

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 19 March 2013,

by

Geoff Thompson (England)

Single Judge of the Players' Status Committee,

on the claim presented by the club,

Club C, from country P

as Claimant

against the club,

Club A, from country C

as Respondent

regarding a contractual dispute between the parties
and relating to the player F

I. Facts of the case

1. On 28 August 2012, Club C, from country P (hereinafter: *the Claimant*) and the Club A, from country C (hereinafter: *the Respondent*), concluded a transfer agreement (hereinafter: *the agreement*) for the loan of the player F (hereinafter: *the player*), from the Claimant to the Respondent, as from the date of signature of the agreement until 30 June 2013.
2. The agreement stipulated, *inter alia*, the following:
“(…)
4. *The total transfer amount of 15.000,00€ (fifteen thousand euros) shall be paid by [the Respondent], upon the signing of this agreement, no later than 29th of August 2012.*
(…)
12. *In case of default of this contract, [the Respondent] is obliged to pay to [the Claimant], by way of penalty, the sum of € 500.000,00 (five hundred thousand euros) (…)*
15. *[the Respondent] has the option to obtain the federative rights of the permanent transfer of the Player from [the Claimant] by informing [the Claimant] no later than 31.12.2012 for total net amount of € 500.000,00 (five hundred thousand Euros), as a transfer fee.(…)”*
3. On 26 December 2012, the Claimant lodged a claim at FIFA requesting payment of the amount of EUR 515,000 from the Respondent, composed of EUR 15,000 according to art. 4 of the agreement and EUR 500,000 according to art. 12 of the agreement, plus interest of 5% p.a. over the amount of EUR 15,000 as of 29 August 2012 until its effective payment. Equally, the Claimant requested that the Respondent would bear *“all the proceedings costs incurred.”*
4. In support of its claim, the Claimant stressed the fact that it had made several attempts to amicably settle the dispute by providing the respective invoice to the Respondent, but that the Respondent failed to comply with its contractual obligations.
5. In spite of having been asked to do so, the Respondent never provided FIFA with its position on the claim of the Claimant, although it had been informed that, in absence of a reply, a decision would be taken on the basis of the documents already on file.

II. Considerations of the Single Judge of the Players' Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter: *the Single Judge*) analysed which Procedural Rules are applicable to the matter at hand. In this respect, he referred to art. 21 par. 2 and 3 of the Rules Governing the Procedures of

the Players' Status Committee and the Dispute Resolution Chamber (edition 2012). The present matter was submitted to FIFA on 26 December 2012, thus after 1 December 2012. Therefore, the Single Judge concluded that the 2012 edition of the Procedural Rules (hereinafter: *the Procedural Rules*) is applicable to the matter at hand.

2. Subsequently, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players was 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 edition 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 on 26 December 2012. In view of this, the Single Judge concluded that the 2012 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. Furthermore, the Single Judge confirmed that, on the basis of art. 3 par. 1 and par. 2 of the Procedural Rules in connection with art. 23 par. 1 and par. 3 as well as art. 22 lit. f) of the Regulations, he was competent to deal with the present matter since it concerned a dispute between two clubs affiliated to two different associations.
4. The competence of the Single Judge and the applicable regulations having been established, and entering into the substance of the matter, the Single Judge started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties.
5. In this respect and first of all, the Single Judge established that it was undisputed between the parties that they concluded, on 28 August 2012, an agreement regarding the loan of the player from the Claimant to the Respondent. Furthermore, the Single Judge noted that the agreement in art. 4 provided for a loan compensation in the amount of EUR 15,000, to be paid upon the signing of the agreement, but no later than 29 August 2012.
6. Moreover, the Single Judge took note that the transfer agreement contained a penalty clause, stipulating a penalty of EUR 500,000 in case of default of the Respondent.
7. The Single Judge also acknowledged that the Claimant lodged a claim against the Respondent, stating that the latter had not fulfilled its payment obligation with regards to the transfer fee of EUR 15,000, at the latest due on 29 August 2012. As a consequence, and referring to art. 4 and 12 of the agreement, the Claimant requested the payment of the total amount of EUR 515,000 from the Respondent.
8. In continuation, the Single Judge noted that the Respondent, in spite of having been invited to do so, did not provide FIFA with its comments pertaining to the present

matter. Therefore, the Single Judge deemed that, by doing so, the Respondent renounced to its right to defence.

9. As a consequence, 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 documentation on file, in other words upon the documents and arguments provided by the Claimant.
10. Bearing in mind the aforementioned, the Single Judge went on to establish whether there was any payment due by the Respondent to the Claimant, based on the transfer agreement in question.
11. In this respect, the Single Judge recalled the contents of the agreement, i.e. the obligation of the Respondent to pay a loan fee in the amount of EUR 15,000 by no later than 29 August 2012. Equally, the Single Judge recalled that the Claimant stated that the Respondent had not made any payments to the Claimant.
12. Taking into account the above-mentioned, the Single Judge concluded that in accordance with art. 4 of the agreement the Respondent had to pay to the Claimant the outstanding amount of EUR 15,000.
13. In this respect, the Single Judge established that no interest had contractually been agreed between the parties in relation to the loan fee. Consequently, the Single Judge decided to award, in accordance with the general practise of the Players' Status Committee, default interest at a rate of 5% *p.a.* on the outstanding amount as of 30 August 2012.
14. As regards the Claimant's request for a penalty fee of EUR 500,000, the Single Judge, after a careful examination of the contents of the agreement, especially art. 12 of the agreement, concluded that a penalty clause amounting to EUR 500,000 for late payment in relation to a total loan compensation of EUR 15,000 is to be considered as manifestly disproportionate and exorbitant, and as such, cannot be enforced.
15. Therefore, the Single Judge decided that the Claimant's claim for the payment of EUR 500,000 as a penalty for the default of the Respondent regarding the payment of the loan fee, had to be rejected.
16. In conclusion, the Single Judge decided to partially accept the Claimant's claim, and established that the Respondent had to pay to the Claimant the total amount of EUR 15,000 plus 5% interest *p.a.* as of 30 August 2012 until the date of effective payment and that any further claims of the Claimant are rejected.
17. 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 proceedings before the Players' Status Committee including its Single Judge, costs in the maximum amount of currency of country H 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. 18 par. 1 of the Procedural Rules).

18. 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 procedural costs are to be divided between the Claimant and the Respondent in accordance with the relevant degree of success.
19. According to Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the bases of the amount in dispute.
20. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings is EUR 515,000 related to the claim of the Claimant. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to currency of country H 25,000 (cf. table in Annex A.)
21. Considering that the case at hand did not pose particular factual difficulty and that it was adjudicated upon by the Single Judge and not the Players' Status Committee *in corpore*, the Single Judge determined the costs of the current proceedings to the amount of currency of country H 10,000. The Single Judge decided that thereof, the Claimant has to pay the amount of currency of country H 5,000 and that the Respondent has to pay the amount of currency of country H 5,000.

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

1. The claim of the Claimant, Club C, is partially accepted.
2. The Respondent, Club A, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 15,000 plus 5% interest p.a. on said amount as of 30 August 2012 until the date of effective payment.
3. If the aforementioned sum plus interest 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 further claim lodged by the Claimant is rejected.
5. The final costs of the proceedings in the amount of currency of country H 10,000 are to be paid **within 30 days** as from the notification of the present decision as follows:
 - 5.1 The Respondent has to pay the amount of currency of country H 5,000 to FIFA to the following bank account with reference to case nr. XX-XXXXX:

- 5.2 The Claimant has to pay the amount of currency of country H 5,000 to FIFA. Given that the Claimant has already paid the amount of currency of country H 5,000 as advance of costs at the start of the present proceedings, no additional amount has to be paid by the Claimant.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is 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
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Single Judge of the
Players' Status Committee

Markus Kattner
Deputy Secretary General

Encl. CAS directives