

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 arisen between the parties
and relating to the Player E.

I. Facts of the case

1. On 29 July 2013, the club from country B, Club A (hereinafter: *the Claimant*), the club from country D, Club C (hereinafter: *the Respondent*), the club from country D, Club F (hereinafter: *Club F*) and the player from country D, Player E (hereinafter: *the player*) signed a loan agreement (hereinafter: *the agreement*) concerning the loan of the player from the Claimant to the Respondent until 30 June 2014, by means of which the Respondent had to pay to the Claimant USD 220,000 as loan fee (hereinafter: *the loan fee*) by no later than 30 July 2013.
2. In this respect, the agreement specified that "*Club A [i.e. the Claimant] and Club F share into equal parts the economic rights related to the player: 50% each club*".
3. As mentioned in art. 3.3. of the agreement (hereinafter: *the penalty clause*) "*(..) Club C [i.e. the Respondent] acknowledges and confirm that the payment shall be done by 15th September 2013, under a penalty fine of 10% (..) to Club A [i.e. the Claimant], plus interest of 1% per month*".
4. On 15 June 2015, the Claimant lodged a claim with FIFA against the Respondent and requested from the latter the payment of the loan fee amounting to USD 220,000. In addition, the Claimant requested from the Respondent the payment of a penalty in accordance with the penalty clause and asked to be "*granted an award of costs and Club C [i.e. the Respondent] should be obliged to pay legal costs and reimburse Club A [i.e. the Claimant] of all costs related to this procedure*".
5. In sum, the total amount claimed by the Claimant is USD 290,400.
6. According to the Claimant, the Respondent had explained the non-payment of the loan fee referring to "*a rule issued by the Central bank of country D that would impede the club to take dollars from the country, i.e., Club C [i.e. the Respondent] would be prohibited to make any payment to a club abroad*".
7. In this respect, the Claimant provided FIFA with an email dated 14 July 2014, allegedly received from Mr G from the Respondent, in which the latter *inter alia* mentioned that, according to the treasurer of the club, "*we [i.e. the Respondent] are still waiting the approval of the Bank of country D to release the payment abroad*".
8. The Claimant calculated the claimed amount as follows:

<i>Principal Amount</i>	€ 220.000,00
<i>Penalty Clause</i>	€ 22.000,00
<i>Total 1</i>	€ 242.000,00
<i>Interest (20%)</i>	€ 48.400,00
TOTAL	€ 290.400,00

9. In spite of having been asked to do so by FIFA, the Respondent did not provide its position in the matter in hand.

II. Considerations of the Single Judge 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 which Procedural Rules are applicable to the matter at hand. In view of the fact that the present matter was submitted to FIFA on 15 June 2015, the Single Judge of the Players' Status Committee concluded that the 2015 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber is applicable to the present matter (cf. art. 21 of the Procedural Rules).
2. Furthermore, 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 2012 and 2015 editions of the Regulations on the Status and Transfer of Players and, on the other hand, to the fact that the claim was lodged with FIFA 15 June 2015. In view of the foregoing, the Single Judge concluded that the April 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.
3. Subsequently, with regard to his competence, 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 and 3 as well as art. 22 lit. f) of the Regulations he is competent to deal with the matter at stake, which concerns a dispute between two football clubs affiliated to two different associations.
4. His competence and the applicable regulations having been established, and entering into the substance of the present matter, the Single Judge started by acknowledging the facts of the dispute, the arguments of the parties as well as the documentation contained in the file.
5. In doing so, the Single Judge observed that the Respondent had not submitted any comments in response to the claim lodged against it by the Claimant despite having been asked to do so by FIFA. Therefore, the Single Judge concluded that, in this way, the Respondent had renounced to its right of defence and, thus, it had to be assumed that it had accepted the allegations of the Claimant.
6. Hence and bearing in mind the aforementioned, the Single Judge referred to art. 9 par. 3 of the Procedural Rules and pointed out that in the present matter a

decision shall be taken upon the basis of the documents on file, in other words upon the allegations and documents provided by the Claimant.

7. In this respect, the Single Judge acknowledged that, on 29 July 2013, the Claimant and the Respondent had concluded a loan agreement (hereinafter: *the agreement*) regarding the transfer of the player from the Respondent to the Claimant, by means of which the Respondent was entitled to receive from the Claimant, as loan fee, the total amount of USD 220,000 by no later than 30 July 2013. Furthermore, the Single Judge observed that the agreement included a penalty clause in accordance with which, in case the Respondent would fail to pay the loan fee to the Claimant by 15 September 2013, it would have to pay to the latter a penalty fine "*of 10% (..) plus interest of 1% per month*".
8. In continuation, the Single Judge observed that, in its claim to FIFA, the Claimant had requested from the Respondent the payment of the entire loan fee due as well as of the applicability of the penalty clause and the relevant interest. In addition, the Single Judge recalled that none of allegations of the Claimant had been contested by the Respondent.
9. Bearing in mind the foregoing and in accordance with the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, as well as considering that the Respondent had never contested the allegations of the Claimant, the Single Judge concluded that the Respondent must fulfil its obligations stipulated in the agreement and, consequently, pay the amount of USD 220,000 to the Claimant.
10. In continuation, the Single Judge turned his attention to the second part of the Claimant's claim, namely, its request for a penalty fee of USD 22,000, corresponding to 10% of the loan fee due as well as its request for interests in the total amount of USD 48,400.
11. In this context, the Single Judge recalled once again that the aforementioned requests of the Claimant had not been challenged by the Respondent. Hence, taking into account the foregoing as well as considering that both the penalty fee as well as the interest at a rate of 1% per year were stipulated in the agreement and that, in accordance with his well-established jurisprudence, the two penalties were not to be considered as excessive or disproportionate, the Single Judge came to the conclusion that both requests of the Claimant had to be accepted. Therefore, the Single Judge concluded that the Respondent has to pay to the Claimant the additional amounts of USD 22,000 as penalty fee and USD 48,400 as interests.
12. Finally, as to the Claimant's claim pertaining to the reimbursement of the legal fee and other costs allegedly incurred in connection with the present dispute, the

Single Judge referred to art. 18 par. 4 of the Procedural Rules in accordance with which no procedural compensation shall be awarded in proceedings of the Players' Status Committee and the DRC. As a result, the Single Judge determined that this last request of the Claimant had to be rejected as it lacked legal basis.

13. In view of all the above, the Single Judge decided that the claim of the Claimant is partially accepted and that the Respondent has to pay to the Claimant the total amount of USD 290,400.
14. Lastly, 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 the proceedings before the Players' Status Committee and the Single Judge, costs in the maximum amount of CHF 25,000 are levied. 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.
15. In this respect, the Single Judge reiterated that the claim of the Claimant is partially accepted and that the Respondent is the party at fault. Therefore, the Single Judge decided that the Respondent has to bear the entire costs of the current proceedings in front of FIFA.
16. Furthermore and 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 and taking into account that the total amount at dispute in the present matter is over CHF 200,001, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
17. Considering the particular circumstances of the present matter, bearing in mind that the Respondent did not reply to the claim of the Claimant, 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.
18. Consequently, the Respondent has to pay CHF 25,000 to cover the costs of the present proceedings.

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, Club A, **within 30 days** as from the date of notification of the present decision, the amount of USD 290,400.
3. If the aforementioned sum, is 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.
4. Any other claims lodged by the Claimant, Club A, are rejected.
5. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, Club C, **within 30 days** as from the date of notification of this decision, as follows:
 - 5.1. The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case nr. xxxxxxxxxxxxxxxx:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A
 - 5.2. The amount of CHF 5,000 has to be paid directly to the Claimant, Club A.
6. The Claimant, Club A, is directed to inform the Respondent, Club C, immediately and directly of the account number to which the remittances under points 2. and

5.2. above are to be made and to notify the Players' Status Committee of every payment received.

Note relating to the motivated decision (legal remedy):

According to article 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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For the Single Judge
of the Players' Status Committee

Markus Kattner
Acting Secretary General

Encl. CAS Directives