Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 15 June 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 players Player E and Player F

I. Facts of the case

1. On 3 September 2012, the club from country B, Club A (hereinafter: *the Claimant*), and the club from country D, Club C (hereinafter: *the Respondent*), concluded a transfer agreement for the transfer of the player, Player E, from the Claimant to the Respondent (hereinafter: *Player E agreement*).

2. Article 4 of the Player E agreement stipulated that, "*[the Respondent] declares itself willing to pay and will pay to [the Claimant] for the transfer to [the Respondent] a fixed transfer fee of EUR 350,000*" payable as follows:

   - EUR 90,000 on 15 September 2012,
   - EUR 90,000 on 1 July 2013,
   - EUR 90,000 on 1 July 2014, and
   - EUR 80,000 on 1 July 2015.

3. On 13 June 2013, the Claimant and the Respondent concluded a transfer agreement for the transfer of the player, Player F, from the Claimant to the Respondent (hereinafter: *the Player F agreement*).

4. Article 4 of the Player F agreement stipulated that, "*[the Respondent] declares itself willing to pay and will pay to [the Claimant] for the transfer to [the Respondent] a fixed transfer fee of EUR 500,000*" payable as follows:

   - EUR 100,000 on 1 July 2013,
   - EUR 100,000 on 1 July 2014,
   - EUR 100,000 on 1 July 2015, and
   - EUR 200,000 on 1 July 2016.

   However, the aforementioned parties agreed that the transfer fee would be payable "*immediately when [the Respondent] reaches the group phase of the Champions League*".

   Equally, article 4 of the Player F agreement stipulated that "*in case of delay in payment (…) [the Respondent] agrees to pay 0.5% of the amount of instalment per every day of delay starting at the fifth day delay. In the case that the above mentioned interest rate shall be considered excessive and, consequently, ineffective, the maximum interest rate provided and permitted under the law governing this agreement shall apply*".

5. On 11 April 2014, the Claimant and the Respondent concluded an agreement (hereinafter: *the first settlement agreement*) in accordance with which, the second instalment of the Player E agreement as well as the first instalment of the Player F agreement remain outstanding.

6. Article 3 of the first settlement agreement provided for the reschedule of the transfer fees as follows:

   - EUR 60,000 payable on 30 April 2014 at the latest,
   - EUR 150,000, payable on 30 September 2014 at the latest,
   - EUR 110,000, payable on 30 April 2015 at the latest,
   - EUR 150,000, payable on 30 September 2015 at the latest,
   - EUR 110,000, payable on 30 April 2016 at the latest, and
   - EUR 80,000, payable on 30 September 2016 at the latest.

7. Article 4 of the first settlement agreement stipulated that, "*in case [the Respondent] is in delay with a payment set out in clause 3 or parts of such payment for more than 30 calendar days, the instalment plan set out in clause 3 is null and void and the obligations set out in the Player E and Player F contracts fully apply again, including interest and penalties accrued so far. In this case, [the Respondent] is especially no longer entitled to any discount from these amounts as granted in case of compliance with the payment plan set out in clause 3 of this agreement. The parties further agree, that in this case, the event that gives rise to a dispute in the sense of art. 25 [of the Regulations on the Status and Transfer of Players] shall be the delay with a payment according to clause 3 of this agreement or the Player E and Player F contracts, whatever may be the later*".

8. Article 5 of the first settlement agreement stipulated that "*in case the preconditions of clause 4 occur, any payments effected by [the Respondent] will first be offset with claims of [the Claimant] for interest and penalty, then with the claims for transfer fees*".

9. Between 5 February 2015 and 5 April 2015, the parties agreed via e-mail that the Claimant "*waives the remaining claims if [the Respondent] pays in full and in time to the Claimant*" the amount of EUR 480,000 in three equal instalments of EUR 160,000 on 30 April 2015, 30 September 2015 and 30 April 2016 to which the Respondent replied that "*we will follow through your kind suggestion*" (hereinafter: *second settlement agreement)*.

10. Furthermore the parties agreed upon the following: "*if [the Claimant] is in default with a payment or parts of it for more than 10 days, the initial claims arising from the transfer contracts apply again and (…) the procedure before FIFA will be suspended for the term of the payment plan and as long as it is complied with and the claim will be withdrawn once the payment plan is completed*".

11. On 26 November 2014, the Claimant lodged a claim before FIFA against the Respondent, requesting, after amending the claim on 11 December 2015, the following amounts:

    - EUR 260,000, as the remaining outstanding transfer fee due on the basis of the Player E agreement, plus 5% interest as of 2 July 2015,
    - EUR 300,000, as the remaining outstanding transfer fee due on the basis of the Player F agreement, plus 0.5% interest per day as of 6 July 2015,
    - EUR 197,944.16, being "*EUR 36,171.52 the remainder as of 29 January 2015*", EUR 158,000, the penalty from the Player F agreement until 5 July 2015, and EUR 3,772.64 the outstanding interests from the Player E agreement until 1 July 2015.

12. In this respect, the Claimant held that when the second instalment of the Player E agreement as well as the first instalment of the Player F agreement fell due on 1 July 2013, the Respondent requested a reschedule in the payment of both transfer fees. As a result, the parties concluded the first settlement agreement, the first instalment of which was lately paid.

13. The Claimant acknowledged receipt of the first instalment of the first settlement agreement and argued that the second instalment, which fell due on 30 September 2014 remained outstanding. In this respect, the Claimant provided an exchange of e-mails dated 30 September 2014 in accordance with which the Respondent's lawyer requested an extension of 24 days to pay, which the Claimant accepted.

14. Notwithstanding the foregoing, the Claimant asserted that the Respondent failed to pay within the extra 24 days and provided a copy of an e-mail sent to the Respondent's legal representative on 5 November 2014 requesting the payment of the outstanding amount. The Claimant provided an exchange of e-mails in which the Respondent replied to the aforementioned e-mail that it was expecting a payment in the amount of EUR 200,000 within the next 30 days and, as a result, on 14 November 2014 the Claimant requested the assignment of the debt against the third party.

15. In this context, the Claimant stated that the conditions stipulated in article 4 of the first settlement agreement are met and that, consequently, the payment plan set out in its article 3 as well as the discount agreed upon in comparison with the transfer fees contained in the Player E and Player F agreements (hereinafter: *the transfer agreements*) are null and void.

16. In light of the foregoing, the Claimant requested the payment of the second and third instalments of the Player E agreement, plus interest as from the day after the maturity date, as well as the payment of the first and second instalments of the Player F agreement, plus the penalty as per article 4 of the Player F agreement.

17. As to the penalty agreed upon in the Player F agreement, the Claimant argued that, although it may be regarded as excessive, it is the Respondent who is liable for its default. Alternatively, the Claimant held that it would accept a more moderate interest rate as per article 4 of the Player F agreement, thus, higher than the usual 5% *p.a*.

18. Lastly, the Claimant asserted that the payment of EUR 60,000 must be offset with the aforementioned claims but that it would accept that this total amount is regarded as the total penalty compensation for the late payment and, alternatively, it would accept to offset this payment with the "*first*" instalment of the Player E contract, therefore reducing the EUR 90,000 to EUR 30,000.

19. On 5 February 2015, the Respondent replied to the Claimant's claim by stating that it paid EUR 150,000 to the Claimant and that, consequently, there were no outstanding amounts as the next payment would fall due on 30 April 2015.

20. On 26 February 2015, the Claimant acknowledged receipt of EUR 150,000 and held that in accordance with the first settlement agreement no amount remained outstanding. However, the Claimant reiterated that due to the lack of payment, and as provided in article 4 of the first settlement agreement, the payment plan agreed upon in it is null and void and the Player E and Player F agreements are applicable again.

21. On 16 March 2015 and 8 April 2015, the Respondent and the Claimant respectively informed that the parties were negotiating the second settlement agreement (cf. point I.9 above). In this regard, the Claimant further requested the suspension of the proceedings.

22. On 11 December 2015, the Claimant requested to resume the proceedings due to the Respondent's alleged failure to pay the second instalment agreed upon in the second settlement agreement (cf. point I.9 above).

23. In this context, the Claimant stated that the second settlement agreement also stipulated that in the event of non-compliance with the new payment plan the Player E and Player F agreements shall be applicable again.

24. In this regard, the Claimant argued that the instalment initially payable in April 2014 was allegedly rescheduled in the second settlement agreement until 30 September 2015 but that the Respondent failed to pay the EUR 160,000 and offered to settle the debt by offering other benefits.

25. Furthermore, the Claimant stated that, as it can be seen from the exchange of e-mails, "*any reduction or partial waiver of the claim was explicitly put under the condition that the payment amounts and dates confirmed by [the Respondent] in the e-mail dated 5 April 2015 are actually complied with*". Consequently, the Claimant asserted that the second settlement agreement is no longer applicable.

26. On 4 March 2016, the Claimant acknowledged receipt of EUR 160,000, corresponding to the first instalment of the second settlement agreement, but reiterated that the Respondent in any case did not honour the payment of the second settlement agreement on time and thus, the second settlement agreement became null and void.

27. On 4 April 2016, the Respondent held that due to its financial difficulties the parties concluded a first settlement agreement (cf. point I.5 above) and, subsequently, a second settlement agreement (cf. point I.9 above) in accordance with which the Respondent shall pay to the Claimant three instalments of EUR 160,000 on 30 April 2015, 30 September 2015 and 30 April 2016.

28. In this context, the Respondent argued that the first instalment was fully paid and that the second instalment was paid in February 2016.

29. Lastly, the Respondent assured that the payment of the third instalment will be made in due time and that it sees "*no reason for this case to be heard by FIFA*".

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 were applicable to 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) as well as to the fact that the present matter was submitted to FIFA on 26 November 2014, thus after 1 August 2014. Therefore, the Single Judge concluded that the 2014 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.

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 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 26 November 2014. In view of the foregoing, the Single Judge concluded that the 2014 edition of the Regulations on 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 different associations.

4. His competence 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, he emphasized that in the following considerations he will refer only to the facts, arguments and documentary evidence which he considered pertinent for the assessment of the matter at hand.

5. First of all, the Single Judge considered that he had to determine which agreement(s) concluded between the parties shall be at the basis of the present matter. In this respect, the Single Judge underscored that it was undisputed that the parties had concluded two transfer agreements – the Player E and the Player F agreements (cf. points I.1 and I.4 above) – as well as two subsequent settlement agreements – the first and the second one – (cf. points I.5 and I.10 above). Furthermore, the Single Judge noted that, from the contents of the Player E and Player F agreements, the Claimant was entitled to receive a total amount of EUR 850,000 (i.e. EUR 350,000 plus EUR 500,000) as transfer fee for the aforementioned players. Equally, the Single Judge underscored that the validity of the two settlement agreements subsequently concluded by the parties was subject to the timely payment of the rescheduled instalments of the transfer fees.

6. In this context, the Single Judge referred to the exchange of e-mails between the parties from 30 September 2014 to 5 April 2015 (cf. points I.9, I.10 and I.12 to I.14 above) and pointed out that, as informed by the Claimant and not disputed by the Respondent, the latter failed to timely pay the instalments of the transfer fee in accordance with the settlement agreements.

7. In light of the foregoing, and taking into account that both the first and the second settlement agreements stipulated that the Respondent's failure to comply with the aforementioned agreements in a timely manner resulted in the right of the Claimant to claim based on the original transfer agreements, the Single Judge concluded that the Player E and Player F agreements are at the basis of the present dispute.

8. Having said that, the Single Judge acknowledged that the Claimant, after amending its claim, requested the amount of EUR 919,716.80, plus 5% interest *p.a.* on EUR 260,000 as of 2 July 2015, as well as 0.5% interest per day on EUR 300,000 as of 6 July 2015. Furthermore, he acknowledged that the Claimant confirmed having received the total amount of EUR 460,000 in relation with the Player E and Player F agreements, consisting of EUR 90,000 (cf. point I.5 above), plus EUR 60,000 (cf. point I.13 above), plus EUR 150,000 (cf. point I.20 above) and plus EUR 160,000 (cf. point I.26 above).

9. In continuation, the Single Judge pointed out that, according to the Respondent, on the basis of the second settlement agreement, it had no more debts towards the Claimant.

10. At this point, the Single Judge referred the parties to the wording of art. 12 par. 3 of the Procedural Rules, according to which: *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*. In the present case, the Single Judge assessed that the Respondent bore the burden of proof of its allegations that the second settlement agreement was the legal document at the basis of the dispute and that all payments due to the Claimant were in fact made. In this respect, the Single Judge pointed out that the Respondent was not able to provide any evidence of the prevalence

of the second settlement agreement – even admitting the untimely compliance with it – or of the payment of all its debts towards the Claimant.

11. On account of the above 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, the Single Judge held that the Respondent has to fulfill its contractual obligations towards the Claimant in the total amount of EUR 850,000, as per the Player E and Player F agreements. However, the Single Judge noted that the last instalment of the Player F agreement payable on 1 July 2016 in the amount of EUR 200,000 had not yet fallen due on the date of the decision, i.e. 15 June 2016. Therefore, the Single Judge underscored that, on 15 June 2016, the amount of EUR 650,000 should have been paid by the Respondent to the Claimant and that the latter acknowledged receipt of various payments totally amounting to EUR 460,000. As a result, the Single Judge decided that the Respondent has to pay to the Claimant the outstanding amount of EUR 190,000 regarding the transfer fees agreed upon in the Player E and Player F agreements.

12. Having established the above, the Single Judge went on to examine the second issue raised in the present matter by the Claimant, *i.e.* the Claimant's request to be awarded interest of 0.5% for each calendar day of late payment on the amount of EUR 300,000, as well as EUR 158,000 as the interests for the late payment of the amounts stipulated in the Player F agreement until 5 July 2015. In this respect, the Single Judge underscored that said request is based on art. 4 of the Player F agreement that reads as follows: "*in case of delay in payment (…) [the Respondent] agrees to pay 0.5% of the amount of instalment per every day of delay starting at the fifth day delay. In the case that the above mentioned interest rate shall be considered excessive and, consequently, ineffective, the maximum interest rate provided and permitted under the law governing this agreement shall apply*".

13. The Single Judge acknowledged the arguments of both parties in respect of the aforementioned clause and, after analysing the relevant provision contained in the transfer agreement, pointed out that an interest rate amounting to 0.5% per calendar day for late payment equals to an interest of 182.5% *p.a.* Consequently, the Single Judge concluded that such interest is to be considered as manifestly disproportionate and exorbitant, and as such, cannot be enforced. In view of the foregoing, the Single Judge held that art. 4 of the Player F agreement should be disregarded and that, as an alternative, taking into account the lack of evidence for any higher and proportionate interest applicable to the case at hand, and in accordance with the longstanding practice of the Players' Status Committee, the Single Judge concluded that the Respondent has to pay 5% default interest *p.a.* on the respective outstanding instalments.

14. In conclusion, the Single Judge decided to partially accept the claim of the Claimant and determined that the Respondent is liable to pay to the Claimant the total amount of EUR 190,000, plus 5% interest *p.a.* until the date of effective payment as follows:

    - on the amount of EUR 5,000 as of 2 July 2014,
    - on the amount of EUR 5,000 as of 7 July 2014,
    - on the amount of EUR 80,000 as of 2 July 2015, and
    - on the amount of EUR 100,000 as of 7 July 2015.

15. 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).

16. In respect of the above, and taking into account that the claim of the Claimant had been partially accepted, the Single Judge concluded that both the Claimant as well as the Respondent had to bear a part of the costs of the current proceedings before FIFA.

17. 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 EUR 919,716.80 as requested by the Claimant in its claim. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.

18. In conclusion, and considering that the case at hand did pose some particular factual difficulties, the Single Judge determined the costs of the current proceedings to the amount of CHF 20,000.

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, **within 30 days** as from the date of notification of this decision, the amount of EUR 190,000, plus 5% interest *p.a.* until the date of effective payment as follows:

   - on the amount of EUR 5,000 as of 2 July 2014,
   - on the amount of EUR 5,000 as of 7 July 2014,
   - on the amount of EUR 80,000 as of 2 July 2015, and
   - on the amount of EUR 100,000 as of 7 July 2015.

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 amount of costs of the proceedings in the amount of CHF 20,000 is to be paid, **within 30 days** as from the date of notification of the present decision as follows:

   5.1 The amount of CHF 5,000 by the Respondent to FIFA to the following bank account with reference to case nr. XXXX:

   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 15,000 by the Claimant 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 Claimant has to pay the amount of CHF 10,000 to FIFA to the aforementioned bank account with reference to case nr. XXXX.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under point 2 above is to be made and to notify the Single Judge of the Players' Status Committee of every payment received.

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Note relating to the motivated decision (legal remedy):

According to article 58 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
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For the Single Judge of the
Players' Status Committee:

Marco Villiger
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Encl. CAS Directives