

# **Decision of the Single Judge of the Players' Status Committee**

passed in Zurich, Switzerland, on 26 April 2016,

by

**Geoff Thompson (England)**

Single Judge of the Players' Status Committee,

on the claim presented by the club

**Club A, from country B**

as "*Claimant*"

against the club

**Club C, from country D**

as "*Respondent*"

regarding a contractual dispute between the parties relating to the  
Player E

## I. Facts of the case

1. On 30 June 2015, the club of country B, Club A (hereinafter: *Claimant*), and the club of country D, Club C (hereinafter: *Respondent*), signed a transfer agreement according to which the Respondent agreed to pay the Claimant the amount of EUR 3,500,000 – for the permanent transfer of the Player of country F, Player E (hereinafter: *the player*) – in four equal instalments of EUR 875,000, respectively due on 30 August 2015, 30 November 2015, 29 February 2016 and 30 June 2016.
2. The transfer agreement also provided that “[the Respondent] *obliges to deliver to [the Claimant] in the present date one Bank Guarantee on first demand in order to assure the payment of all the amount [as referred in 2 above] as well as to allow [the Claimant] to request the anticipated Bank discount of such Bank Guarantee/amount. The Bank Guarantee shall be approved by the Bank designated by [the Claimant] and [the Respondent] agrees to assume the responsibility of all costs derived from the anticipated discount of such Bank Guarantee*”.
3. On 1 October 2015, the Claimant put the Respondent in default of the non-payment of the first instalment of EUR 875,000 as well as the non-delivery of the bank guarantee on first demand on the amount of EUR 2,625,000, granting the Respondent a deadline of two days to remedy the default (note: default notice dated 1 October 2015 on file).
4. On 19 October 2015, the Claimant lodged a complaint before FIFA against the Respondent, explaining that the latter had still not paid the first instalment of the transfer compensation agreed for the permanent transfer of the player, which fell due on 30 August 2015.
5. Moreover, the Claimant sustained that the Respondent had not delivered the bank guarantee on first demand, as agreed in the transfer agreement (cf. point 2 above). In this respect, the Claimant referred to an exchange of correspondence between both parties by means of which, on 14 August 2015, the Claimant requested the Respondent to deliver “*one Bank Guarantee on first demand on the amount of EUR 3.500.000 plus interests as of 30<sup>th</sup> June until the delivery is made – in order to allow [the Claimant] to request the anticipated Bank discount of such Bank Guarantee/amount plus interests*”, granting the Respondent a deadline of ten days to remedy the default. Thereafter, on 24 August 2015, the Respondent informed the Claimant that it

should have requested a bank guarantee on the first instalment of the transfer fee, and not for the entire transfer fee. The Respondent also deemed that no interest was due since the payment of the first instalment of the transfer fee would fall due on 30 August 2015. Then, on 26 August 2015, the Claimant recalled the Respondent that it agreed, in the transfer agreement, to secure the payment of the amount of EUR 3,500,000 to the Claimant by the delivery, on the signing date, of a bank guarantee on first demand. The Claimant further explained that, upon delivery of the said bank guarantee by the Respondent, it could immediately request to the respective issuing bank the total amount of EUR 3,500,000. Finally, the Claimant granted the Respondent three working days to proceed to such delivery.

6. As a result, the Claimant claimed from the Respondent the payment of EUR 875,000 corresponding to the first instalment of the transfer compensation, as well as the immediate delivery of a bank guarantee on first demand to assure the payment of the remaining amount of EUR 2,625,000, and "*the anticipated Bank discount of such Bank Guarantees/amount*", plus 5% interest p.a.
7. In its statement of defence, the Respondent first of all claimed that all amounts stipulated in the transfer agreement were gross and, therefore, the 5% solidarity contribution should be deducted.
8. In this context, the Respondent alleged that, on 15 October 2015, it proceeded to the payment of EUR 831,250 corresponding to the first instalment of the transfer compensation, after deduction of the 5% solidarity contribution. In order to corroborate its allegations, the Respondent provided a document dated 15 October 2015 referred to as "*Money Transfer / Draft Issuance Application*", indicating the relevant amount to be transferred to the Claimant.
9. As regards the bank guarantee, the Respondent considered that it was only applicable on the first instalment, which was already paid. On account of the above, the Respondent deemed that the intended effect of the bank guarantee was called off upon the payment of the first instalment and, consequently, the said bank guarantee was inapplicable to the rest of the instalments.
10. In its replica, the Claimant explained that, in order to assure the payment of the entire transfer compensation, the parties agreed upon said bank guarantee on first demand with the possibility for it to request its anticipated bank discount insofar as Club A needed immediate funding, i.e. a lump-sum payment on the date of signing, whereas the Respondent wanted to pay the

transfer fee in several instalments. The Claimant also maintained that FIFA already recognised the validity of a bank guarantee on first demand.

11. Moreover, the Claimant acknowledged the payment by the Respondent of the first instalment of the transfer compensation, however received on 29 October 2015 and in the amount of EUR 831,135 (note: no evidence provided). In this regard, the Claimant emphasised that such payment evidenced that the Respondent did not comply with its obligation of payment as to the agreed date, i.e. 30 August 2015.
12. As regards the deduction of the 5% solidarity contribution, the Claimant held that it was never informed by the Respondent of such deduction. Notwithstanding the above, the Claimant referred to the player passport and deemed that, in the event the deduction of the 5% solidarity contribution was to be taken into account, the Claimant would thus be entitled to 10.58% of the 5%, equivalent to EUR 18,515. Consequently, the Claimant considered that the Respondent should have deducted on the first instalment 4.471% of the 5%, i.e. EUR 39,121.25, and thus should have paid EUR 835,878.5 to Club A, instead of EUR 831,135.
13. On account of the above, The Claimant provided the said player passport, according to which the player was registered with it from 11 August 2014 until 23 February 2015, then loaned to the Club of country B, Club F, from 23 February 2015 until 30 June 2015 and back to the Claimant as from 1 July 2015 until 11 August 2015, i.e. date of mutual termination of the contract by Club A and the player, and finally was registered with the Respondent as from 1 September 2015.
14. Subsequently, the Claimant sustained that the Respondent did not pay the second instalment of the transfer compensation, which was due on 30 November 2015. In this regard, the Claimant referred to its correspondence dated 7 January 2016 sent to the Respondent, putting the latter in default of the non-payment of the relevant second instalment and granting said party ten days to remedy the default.
15. In light of the above, and provided that “[the Claimant]’s share is not included in accordance with the Regulations”, the Claimant accepted to be deducted the 5% solidarity contribution, resulting in the total net amount of EUR 3,343,515 to be paid by the Respondent.
16. Consequently, on 15 February 2016, the Claimant amended its original claim, thus requesting the payment by the Respondent of EUR 836,622.5,

corresponding to EUR 2,743.75 as the balance of the first instalment of EUR 833,878.75 and EUR 833,878.75 as the outstanding second instalment. The Claimant also requested the immediate delivery by the Respondent of one bank guarantee on first demand on the amount of EUR 1,667,757.5 as well as "*interests on the sum of EUR 3,343,515 from 30<sup>th</sup> June 2015 until 29<sup>th</sup> October 2015 and interests on the sum of EUR 2,504,380 from 29<sup>th</sup> October 2015 until total and effective payment is made*".

17. In its duplica, the Respondent pointed to the fact that it was not aware of any precedent from FIFA in favour of a bank guarantee on first demand. The Respondent further asserted that as long as the Claimant agreed to deduct 4.471% of the total transfer compensation as solidarity contribution – resulting in a total net amount of EUR 3,343,515 – it was not pertinent to claim a bank guarantee for the amount of EUR 3,500,000.
18. Therefore, the Respondent rejected the Claimant's claim in full.

## 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 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 19 October 2015, thus after the aforementioned rules entered into force (1 April 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*) was applicable to the matter in hand.
2. 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 in front of FIFA on 19 October 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 matter as to the substance.
3. Furthermore, the Single Judge confirmed that, on the basis of art. 3 par. 1 of the Procedural Rules in connection with art. 23 par. 1 and 3 as well as art. 22 lit. f) of the Regulations on the Status and Transfer of Players, 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 present matter, the Single Judge started by acknowledging the above-mentioned facts of the case as well as the documents contained in the file. However, the Single Judge emphasised 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. In this respect, the Single Judge noted that the parties had signed a transfer agreement on 30 June 2015 for the permanent transfer of the player from the Claimant to the Respondent, in exchange of the payment by the Respondent to the Claimant of the amount of EUR 3,500,000 payable in four equal instalments of EUR 875,000 respectively due on 30 August 2015, 30 November 2015, 29 February 2016 and 30 June 2016.
6. In continuation, the Single Judge noted that the Claimant lodged a claim against the Respondent in front of FIFA for the outstanding payment of the first and second instalments of the relevant transfer compensation, respectively due on 30 August and 30 November 2015, as well as for the delivery of a bank guarantee on first demand as per the transfer agreement. In this regard, the Single Judge observed that, within the course of the present procedure, the Respondent had proceeded with the payment of the first instalment of the transfer compensation, which was also acknowledged by the Claimant.
7. Having said that, the Single Judge turned his attention to the outstanding second instalment of the transfer compensation and reverted to the parties' submissions underlining that, in particular, the Respondent acknowledged owing the Claimant the relevant instalment, albeit alleging that the deduction of the 5% solidarity contribution should be applied prior to the payment.
8. In this regard, the Single Judge referred to 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.
9. *In casu*, the Single Judge noted that the Respondent did not provide any conclusive evidence in order to establish that it did pay training clubs the relevant proportion of the solidarity contribution, so that such percentage should be deducted from the amount due to the Claimant. Consequently, the Single Judge rejected the Respondent's argument in this respect.

10. Notwithstanding the above and in accordance with the general 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 must fulfil the obligation it entered into with the Claimant by means of the contract signed between the parties.
11. Consequently, considering the Claimant's request as well as the legal principle of *non ultra petita*, the Single Judge concluded that the Respondent must pay to the Claimant the outstanding second instalment due under the transfer agreement in the amount of EUR 833,878.75.
12. In continuation and in view of the request of the Claimant for interest, the Single Judge decided that an interest of 5% per year on the amount of EUR 833,878.75 should apply from 1 December 2015 until the date of effective payment.
13. Turning his attention to the Claimant's claim relating to the delivery of one bank guarantee on first demand, the Single Judge assessed the relevant clause in the transfer agreement and emphasised that the parties did not specifically agree upon any financial consequences in case of the non-fulfilment of such obligation. In this regard, the Single Judge deemed that it appears that he is not in a position to rule on a contractual obligation, in which the direct financial consequences cannot be determined conclusively. Therefore, the Single Judge rejected this part of the claim.
14. Finally, 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).
15. On account of the above, and considering that the claim of the Claimant had been partially accepted and that the Respondent was the party at fault, the Single Judge concluded that the Respondent had to bear the entire costs of the current proceedings before FIFA. 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.
16. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings was EUR 833,878.75. Consequently

and taking into account that the total amount in dispute in the present matter was over CHF 200,000, the Single Judge concluded that the maximum amount of costs of the proceedings corresponded to CHF 25,000.

17. In conclusion, and in view of the particular circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 10,000 and decided that such amount had to be paid by the Respondent in order 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 total amount of EUR 833,878.75, plus an interest at a rate of 5% per year on the said amount from 1 December 2015 until the date of effective payment.
3. If the aforementioned amount, plus interest as established above, 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 10,000 are to be paid by the Respondent, Club C, within 30 days as from the notification of the present decision as follows:
  - 5.1 The amount of CHF 5,000 has to be paid directly to FIFA to the following bank account with reference to case nr xxx:

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

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**Note relating to the motivated decision (legal remedy):**

According to art. 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  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Single Judge of the  
Players' Status Committee:

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Marco Villiger  
Deputy Secretary General

Encl. CAS directives