

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 26 January 2016,

by

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
and relating to the Player E

I. Facts of the case

1. On 13 January 2015, the club from country B, Club A (hereinafter: *Club A*), and the club from country D, Club C (hereinafter: *Club C*), concluded a loan agreement for the temporary transfer of the player, Player E (hereinafter: *the player*), from Club A to Club C, for the period between 13 January 2015 and 30 June 2015.
2. Article 5.2 of the loan agreement stipulated that, "*Club C shall pay to [Club A] the sum of fifty thousand Euro (€50,000) in consideration of the temporary transfer of the player's registration from [Club A] to Club C*" payable as follows:
 - EUR 15,000 on 20 February 2015,
 - EUR 15,000 on 20 March 2015,
 - EUR 15,000 on 20 April 2015, and
 - EUR 5,000 on 20 May 2015.
3. Furthermore, article 9 of the loan agreement stipulated that "*this agreement shall be governed by and interpreted in accordance with the laws of country F and the FIFA Regulations. Any dispute arising out of this Agreement shall be referred to the Court of Arbitration for Sport (CAS) (...). The parties also submit to the jurisdiction of FIFA*".
4. On 18 September 2015, Club A lodged a claim before FIFA against Club C, requesting the total amount of EUR "26,323.78" allegedly due for the loan of the player from Club A to Club C. In this respect, Club A held that EUR 1,545.38 remain outstanding for each of the two first instalments and that the third and fourth instalments remain fully outstanding. Moreover, Club A requested an indemnification of 10% over said amounts, i.e. EUR 2,309.10 as well as interests in the amount of EUR 923.64.
5. In its reply to Club A's claim, Club C referred to art. 9 of the loan agreement and contested the jurisdiction of FIFA decision-making bodies in favour of that of CAS.

II. Considerations of the Players' Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as: *the Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he referred to art. 21 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2015). Consequently, and since the present matter was submitted to FIFA on 18 September 2015, the Single Judge concluded that the 2015 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the 2015 edition of the Procedural Rules).

2. Furthermore, the Single Judge confirmed that, on the basis of art. 3 par. 1 and 2 of the Procedural Rules in connection with art. 23 par. 1 as well as art. 22 f) of the 2015 edition of the Regulations on the Status and Transfer of Players, he was, in principle, competent to deal with the present matter since it concerned a dispute between two clubs affiliated to different associations.
3. Notwithstanding the foregoing, the Single Judge of the Players' Status Committee noted that the Respondent contested FIFA's jurisdiction in favour of that of CAS on the basis of art. 9 of the loan agreement. In this respect, the Single Judge noted that art. 9 of the loan agreement referred the parties to the jurisdiction of CAS. However, the same provision also specifically provides that "*the parties also submit to the jurisdiction of FIFA*".
4. In light of the foregoing, the Single Judge concluded that he was competent to deal with the matter at stake.
5. Subsequently, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, he referred, on the one hand, to art. 26 par. 1 and 2 of the 2015 edition of the Regulations on the Status and Transfer of Players and, on the other hand, to the fact that the claim was lodged before FIFA on 18 September 2015. In view of the foregoing, the Single Judge concluded that the 2015 edition of the FIFA Regulations for the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the case at hand as to the substance.
6. The competence of the Single Judge and the applicable regulations having been established and entering into the substance of the matter, he started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties. In this respect, he noted that the parties had concluded a loan agreement on 13 January 2015 under the terms of which the Player E would be loaned from the Claimant to the Respondent, and would render his services to the latter as from 13 January 2015 until 30 June 2015, for a total amount of EUR 50,000 to be paid in three instalments of EUR 15,000 and one instalment of EUR 5,000 on 20 February 2015, 20 March 2015, 20 April 2015 and 20 May 2015 respectively.
7. In continuation, the Single Judge took note of the allegation of the Claimant according to which EUR 1,545.39 for each of the two first instalments as well as the third and fourth instalments remain outstanding.
8. At this stage, the Single Judge underscored that the Respondent only challenged his jurisdiction without replying as to the substance of the matter. In particular, the Single

Judge noted that the Respondent did not allege having paid any of the requested amounts and failed to provide any evidence in this respect.

9. In this context, the Single Judge was keen to underline that the burden of proof is always on the party making a particular assertion (cf. art. 12 par. 3 of the Procedural Rules), and that, *in casu*, it was clearly the responsibility of the Respondent to provide evidence of the payment of the total amount of EUR 50,000 to the Claimant. Consequently, in the absence of any evidence to the contrary, the Single Judge had no other option but to conclude that the Respondent had failed to honour its obligations as per the loan agreement.
10. The Single Judge then turned his attention to the request of the Claimant for an indemnification of 10% on the claimed amounts. In this respect, after having again analysed the loan agreement, the Single Judge deemed that the Claimant's request had to be rejected due to the lack of contractual basis.
11. In addition, the Single Judge underscored that the amount of EUR 923.64 claimed as interests for the late payment approximately equals an interest rate of the 4% *p.a.* As a result, and taking into account both the due dates of the amounts requested as well as the common practice of the Single Judge and the Players' Status Committee, the Single Judge concluded that the amount of EUR 923.64 was also payable as interests.
12. In view of all of the above, the Single Judge concluded that the claim of the Claimant has to be partially accepted and consequently, the Respondent has to pay to the Claimant the amount of EUR 23,090.76, representing EUR 1,545.38 outstanding for each of the first two instalments of the loan fee and the full third and fourth instalments, plus interests in the amount of EUR 923.64.
13. Finally, the Single Judge of the Players' Status Committee referred to art. 25 par. 2 of the Regulations in combination with art. 15 par. 1 of the Procedural Rules, according to which, in the proceedings before the Players' Status Committee or its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings (cf. art. 15 par. 1 of the Procedural Rules) and are usually borne by the losing party.
14. Furthermore and according to Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. The amount in dispute to be taken into consideration in the present proceedings is above CHF 26,323.78. Therefore, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 5,000.

15. In respect of the above and taking into account that the claim of the Claimant has been partially accepted, the Single Judge concluded that the costs of the current proceedings before FIFA have to be split between the parties.
16. In conclusion, and in view of the circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 5,000. Consequently, the Single Judge of the Players' Status Committee decided that the amount of CHF 4,000 has to be paid by the Respondent and that the amount of CHF 1,000 has to be paid by the Claimant in order to cover the costs of the present proceedings. Given that the Claimant has already paid the amount of CHF 1,000 as advance of costs at the start of the present proceedings, no further amount shall be paid by the Claimant.

III. Decision of the Single Judge of the Players' Status Committee

1. The claim of the Claimant, Club A, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 23,090.76, plus interest in the amount of EUR 923.64.
4. If the aforementioned sums are not paid within the aforementioned deadline the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.
5. Any further claim lodged by the Claimant is rejected.
6. The final amount of costs of the proceedings in the amount of CHF 5,000 is to be paid, **within 30 days** as from the date of notification of the present decision as follows:
 - 6.1 The amount of CHF 4,000 by the Respondent to FIFA to the following bank account with reference to case nr. xxxxxxxxxx:

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

- 6.2 The amount of CHF 1,000 by the Claimant to FIFA. Given that the Claimant has already paid the amount of CHF 1,000 as advance of costs at the start of the present proceedings, no further amount shall be paid by the Claimant.
7. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under point 3 above are to be made and to notify the Single Judge of the Players' Status Committee of every payment received.

Note relating to the motivated decision (legal remedy):

According to art. 67 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
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1012 Lausanne
Switzerland
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For the Single Judge of the
Players' Status Committee

Markus Kattner
Acting Secretary General

Encl. CAS Directives