

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 16 March 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
relating to the Player E

I. Facts of the case

1. On 1 July 2013, the club from country B, Club A (hereafter: *Club A* or *the Claimant*), and the club from country D, Club C (hereafter: *Club C* or *the Respondent*), concluded a transfer agreement for the transfer of the player, Player E, from Club A to Club C.
2. In accordance with art. 2.1 in conjunction with art. 2.4 of the transfer agreement, Club C would pay Club A a transfer compensation amounting to USD 323,830 by no later than 18 July 2013.
3. On 16 June 2015, Club A lodged a claim in front of FIFA against Club C requesting payment of the amount of USD 323,830 plus 5% interest as from 18 July 2013 as well as procedural costs.
4. In its claim, Club A explained that Club C had initiated the payment on 22 July 2013, but that due to administrative problems of Club A's bank in country B, the money "*never reached the Claimant's accounts.*" In this respect, Club A provided a notification dated 22 July 2013 confirming that Club C ordered the payment of USD 323,613.5 to Club A's bank account.
5. On 28 February 2014, Club A was informed by its bank that the funds had been returned to the country D. In this respect, Club A submitted a notification dated 28 February 2014 which includes the following information:

*"BENEFICIARY: Club A
ORDERING: XXXXXXXX, country D.
REF: XXX REF xxxxxxxxxxxxxxxxx*

PLEASE RETURN FUNDS AS THE BENEFICIARY REQUEST"

6. Thereafter, Club A explained that the following events had occurred:
 - On 21 March 2014, Club A informed Club C that due to "*some problems here in country B with the reception of the value, the amount sent by Club C was reversed to country D.*" It further stated that it would soon inform Club C "*how the value can be, in fact, received.*"
 - On 3 November 2014, Club C informed Club A that "*after reviewing the exchange office turned out to non-receipt of transfer value clear and complete so that we can make the necessary So please resend bank account date again to resubmit again.*"
 - In reply thereto, Club A requested Club C if it could make a payment to the club from country F, Club G, as Club A had a debt with said club.
 - On 9 December 2014, Club C asked to be provided with a copy of Club A's request to its bank to refund the transfer compensation to the country D, "*because the exchanges office rejects recognizing amount.*"

- On the same date, Club A sent an email to Club C allegedly enclosing the document dated 28 February 2014.
7. Club A concluded that Club C's behaviour clearly demonstrated a lack of responsibility and respect in relation to the transfer agreement, reason for which it had no other choice than to refer the case to FIFA.
 8. In reply to the claim lodged by Club A, Club C stated that it paid the relevant transfer compensation to Club A on 22 July 2013. Club C further stressed that Club A wrongly argued that the money never entered its bank account, since it is clear from the document dated 22 July 2013 that the transaction was successful. In particular, Club C claims that Club A's statement that the money never reached its bank account due to "*administrative issues*" is not backed up by any documentation.
 9. Equally, Club C pointed out that the notification dated 28 February 2014 indicates that the amount was returned since "*the beneficiary requests*", which would mean that Club A received the money and voluntarily requested to return the money to Club C. In this context, Club C insisted that the money was indeed transferred as requested by Club A, however, not to Club C but to a third party which has no legal relationship with Club C. As such, Club C indicates that it never received the amount back and underlined that Club A "*never raised any notice to Club C that they will transfer the Money back and there is no reason to do so.*"
 10. In its replica dated 29 September 2015, Club A stressed that the payment notification dated 22 July 2013 contains the following information:

Ordering Customer Name: Club C
Ordering Institution: XXXXXXXX Company H from country D
 11. As a result, according to Club A, it can thus be established that Club C used the "*Company H*" as the financial institution to transfer the relevant compensation to Club A.
 12. In this respect, Club A indicated that its bank (Bank I), via the notification of 28 February 2014, requested the intermediary bank (Bank J) to "*return the funds as the beneficiary request*" to the ordering institution "*XXXXXXXXXX*", which is the "*Company H*", i.e. the bank of Club C. Therefore, Club A argued that the money was returned to Club C and added that it is financially and legally impossible that the amount was returned to a banking institution different from the original sender.
 13. In addition, Club A submitted the following documents:
 - A declaration of Bank I dated 16 September 2015 confirming that on 22 July 2013 it received the amount of USD 323,588.50 and that on 3 March 2014, such amount was returned to Company H; "*finally we inform that the*

amount of USD 323,588.50 has never been introduced into the banking account which Club A holds with Bank I in country B.”

- An apparent answer of Bank J dated 22 September 2015 to an apparent inquiry of Club A confirming that the amount of USD 323,568.50 was returned to the originating bank, XXXXXXXXXX, on 3 March 2014; *“pls contact originating bank directly for further inquiry on the subject matter”.*
- A declaration of the financial director of Club A by means of which he confirmed that *“Club A received a payment order in the amount of USD 323,830, sent by Club C (...). However, such amount has been never integrated in country B in any banking account of Club A. In order to release the funds, making the conversion to country B and receiving it in the banking account, we should file relevant documentation with Bank I in country B. Such documentation has been never presented to the bank and the payment order remained untouched for 8 months. Due to this fact, on 28 February 2014 the amount of USD 323,830 was returned to the banking account of Club C with “Company H” (...).”*

14. In its final comments, Club C emphasised that:

- Club A admits that the bank transfer was done correctly; *“in that perspective, keeping the money in Club A’s possession for approximately 7 months and 2 weeks until March 3, 2014 exempt Club C from any financial obligations toward Club A. We insist that Club A’s issue regarding the entrance of the money in their bank account is not Club C’s problem as the money was transferred to the bank account of country B as agreed (...).”*
- The Company H was indeed used to transfer the money to Club A. However, the Company H is a currency exchange company and *“do not represent the Respondent and it has no legal relation with the Respondent.”*
- Club C never received any amount back from Club A and the account number mentioned in the notification dated 28 February 2014 is not that of Club C; the transfer from the bank of country B to Company H is not the responsibility of Club C; it never requested for it and Club A never informed it that the money would be transferred back.
- Club A should have contacted Club C to enquire if it would accept receiving the money back and, if so, on which bank account.
- No reason has been put forward by Club A why it would transfer the money back after more than 7 months.

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 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) were applicable to the matter at hand. In this respect, he referred to art. 21 of the Procedural Rules as well as to the fact that the present matter was submitted to FIFA on 16 June 2015. Therefore, the Single Judge concluded that the 2015 edition of 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 is 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 Regulations on the Status and Transfer of Players and, on the other hand, once again to the fact that the claim was lodged in front of FIFA on 16 June 2015. In view of the foregoing, the Single Judge concluded that the 2015 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the case at hand.
3. Furthermore, the Single Judge confirmed that, based on 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 was competent to deal with the present matter since it concerned a dispute between 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. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence that he considered pertinent for the assessment of the matter at hand.
5. First of all, the Single Judge took note that Club A maintained that it is entitled to receive transfer compensation in the amount of USD 323,830 from Club C, as agreed upon in the transfer agreement signed between the parties on 1 July 2013. In particular, Club A indicated that the payment of the relevant transfer compensation had been initiated by Club C in July 2013, but that in February 2014 the money had been returned to Club C.
6. Equally, the Single Judge noted that Club C categorically rejected that any further amount is due to Club A, underlining that Club A confirmed that the money had indeed been transferred to its account and that it had never received any refunds from Club A. In particular, Club C indicated that the Company H is a currency exchange company and does "*not represent the Respondent and it has no legal relation with the Respondent.*"
7. Having taken into account the positions of both parties, the Single Judge remarked that the question that needs to be answered in the present matter is the question whether or not Club C indeed received back the relevant transfer compensation in February 2014, after it had initiated the payment in July 2013.

At this stage, the Single Judge found it important to recall that both parties agree that, in July 2013, Club C had duly complied with its contractual obligations by initiating the relevant payment to the bank account of Club A. In this context, it appears to the Single Judge that the reason for which the transfer compensation eventually – and allegedly – not reached its bank account, is due to a lack of action on the side of Club A. Indeed, this can be concluded by the statement of the financial director of Club A who confirmed that Club A had not filed certain documentation reason for which the relevant amount could not be “integrated” in Club A’s bank account. As such, the Single Judge finds that Club A acted negligent and that it was thus exclusively Club A’s fault that the amount was eventually not “integrated” in its bank account.

8. Having recalled the above-mentioned, the Single Judge referred to art. 12 par. 3 of the Procedural Rules which stipulates that any party claiming a right on the basis of an alleged fact shall carry the burden of proof. The application of the aforementioned article led the Single Judge to conclude that it is up to Club A to unambiguously establish that the payment of the transfer compensation initiated by Club C in July 2013 was indeed returned to – and received by - Club C.
9. In this regard, having duly considered all the documentation on file, the Single Judge finds that Club A has not been able to prove, beyond doubt, that the relevant transfer compensation was eventually refunded to – and received by - Club C. In particular, the Single Judge concludes that whereas Club A has provided a declaration of Bank I and an “answer” of Bank J that they refunded the relevant amount to Company H, there has been no declaration provided of the Company H confirming that said company in fact received the money. This may reasonably have been expected from Club A, in particular, in view of the fact that in the “answer” of Bank J dated 22 September 2015, said bank confirmed: *“pls contact originating bank directly for further inquiry on the subject matter”*.
10. Furthermore, the Single Judge deems that it has equally not been proven that Company H is indeed the official bank of the Respondent and that by refunding the money to the Company H, the relevant transfer compensation came back in the possession of Club C.
11. As a consequence of all of the above, in particular considering that Club A had been unable to unambiguously prove that Club C was again in possession of the relevant transfer compensation, the Single Judge decided to reject the claim of Club A.
12. 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 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. 18 par. 1 of the Procedural Rules).

13. In respect of the above, and taking into account that Club A is the unsuccessful party in the present proceedings, the Single Judge concluded that Club A has to bear the full costs of the current proceedings before FIFA.
14. 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. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings is USD 323,830. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
15. In conclusion, taking into account the degree of success as well as the complexity of the case and the volume of the documentation submitted, the Single Judge of the Players' Status Committee determined the costs of the proceedings to the amount of CHF 20,000, which shall be borne by Club A.

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

1. The claim of the Claimant, Club A, is rejected.
2. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Claimant **within 30 days** as from the date of notification of the present decision, to FIFA. Given that the Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the amount of CHF 15,000 is to be paid to FIFA to the following bank account with reference to case nr. xxxxxxxxxxxx:

UBS Zurich

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

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
Avenue de Beaumont 2
1012 Lausanne - Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
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www.tas-cas.org

For the Single Judge of the
Players' Status Committee:

Markus Kattner
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Encl. CAS Directives