] to [the Claimant] of five thousand Euros (...) per starting week the breach had not been solved with a solution officially approved by [the Claimant].”*
4. By correspondence dated 16 May 2019, the Claimant put the Respondent in default of payment of EUR 400,000, corresponding to the first and the second instalment as per the agreement, plus interest of 5% *p.a.* as of the due dates, setting a 10 days' time limit in order to remedy the default.
5. The Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to it overdue payables of EUR 400,000, corresponding to the first and the second instalment of the transfer fee, *i.e.* amounting to EUR 200,000 each, as well as *“the penalty payment of five thousand Euros (5.000,00 EUR) from the due date until the date of the decision”*.
6. The Claimant further asks, in subsidiary order and in case the penalty fee should be considered as excessive, a *“penalty payment of 18% p.a. from the due date until the date of the decision”*, and, in strict subsidiary order, *“the interests of 5% p.a. on the first and second instalment from the due date until the date of effective payment”*. Moreover, the Claimant asks the Respondent be ordered to pay legal and procedural costs.
7. In spite of having requested an extension of the time limit in order to reply to the claim, the Respondent has not replied to the claim.

II. Considerations of the Single Judge of the Player's Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter: *Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 6 June 2019. Consequently, the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the Single Judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and par. 4 in conjunction with art. 22 lit. f of the Regulations on the Status and Transfer of Players (edition 2019) he is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations.
3. Furthermore, 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 par. 2 of the Regulations on the Status and Transfer of Players (edition 2019), and considering that the present claim was lodged on 6 June 2019, the 2019 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Single Judge and the applicable regulations having been established, the Single Judge entered into the substance of the matter. 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.
5. Having said this, the Single Judge acknowledged that the Claimant and the Respondent signed a transfer agreement, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, the total amount of EUR 600,000, payable in three instalments, the first of EUR 200,000 due on 30 September

2018, the second of EUR 200,000 due on 30 April 2019, and the third of EUR 200,000 due on 30 September 2019.

6. In addition, the Single Judge acknowledged that the transfer agreement contains a clause stipulating that *“Any breach of the payments stipulated under Titel 4 [s. point 2] (...) will lead to a penalty payment due by [the Respondent] to [the Claimant] of five thousand Euros (...) per starting week the breach had not been solved with a solution officially approved by [the Claimant].”*
7. The Single Judge further acknowledged that the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards it in the amount of EUR 400,000, corresponding to the first and the second instalment of the transfer fee. Furthermore, the Single Judge noted that the Claimant requested the payment by the Respondent of an additional amount, corresponding to *“the penalty payment of five thousand Euros (5.000,00 EUR) from the due date until the date of the decision”*.
8. In this context, the Single Judge took particular note of the fact that, on 16 May 2019, the Claimant put the Respondent in default of payment of EUR 400,000, corresponding to the first and the second instalment as per the agreement, plus interest of 5% *p.a.* as of the due dates, setting a 10 days’ time limit in order to remedy the default.
9. Consequently, the Single Judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligations.
10. Subsequently, the Single Judge took into account that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having requested an extension of the time limit in order to reply to the claim. In this way, the Single Judge considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
11. Furthermore, as a consequence of the aforementioned consideration, the Single judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall

take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.

12. Having said this, the Single Judge acknowledged that, in accordance with the transfer agreement, the Respondent was obliged to pay to the Claimant a transfer fee of EUR 600,000, payable in three instalments, the first of EUR 200,000 due on 30 September 2018, the second of EUR 200,000 due on 30 April 2019, and the third of EUR 200,000 due on 30 September 2019.
13. Taking into account the documentation presented by the Claimant in support of his petition, the Single Judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
14. On account of the aforementioned considerations, the Single Judge established that the Respondent failed to remit the amount of EUR 400,000 to the Claimant, corresponding to the first and the second instalment of the total transfer fee of EUR 600,000.
15. In addition, bearing in mind the considerations under numbers II./8. and II./9. above, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
16. Consequently, the Single Judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the total amount of EUR 400,000.
17. In this context and for the sake of good order, the Single Judge highlighted that in light of the prerequisites set out in art. 12bis par. 3 of the Regulations, only the outstanding amount of EUR 200,000 in connection with the Claimant's claim related to the first instalment of the transfer agreement is considered to fall within the scope of art. 12bis of the Regulations.
18. In addition, the Single Judge focussed his attention on the Claimant's request for an additional amount, corresponding to "*the penalty payment of five thousand Euros (5.000,00 EUR) from the due date until the date of the decision*", in accordance with art. 16 of the transfer agreement.
19. In this respect, the Single Judge deemed it appropriate to stress that penalty clauses, in principal, may be freely entered into by the contractual parties and may be

considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. In this respect, the Single Judge highlighted that in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the deciding body shall also be taken into consideration.

20. In this regard, the Single Judge outlined that the alleged penalty clause as stipulated in article 16 of the transfer agreement, is in fact an interest rate, corresponding to an interest rate of roughly 240% per year.
21. As a result, the Single Judge found that such interest rate provided in article 16 of the transfer agreement is clearly excessive and disproportionate as per Swiss law and in accordance with the jurisprudence of the Players' Status Committee.
22. Taking into account the foregoing circumstances, as well as the jurisprudence of the Players' Status Committee in this respect, the Single Judge determined that the relevant interest rate had to be reduced to solely 18% *p.a.* on the amount of EUR 200,000 as of 1 October 2018 until the date of the decision, and on the amount of EUR 200,000 as of 1 May 2019 until the date of the decision, as requested by the Claimant. Consequently, the claim of the Claimant is partially accepted.
23. In continuation, taking into account the consideration under number II./15. above, the Single Judge referred to art.12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
24. The Single Judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. In this context, the Single Judge highlighted that the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis, as a result of which two fines had been imposed on the Respondent by the Single Judge of the Players' Status Committee with his decision dated 13 March 2019 (Ref. no. XX-XXXXX/XXX) and by the DRC Judge with his decision dated 28 March 2019 (Ref. no. XX-XXXXX/XXX) respectively.
25. Moreover, the Single Judge referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.

26. Bearing in mind the above, the Single Judge decided to impose a fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. Furthermore, taking into consideration the amount due of EUR 200,000, the Single Judge regarded a fine amounting to CHF 15,000 as appropriate and hence decided to impose said fine on the Respondent.
27. Having established the above, 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 and which states that the costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.
28. Taking into account that the responsibility of the failure to comply with the payment of the amounts as agreed in the transfer agreement can entirely be attributed to the Respondent, the Single Judge concluded that the Respondent has to 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. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings is EUR 400,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
29. Considering the particular circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 25,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
30. What is more, taking into account the consideration under number II./3. above, the Single Judge 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.
31. In this regard, the Single Judge 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.

32. Therefore, bearing in mind the above, the Single Judge 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.
33. Finally, 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. 24bis par. 3 of the Regulations.

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 the amount of EUR 400,000, plus 18% interest *p.a.* as follows:
 - a. On the amount of EUR 200,000 as from 1 October 2018 until 11 September 2019;
 - b. On the amount of EUR 200,000 as from 1 May 2019 until 11 September 2019.
3. Any further claim lodged by the Claimant is rejected.
4. The Respondent is ordered to pay a fine in the amount of CHF 15,000. The fine is to be paid **within 45 days** of notification of the present decision to FIFA to the following bank account with reference to case nr. XX-XXXXX/XXX:

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

5. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount plus interest mentioned under point III./2. above.
6. The Respondent shall provide evidence of payment of the due amount plus interest in accordance with point III./2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount due plus interest in accordance with point III./2. above is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned 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 (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
8. The ban mentioned in point III./7. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
9. In the event that the aforementioned sum, plus the relevant interest, 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 FIFA's Disciplinary Committee for consideration and a formal decision.
10. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, **within 45 days** of notification of the present decision, as follows:
 - 10.1 The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case no XX-XXXXX/XXX:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)

Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

10.2 The amount of CHF 5,000 has to be paid to the Claimant.

11. In the event that the aforementioned amount of costs 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

Note relating to the motivated decision (legal remedy):

According to article 58 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
e-mail: info@tas-cas.org
www.tas-cas.org

For the Single Judge
of the Players' Status Committee:

Emilio García Silvero
Chief Legal & Compliance Officer

Encl: CAS directives