

Decision of the Single Judge of the Players' Status Chamber (PSC)

passed on 9 November 2021

regarding an employment-related dispute concerning the player Soualiho Meite

BY:

Ms Sarah Ochwada (Kenya), Single Judge of the PSC

CLAIMANT:

LOSC Lille, France

RESPONDENT:

SV Zulte Waregem, Belgium

I. Facts of the case

1. On 1 February 2016, the French club, LOSC Lille (hereinafter: *the Claimant*) and the Belgian club, SV Zulte Waregem (hereinafter: *the Respondent*) concluded an agreement (hereinafter: *transfer agreement*) regarding the loan transfer of the player Soualiho Meite, born on 17 March 1994, from the Claimant to Respondent for the season 2015/2016 and 2016/2017.
2. The transfer agreement established an option to definitely transfer the player to the Respondent in its article 2.3.
3. Art. 2.4 of the transfer agreement reads as follows: *“En cas de transfert du Joueur de Zulte vers un autre club, le LOSC recevra une somme équivalente à 60% (soixante pour cent) de toute indemnité de transfert fixe et/ou complémentaire, convenue entre Zulte et le nouveau club (indemnité fixe de transfert défini, indemnité variable, intéressement sur transfert, Indemnité issue d’un ou plusieurs prêts due Joueur, versement d’une somme indemnitaire/compensation financière au profit de Zulte en cas par exemple de rupture anticipée due contrat du Joueur...) [...]”*.
Free translation: *“In the event of a transfer of the Player from Zulte to another club, LOSC shall receive a sum equivalent to 60% (sixty percent) of any fixed and/or additional transfer compensation agreed between Zulte and the new club (fixed transfer compensation, variable compensation, transfer profit-sharing, compensation from one or more loans due to the Player, payment of compensation/financial compensation to Zulte in the event of e.g. early termination of the Player's contract...)”*.
4. Art. 4.2. of the transfer agreement stipulates: *“Au regard des conditions de mutation qui lui sont consenties, ZULTE renonce au versement de toute indemnité de formation, notamment contribution de solidarité FIFA qui pourrait être due au titre de la présente mutation temporaire du Joueur du premier février 2016 au 30 juin 2017. En cas d’évènement dans le futur (mutation temporaire et/ou définitive du joueur vers un club tiers) ouvrant droit à la perception d’une part de la contribution de solidarité FIFA, relative au bénéfice de la présente mutation temporaire dudit joueur, il est ainsi entendu entre les parties que toute somme perçue par ZULTE dans le cadre des dispositions précitées devra être reversée au LOSC Lille dans les quinze jours suivant la réception du paiement de la part du club tiers”*.
Free translation: *“In view of the conditions of transfer agreed upon, ZULTE waives the payment of any training compensation, including the FIFA solidarity contribution, which may be due in respect of the present temporary transfer of the player from 1 February 2016 to 30 June 2017. In the event of a future transfer (temporary and/or definitive transfer of the player to a third party club) entitling the collection of a share of the FIFA solidarity contribution, relating to the benefit of the present temporary transfer of the said player, it is thus agreed between the parties that any sum collected by ZULTE within the framework of the aforementioned provisions shall be repaid to LOSC Lille within fifteen days following receipt of the payment from the third party club. ”*

5. On 15 January 2021, the player was temporary transferred from Torino to AC Milan, including a loan fee of EUR 500,000.
6. On 26 July 2021, the player was transferred on a permanent basis from Torino to SL Benfica, including a transfer fee of EUR 6,000,000, payable as follows:
 - EUR 2,000,000 within 15 days of receipt of the ITC;
 - EUR 2,000,000 on 31 July 2022;
 - EUR 2,000,000 on 31 July 2023.
7. On 3, 11, 25 March 2021 and 8 April 2021, the Claimant sent letters to the Respondent, requesting reimbursement of the solidarity contribution of the player based on art. 4.2 of the transfer agreement.
8. On 6 May 2021, the Respondent replied stating being entitled to solidarity contribution of EUR 3,714 and offered a settlement whereby it agreed to pay 60% of the solidarity contribution to the Claimant.
9. On 7 May 2021, the Claimant rejected the Respondents proposal and maintained being entitled to received the full amount.
10. On 4 June 2021, the Claimant reiterated its request.
11. On 15 June 2021, the Respondent replied that it rejects the request and prefers a decision of FIFA.

II. Proceedings before FIFA

12. On 29 July 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

13. LOSC Lille lodged a claim before FIFA against SV Zulte Waregem for reimbursement of all solidarity contribution received by the Respondent on the occasion of the loan from Torino to AC Milan and the transfer from Torino to SL Benfica, based on art. 4.2 of the transfer agreement.
14. In its claim, the Claimant held that it tried to settle the matter amicably, which was refused by the Respondent.
15. In accordance with the contractual obligation established in art. 4.2 of the transfer agreement, the Claimant held being entitled to the reimbursement claimed.

b. Position of the Respondent

16. In its reply, the Respondent rejected the Claimants claim.
17. In this regard, it held that the wording of art. 4.2 of the transfer agreement was unclear as it refers to training compensation an solidarity contribution and therefore does not contain a clear waiver for solidarity contribution.
18. Furthermore, the Respondent pointed out that waiving training compensation was common practice, but that waiving solidarity contribution was very rare. In this regard, the Respondent pointed out that awarding reimbursement of solidarity contribution to a club who did not train the club during the period rewarded was against the spirit of the regulations and it would open the door for bigger clubs to take advantage of smaller ones by inserting such clauses in loan agreements.

III. Considerations of the Single Judge of the PSC

a. Competence and applicable legal framework

19. First of all, the Single Judge of the PSC (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 29 July 2021 and submitted for decision on 9 November 2021. 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.
20. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 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.
21. 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 29 July 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

22. 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 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

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

i. Main legal discussion and considerations

24. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the application of art. 4.2 of the transfer agreement regarding the reimbursement of solidarity contribution.
25. In this context, the Single Judge acknowledged that her task was to decide if the Claimant is entitled to the reimbursement and in the affirmative, to establish the amount of reimbursement.
26. The Single Judge started to examine the content of art. 4.2. of the transfer agreement, which reads as follows in its translated version:

"In view of the conditions of transfer agreed upon, ZULTE waives the payment of any training compensation, including the FIFA solidarity contribution, which may be due in respect of the present temporary transfer of the player from 1 February 2016 to 30 June 2017. In the event of a future transfer (temporary and/or definitive transfer of the player to a third party club) entitling the collection of a share of the FIFA solidarity contribution, relating to the benefit of the present temporary transfer of the said player, it is thus agreed between the parties that any sum collected by ZULTE within the framework of the aforementioned provisions shall be repaid to LOSC Lille within fifteen days following receipt of the payment from the third party club."

27. The Single Judge then pointed out that such clause appears to be clear and entitles the Claimant to get reimbursed with the solidarity contribution the Respondent is entitled to in connection with the loan of the player between 1 February 2016 and June 2017.

28. On account of the above, the Single Judge decided that the Claimant was entitled to be reimbursed with the amounts received as solidarity contribution as agreed between the parties.

ii. Consequences

29. The Single Judge then turned her attention to the calculation of the reimbursement in accordance with art. 4.2 of the transfer agreement.
30. The Single Judge noted that the Respondent acknowledged receipt of EUR 3,714 as solidarity contribution in relation to the loan transfer of the player from Torino to AC Milan.
31. Furthermore, the Single Judge determined that that from the player's permanent transfer to Benfica SL, only the first instalment of EUR 2,000,000 had fallen due yet. On the basis of the player's registration with the Respondent, the Single Judge concluded that 14.16% of EUR 100,000 (which is 5% of EUR 2,000,000 as total solidarity contribution) were already payable as solidarity contribution to the Respondent (i.e. EUR 14,160) and that this amount has to be reimbursed to the Claimant.
32. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts of EUR 3,714 and EUR 14,160 as reimbursement in accordance with art. 4.2 of the transfer agreement.

iii. Compliance with monetary decisions

33. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24bis 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.
34. 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.
35. 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. 24bis par. 2, 4, and 7 of the Regulations.

36. 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.
37. 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. 8 of the Regulations.

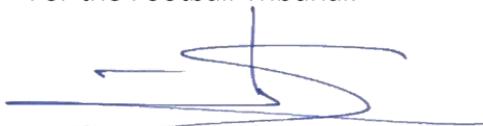
d. Costs

38. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
39. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
40. Lastly, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Single Judge of the PSC

1. The claim of the Claimant, LOSC Lille, is accepted.
2. The Respondent, SV Zulte Waregem, has to pay to the Claimant the amount of EUR 17,864.
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. 24bis of the Regulations on the Status and Transfer of Players (February 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. 24bis par. 7 and 8 and art. 24ter of the Regulations on the Status and Transfer of Players.
6. The final costs of the proceedings in the amount of USD 5,000 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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