

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 11 May 2012,

by

Geoff Thompson (England)

Single Judge of the Players' Status Committee,

on the claim presented by the club

Club P, from country I

as "*Claimant*"

against the club

Club Q, from country J

as "*Respondent*"

regarding a contractual dispute between the parties
and relating to the player E.

I. Facts of the case

1. On 20 January 2005, Club P (hereinafter "*the Claimant*"), Club Q (hereinafter "*the Respondent*") and the player E (hereinafter "*the player*") signed a transfer agreement (hereinafter "*the agreement*").
2. The second clause of the agreement established that "*Club P permanently grants, sells and transfers to Club Q one hundred percent (100%) of the federative rights over the transfer of the PLAYER, as well as fifty percent (50%) of all (100%) of the economic rights over the transfer, with fifty percent (50%) of the remaining economic rights being retained by Club P. The PLAYER expressly and irrevocably confirms and accepts this circumstance and declares that an agreement has already been drawn up with Club Q for his sports services contract*".
3. The agreement provided that the Claimant would pay the Respondent the total sum of EUR 2,800,000 as follows:
 - a) EUR 1,600,000 "*for the definitive transfer*" of the player, payable in three instalments as follows: EUR 400,000 on 30 January 2005, EUR 400,000 on 30 June 2005 and EUR 800,000 on 30 June 2006 (cf. the third clause of the agreement);
 - b) EUR 1,200,000 for "*the remaining 50% of the economic rights*" payable in three instalments as follows: EUR 400,000 on 31 January 2006, EUR 400,000 on 31 January 2007 and EUR 400,000 on 31 January 2008 (cf. the fourth clause of the agreement).
4. The fifth clause of the agreement established that "*should Club Q permanently transfer the player to a third club before 31 January 2008, Club P will be entitled to receive the sum it is owed within thirty days of the transfer agreement being deposited in the third club. The minimum of EUR 1,200,000 (one million, two hundred thousand euro) guaranteed to Club P, which represents fifty percent (50%) of the economic rights over the transfer, will be reduced in accordance with the payments it receives from Club Q as per the procedure agreed in the fourth clause*".
5. The ninth clause of the agreement established that default interest would be applied based on "*the official benchmark annual rate of the Bank of country I during the late payment period, plus three points*" in the event of delays in making the payments as per the agreement.
6. On 24 July 2007, the Respondent and Club R, from country K (hereinafter: "*Club R*") signed a transfer agreement (hereinafter: "*the new agreement*").

7. The new agreement established that Club R would pay the Respondent the total sum of EUR 4,233,000 as follows:
 - a) EUR 3,400,000 for the transfer compensation in two instalments of EUR 1,700,000 each, the first of which payable within five days of the new agreement being signed and the second on 31 July 2008;
 - b) EUR 833,000 as transaction "*expenses*" for the transfer compensation in accordance with statutory rules of the country J Football Association, also payable within five days of the new agreement being signed.
8. On 9 August 2007, in the context of another proceedings initiated by the Claimant against the Respondent in front of FIFA in relation to the non-payment of the transfer compensation agreed upon in the third and fourth clauses of the agreement, the Single Judge of the Players' Status Committee ruled that the Respondent had to pay the Claimant the sum of EUR 1,600,000, plus 5% annual interest from the date on which each instalment fell due (hereinafter "*the decision*").
9. On 17 April 2008, the Claimant filed the present claim in front of FIFA against the Respondent, requesting payment of the sum of EUR 1,300,000 based on the fifth clause of the agreement, plus an interest of 7% *per annum* (cf. clause ninth of the agreement) and legal costs.
10. The Claimant calculated the amount of USD 1,300,000 as follows: EUR 4,200,000, representing the player's transfer amount from the Respondent to Club R (according to information available in the media); 50% = EUR 2,100,000 – EUR 800,000 (sum already paid under the fourth clause of the agreement) = EUR 1,300,000. Furthermore, the Claimant stated that once FIFA received the new agreement from the Respondent and ascertained the exact compensation for the player's transfer to Club R, FIFA should decide the exact sum in question.
11. The Claimant also requested that the interest claimed be calculated from 23 August 2007 (i.e. 30 days as of the date of the new transfer) up until the actual day of payment based on the interest rate set in the ninth clause of the agreement.
12. In its response to the claim, the Respondent categorically rejected it as inadmissible and as an attempt to reintroduce matters which had already been resolved by the Single Judge of the Players' Status Committee in his decision of 9 August 2007 and by the negotiations carried out by both parties at the time.
13. In particular, the Respondent stated that:
 - a) in points I.16, II.10 and ss. of the aforementioned decision, the Single Judge had ordered the Respondent to pay EUR 1,600,000 plus interest and also

acknowledged that the latter had made said payment on the previous day (8 August 2007). In view of this alleged obvious error, the Respondent demanded a clarification to FIFA on 27 December 2007, requesting a review of the respective decision;

- b) on 8 January 2008, FIFA had sent a letter to the Respondent explaining that the Claimant had confirmed receipt of the sum claimed but that payment of the corresponding interest remained outstanding;
 - c) during the investigation which had led to the decision of 9 August 2007, the parties had exchanged several correspondence in order to reach an amicable solution. From said correspondence, the Respondent highlighted the following letters from the Claimant: the fax dated 12 July 2007, in response to Club R's offer, and in which the Claimant had offered two options for an amicable solution, the fax dated 17 July 2007, in which the Claimant had put forward a further two options and the fax dated 24 July 2007, in which the Claimant had confirmed its approval of the player's transfer to Club R on the condition that the sum of EUR 1,600,000 would be paid in advance, with the balance being paid as per the agreement. Furthermore, in the last two faxes, the Claimant had waived all actions through FIFA if the Respondent honoured the final and full payment of the sum of EUR 1,600,000 and settled the balance as per the fourth clause of the agreement, completing all these before the player's transfer to Club R;
 - d) the Respondent had adhered to said conditions, paying the Claimant the sum of EUR 1,600,000 on 8 August 2007, sending Club R the player's International Transfer Certificate (ITC) on 10 August 2007 and paying the Claimant the last instalment of EUR 400,000, which fell due on 31 January 2008, within the thirty-day period following its due date (cf. fourth clause of the agreement). The Claimant maintained that it had withheld the sum of EUR 300,000 as requested by Club S, from country J, a creditor of the Claimant, and transferred the remaining balance of EUR 100,000 into the bank account indicated by the Claimant;
 - e) the Claimant had accepted the payments made by the Respondent and had made no remarks, as the payments had been performed in accordance with the conditions stipulated by the Claimant in its aforementioned correspondence from July 2007;
 - f) the Claimant was trying to generate an additional sum based on its arbitrary interpretation of the fifth clause of the agreement.
14. The Claimant responded to the Respondent's statements, categorically rejecting it and pointing out that the decision had been passed exclusively on the Respondent's failure to comply with the second, third and fourth clauses of the agreement. The claim in question, however, referred to the Respondent's failure to perform the obligation stipulated in the fifth clause of the agreement.

15. In particular, the Claimant stated that the fifth clause of the agreement consolidated its right to receive a sum corresponding to 50% of the "*transfer of the economic rights to the player*", with a guaranteed minimum of EUR 1,200,000, less the payment already made by the Respondent to the Claimant based on the fourth clause of the agreement, in the event of a new definitive transfer of the player to a third club before 31 January 2008. Bearing in mind that this situation had arisen through the player's transfer from the Respondent to Club R on 10 August 2007, the Claimant had initiated the current proceedings.
16. Furthermore, the Claimant argued that the Respondent had misinterpreted the content of its letters of 12, 17 and 24 July 2007. In said faxes, the Claimant had not waived any sums which would be generated from a new transfer of the player to a third club.
17. Lastly, the Respondent submitted its final comments, reiterating its previous statements and maintaining, in particular, that it had honoured all of the payments, including those in the conditions agreed with the Claimant via their correspondence, and that therefore the waiver made by the Claimant was indeed valid.

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

1. First of all, the Single Judge of the Players' Status Committee (hereafter also referred to as: "*the Single Judge*") analysed whether he was competent to deal with the matter at hand. In this respect, the Single Judge confirmed that, on the basis of art. 3 par. 1 of the 2008 edition of the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber in connection with art. 23 par. 1 and 3 as well as art. 22 f) of the 2010 edition 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.
2. Furthermore, the Single Judge analysed which Procedural Rules are applicable to the matter at hand. In this respect, he referred to art. 21 par. 1 and 2 of the 2008 edition of the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber. Consequently, and since the present matter was submitted to FIFA on 17 April 2008, the Single Judge concluded that the 2005 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereafter: "*the Procedural Rules*") is applicable to the matter at hand (cf. art. 18 par. 1 and 2 of the Procedural Rules).

3. 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 of the 2010, 2009 and 2008 editions of the Regulations on the Status and Transfer of Players and, on the other hand, to the fact that the present claim was lodged with FIFA on 17 April 2008. In view of the foregoing, the Single Judge concluded that the 2005 edition of the Regulations for the Status and Transfer of Players (hereafter: "*the Regulations*") is applicable to the case at hand as to the substance.
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.
5. First and foremost, the Single Judge took note that the Claimant and the Respondent had concluded an agreement on 20 January 2005 by means of which both clubs agreed on the definitive transfer of the player from the Claimant to the Respondent for an initial amount of EUR 2,800,000 to be paid in different instalments (cf. third and fourth clauses of the agreement).
6. Moreover, the Single Judge noted that both clubs had also agreed under the fifth clause of the agreement, that in case the player was transferred from the Respondent to another club before 31 January 2008, the Claimant would be entitled to "*fifty percent (50%) of the economic rights*" of the said transfer, minus "*the payments it [i.e. the Claimant] receives from Club Q [i.e. the Respondent] as per the procedure agreed in the fourth clause*" of the agreement. The said clause further stipulated that the amount as sell-on-fee to be paid by the Respondent to the Claimant should in any case not be lower than EUR 1,200,000.
7. Furthermore, the Single Judge took note that based on the subsequent transfer of the player from the Respondent to Club R on or around 24 July 2007, the Claimant had lodged the present claim with FIFA requesting from the Respondent the payment of EUR 1,300,000 based on the fifth clause of the agreement, plus interest.
8. Having established the above, the Single Judge underlined that, while the Claimant alleged that it was entitled to receive the amount of EUR 1,300,000 as sell-on-fee from the Respondent on the basis of the fifth clause of the agreement, the latter deemed that the Claimant had waived its right to receive the relevant sell-on-fee in an exchange of correspondence following their previous dispute which had resulted in the decision passed on 9 August 2007.

9. In this context, the Single Judge pointed out that, on 9 August 2007, a decision was indeed rendered by the Single Judge of the Players' Status Committee within the frame of a claim lodged with FIFA by the Claimant against the Respondent for an outstanding transfer amount related to the third and fourth clauses of the agreement signed on 20 January 2005. In this respect, the Single Judge noted that in the said decision, the Respondent was ordered to pay to the Claimant a total amount of EUR 1,600,000, representing the instalment of EUR 800,000 due on 30 June 2006 under the third clause of the agreement as well as the first two instalments of EUR 400,000 under the fourth clause of the agreement, which were due on 31 January 2006 and 31 January 2007 respectively. In addition, the Single Judge underlined that the abovementioned amount of EUR 1,600,000 was paid by the Respondent to the Claimant a day before the decision in question was adopted.
10. In continuation, the Single Judge focussed his attention to the correspondence exchanged between the Claimant and the Respondent some days before the aforementioned decision was passed, and on the basis of which the Respondent had argued, in the present proceedings, that the Claimant had at the time waived its right to claim any further amount under the fifth clause of the agreement.
11. Consequently, the Single Judge carefully analysed the content of the Claimant's letters dated 12, 17 and 24 July 2007 which were mentioned by the Respondent in its allegations and noted that the said letters appear to have been sent in an attempt to solve the matter amicably between the parties. In addition, the Single Judge noted that a number of propositions and counter-propositions appear to have been made by the parties in their exchange of correspondence. However, the Single Judge was eager to underline that, from the content of the correspondence in question and, in particular, the letter dated 24 July 2007 sent by the Claimant, it was not possible to conclude that the latter had effectively renounced to its right to receive the amount stipulated under the fifth clause of the agreement.
12. Moreover, the Single Judge stated that, as a general rule, a document waiving any rights has to be clearly drafted and explicit so as to leave no doubt as to the real intention of the parties.
13. Having established that the Claimant had not waived any of its rights under the fifth clause of the agreement and was, consequently, entitled to claim from the Respondent the amount due under the said clause following the transfer of the player from the Respondent to Porto, the Single turned his attention to the calculation of the relevant sell-on-fee.
14. In this respect, the Single Judge took note that the Claimant requested the amount of EUR 1,300,000 based on information available in the media and that it

reserved the right to amend its claim, should the real transfer sum be of a different amount.

15. At this point, the Single Judge emphasised that, during the course of the present proceedings, the Respondent had sent to FIFA a copy of the transfer agreement concluded on 24 July 2007 with Club R for the player. After an analysis of the aforementioned transfer agreement (the new agreement), the Single Judge pointed out in particular that the parties had agreed on a total transfer compensation of EUR 4,233,000, to be paid by Club R to the Respondent as follows: EUR 1,700,000 within five days from the signature of the new agreement, EUR 1,700,000 on 31 July 2008 and EUR 833,000 as additional "*expenses*" also within five days from the signature of the new agreement.
16. For the sake of good order, the Single Judge emphasised that in order to calculate the relevant sell-on-fee owed by the Respondent to the Claimant under the fifth clause of the agreement, all the amounts agreed in the new agreement between Club R and the Respondent should be taken into account.
17. At this stage, the Single Judge reiterated that in accordance with the fifth clause of the agreement, the Claimant was entitled to 50% of the subsequent transfer amount, *i.e.* 50% of EUR 4,233,000. Therefore, the Single Judge concluded that the relevant sell-on-fee was equivalent to EUR 2,116,500.
18. In continuation, the Single Judge reverted to the wording of the fifth clause of the agreement and underlined that the said clause clearly stated that the relevant sell-on-fee would be reduced "*in accordance with the payments*" already made by the Respondent on the basis of the fourth clause of the agreement. In other words, any payments already made to the Claimant under the fourth clause of the agreement should be deducted from the abovementioned amount of EUR 2,116,500.
19. In this respect, the Single Judge pointed out that in the decision of 9 August 2007, the deciding body had condemned the Respondent to pay the amount of EUR 1,600,000 to the Claimant and that said amount represented three instalments, two of which were due under the fourth clause of the agreement. In particular, the Single Judge underlined that the two instalments that had to be paid as per the fourth clause of the agreement represented a total amount of EUR 800,000, an amount composed of the sum of EUR 400,000, originally due on 31 January 2006, and the sum of EUR 400,000, originally due on 31 January 2007.
20. In view of the foregoing, the Single Judge concluded that, based on the fifth clause of the agreement, the amount of EUR 800,000, corresponding to the first

two instalments pertaining to the fourth clause of the agreement, had to be deducted from the sell-on-fee of EUR 2,116,500.

21. In addition and for the sake of good order, the Single Judge reverted to the Respondent's allegation that the amount of EUR 400,000, corresponding to the last instalment under the fourth clause of the agreement originally due on 31 January 2008, had already been paid as an amount of EUR 300,000 had been "*withheld*" in favour of Club S, and the remaining amount of EUR 100,000 had allegedly been transferred to the bank account of the Claimant.
22. In this respect, and while referring to art. 12 par. 3 of the Procedural Rules which states that "*any party deriving a right from an alleged fact shall carry the burden of proof*", the Single Judge noted that the Respondent had not provided any evidence in support of the aforementioned allegations. As a consequence, the Single Judge concluded that the last instalment provided in the fourth clause of the agreement for an amount of EUR 400,000 due on 31 January 2008 still appeared to be outstanding and could, therefore, not be deducted from the abovementioned sell-on-fee.
23. In view of all the above, the Single Judge concluded that the Respondent owes to the Claimant a total amount of EUR 1,316,500 as sell-on-fee, *i.e.* EUR 2,116,500 minus EUR 800,000, based on the terms of the fifth clause of the agreement.
24. Furthermore, the Single Judge went on to address the Claimant's request for an interest of 7% *p.a.* to apply on the outstanding amount as from 23 August 2007 based on the ninth clause of the agreement.
25. On the basis of the documents provided by the parties and in view of the fact that the ninth clause of the agreement did not specifically mention the exact percentage to be applied, the Single Judge deemed that an interest of 5% *p.a.* appeared to be reasonable and adequate in order to compensate the Claimant for the delay in the payment of the relevant sell-on-fee by the Respondent. In order to arrive at the aforementioned conclusion, the Single Judge also referred to the well-established jurisprudence of the Players' Status Committee in similar cases.
26. As from when exactly the relevant interest must apply, the Single Judge took note that the Claimant had requested the interest to start counting as from 23 August 2007 and emphasised, before establishing how the relevant interest should be calculated, that in view of the legal principle of "*non ultra petita*", he could not go beyond what the latter had requested in its claim to FIFA.
27. In continuation, the Single Judge reiterated that the amount of EUR 4,233,000 agreed between the Respondent and Club R for the transfer of the player was

payable in three instalments, the first instalment of EUR 1,700,000 as well as the amount of EUR 833,000 as additional "*expenses*" being due within five days of signing the new agreement and the second instalment of EUR 1,700,000 being due on 31 July 2008.

28. Therefore, applying the same division and payment schedule as for the sum of EUR 4,233,000 and taking into account the specific request of the Claimant, the Single Judge held that the interest of 5% *p.a.* should apply as from 23 August 2007 on the partial amounts of EUR 528,706.4 (*i.e.* amount due in connection with the first instalment of EUR 1,700,000) and of EUR 259,087.2 (*i.e.* amount due in connection with the additional "*expenses*" of EUR 833,000). Equally, the Single Judge held that an interest of 5% *p.a.* should apply on the partial amount of 528,706.4 (*i.e.* amount due in connection with the second instalment of EUR 1,700,000) as from 1 August 2008, *i.e.* one day after the aforementioned amount of EUR 1,700,000 had become due.
29. In view of all the above, the Single Judge decided that the Respondent has to pay to the Claimant an amount of EUR 1,316,500 in accordance with the fifth clause of the agreement, plus a 5% interest *p.a.* on the relevant partial amounts as established above.
30. Lastly for the sake of good order, the Single Judge took note that the Claimant also requested the payment of the legal costs which it had allegedly incurred. In this respect, the Single Judge pointed out that based on art. 15 par. 3 of the Procedural Rules, legal costs are not awarded in proceedings before the Players' Status Committee.
31. Finally, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 15 par. 1 of the Procedural Rules, according to which in the proceedings before the Players' Status Committee (including its Single Judge) costs in the maximum amount of currency of country C 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.
32. In respect of the above, the Single Judge concluded that the Respondent has to bear the costs of the current proceedings before FIFA.
33. 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. The amount in dispute to be taken into consideration in the present proceedings is above currency of country 200,000. Therefore, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to currency of country C 25,000.

34. In view of the considerable amount of submissions that had to be analysed but taking into account that the present dispute was submitted to the Single Judge and not to the Players' Status Committee *in corpore*, the Single Judge determined the costs of the current proceedings to the amount of currency of country C 12,000.
35. Consequently, and in line with the aforementioned, the Single Judge decided that the amount of currency of country 12,000 has 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 P, is partially accepted.
2. The Respondent, Club Q, has to pay to the Claimant, Club P, the amount of EUR 1,316,500, **within 30 days** as from the date of notification of this decision.
3. Within the same time limit, the Respondent, Club Q, has to pay to the Claimant, Club P, default interest of 5% *p.a.* on the following partial amounts as follows:
 - on EUR 528,706.4, as from 23 August 2007 until the date of effective payment;
 - on EUR 528,706.4, as from 1 August 2008 until the date of effective payment;
 - on EUR 259,087.2, as from 23 August 2007 until the date of effective payment.
4. Any further claims lodged by the Claimant, Club P, are rejected.
5. If the aforementioned sum plus interests are 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.
6. The Claimant, Club P, is directed to inform the Respondent, Club Q, directly and immediately of the account number to which the remittance is to be made in accordance with the above points 2 and 3 and to notify the Players' Status Committee of every payment received.
7. The final amount of costs of the proceeding amounting to currency of country C 12,000 is to be paid by the Respondent, Club Q, **within 30 days** as from the date of notification of the present decision, to FIFA to the following bank account with reference to case no. XX-XXXX:

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
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For the Single Judge of the
Players' Status Committee

Jérôme Valcke
Secretary General

Encl. CAS directives