

Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 28 September 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 10 July 2015, the Club of Country B Club A (hereinafter: *the Claimant*) and the Club of Country D Club C (hereinafter: *the Respondent*) concluded a loan agreement (hereinafter: *the agreement*) according to which the Claimant would temporarily transfer the Player E (hereinafter: *the player*) to the Respondent, without payment of any loan fee and for the period between 10 July 2015 and 30 June 2016.
2. Clause 2.2 of the agreement stated that, the Respondent shall be *inter alia* integrally responsible for paying the players' remuneration during the loan period in the form and value agreed between the player and the Respondent.
3. Moreover, in accordance with clause 2.6 of the agreement, "*[t]he present contract [i.e. the agreement] shall not, in any hypothesis, be unilaterally terminated by Club C [i.e. the Respondent], neither shall the employment contract between Club C and the PLAYER be terminated during the term of the temporary assignment without the formal acquiescence by Club A [i.e. the Claimant]. The failure to comply with such provision shall submit Club C to the payment of a fine in the amount of EUR 200,000.00 (two hundred thousand Euros), regardless of the moment the termination occur*".
4. According to article 8 par. 3 of the agreement, the validity of the latter was conditioned to the conclusion of an employment contract between the player and the Respondent (cf. art. 8 par. 2) and subject to the FIFA Regulations, and subsidiarily, to Swiss Law. In particular, the agreement stipulated that, "*[t]he parties elect the forum of FIFA and its bodies as competent to settle any doubt or controversy arisen from the present contract and the Court of Arbitration for Sport (TAS-CAS) as competent to judge eventual appeal against the referred decision*".
5. On 16 July 2015, the Respondent and the player concluded an employment contract (hereinafter: *the employment contract*) "*starting on 1 August 2015 and ending on 30 June 2016*", which stated that, "*[t]he Parties stipulate, for the effects of the probation period, that the starting fifteen days the present contract is in force, in terms of art. 11 of Agreement F firmed between the Professional Football Players Syndicate of Country D and the Professional Football League of Country D and by Law n°28/98, of 26 June, regardless the Player affiliation with the syndicate*".
6. Finally, in accordance with article 14 of the employment contract, the Respondent and the player agreed that, in case of any dispute related to their contractual relationship, the Judicial Court of Labour Section of the District G would be competent, with exclusion of any other.
7. On 5 October 2015, the Claimant lodged a claim with FIFA requesting from the Respondent the payment of EUR 200,000, plus interest a rate of 5% *p.a.* as from the date of breach of the agreement until the date of effective payment as well as

the amount of 38,500 corresponding to the outstanding salaries allegedly due to the player and the legal costs.

8. In support of its claim, the Claimant alleged that the Respondent breached the agreement and the employment contract during the probation period of the player without just cause and without the consent of the Claimant. In this regard, the latter stated that the Respondent terminated the employment contract on 30 July 2015 in violation of clause 2.6 of the agreement and, therefore, failed to pay the relevant fine in the amount of EUR 200,000 as well as the amount of 38,500 as the alleged player's salaries which the Claimant would incur during the period of loan.
9. In continuation, the Claimant explained that it asked the Respondent to justify its breach, by means of a letter dated 3 August 2016, setting a time limit of 5 days to explain the circumstances, and, subsequently, reminded the Respondent on 18 September 2016 of the allegedly outstanding amount of EUR 200,000 setting a time limit of 5 days to remedy the default.
10. In its reply to the claim, the Respondent rejected the allegations made by the Claimant and, first of all, contested the competence of FIFA *ratione materiae* arguing that *"this situation has nothing to do with football but only with a contract with civil effects"*. In this regard, the Respondent argued that the present dispute should be resolved exclusively in front of Civil or Commercial Courts of Country D and rejected the applicability of the FIFA Regulations, and, the subsidiary application of Swiss Law.
11. Furthermore, the Respondent contested the effectiveness and the validity of the agreement arguing that it terminated the employment contract on 30 July 2015 with just cause, since such termination occurred during the probation period of the employment of the player in accordance with art. 12 of the contract as well as Law of Country D. Additionally, the Respondent pointed out that the contract was only valid as from 1 August 2015, i.e. the end of the probation period.
12. In its replica, the Claimant mainly reiterated its initial claim, alleging that the jurisdiction of FIFA to rule on the present dispute automatically derives from articles 22 lit. b) and 23 paragraph 1 of FIFA Regulations on the Status and Transfer of Players and that the matter at hand shall be decided in application of the 2015 edition of FIFA Regulations, and, in subsidiary Swiss law.
13. In its duplica, The Respondent reiterated its position and previous arguments.

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 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, considering that the present matter was submitted to FIFA on 5 October 2015, the Single Judge concluded that the 2015 edition of the Procedural Rules is applicable in the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players (hereinafter: "*the Regulations*") should be applicable as to the substance of the matter. In this respect, he confirmed that the present matter was submitted to FIFA on 5 October 2015 and, therefore, concluded that the 2015 edition of the Regulations is applicable in the matter at hand as to the substance (cf. art. 26 par. 1 and par. 2 of the Regulations).
3. With regard to his competence, the Single Judge remarked that in its statements of defence, the Respondent contested the competence of FIFA *ratione materiae* invoking that "*this situation has nothing to do with football but only with a contract with civil effects*". Notwithstanding the above, the Single Judge referred to the content of 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 2015 edition of the Regulations and confirmed that he was competent to deal with the present matter since it concerned a dispute between two football clubs affiliated to two different associations.
4. His competence and the applicable regulations having been established and entering into the substance of the matter, the Single Judge started his analysis by acknowledging the facts of the case and the arguments of the parties 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 that he considered pertinent for the assessment of the matter at hand.
5. In doing so and to begin with, the Single Judge acknowledged that, on 10 July 2015, the Claimant and the Respondent concluded an agreement in relation to the temporary transfer of the player for the period between 10 July 2015 and 30 June 2016, under the terms of which its effectiveness was conditioned to the conclusion of an employment contract between the player and the Respondent.

6. In continuation, the Single Judge underlined that the Claimant maintained that it was entitled to receive EUR 200,000 from the Respondent in relation to clause 2.6 of the agreement, which provided for the Respondent the contractual obligation to pay the Claimant a fine in the amount of EUR 200,000 in case of unilateral breach of the agreement without the formal consent of the Claimant and regardless of the moment the termination occurs.
7. Equally, the Single Judge observed that, in its reply, the Respondent disputed the Claimant's entitlement to the further amount, arguing that it terminated the employment contract on 30 July 2015, i.e. during the 15 days probation period of the player and before the starting date of such contract on 1 August 2015.
8. Having duly examined the argumentation and documentation put forward by both parties, the Single Judge emphasised that it remained undisputed that the player and the Respondent concluded an employment contract, which was, during the probation period unilaterally terminated by the Respondent. For the sake of good order, the Single Judge deemed appropriate to highlight that the conditions as set forth in art. 8 par. 2 of the agreement had been fulfilled.
9. Turning his attention to clause 2.6 of the agreement, the Single Judge emphasised the pertinent and concrete character of such provision and, considering the early termination of the agreement by the Respondent without the consent of the Claimant, the Single Judge determined that the Respondent had breached its contractual obligations towards the Claimant and should, as a consequence, be liable to pay a fine for breach of contract in accordance with clause 2.6 of the agreement.
10. Bearing in mind the aforementioned and the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith as well as bearing in mind the content of the agreement and the fact that the conditions for the payment of a fine had *in casu* been met, the Single Judge decided that the Respondent must pay the Claimant an outstanding fine in the amount of EUR 200,000 according to clause 2.6 of the agreement.
11. In continuation, the Single Judge further observed that the Claimant claimed allegedly outstanding salaries of the player in the amount of 38,500. In this respect, the Single Judge highlighted that such amount was based exclusively on the employment contract between the player and the Respondent whereas the agreement did not contain any provision entitling the Claimant to request any outstanding salary on behalf of the player.

12. Consequently, the Single Judge ruled that the relevant request of the Claimant had to be rejected.
13. In addition, with regard to the Claimant's request related to the payment of interest at a rate of 5% *p.a.* on the amount claimed from the date of breach of the agreement until the date of effective payment, the Single Judge decided that the Respondent must pay to the Claimant interest at a rate of 5% *p.a.* over the outstanding amount of EUR 200,000 as from 30 July 2015 until the date of effective payment.
14. Finally, as regards to the claimed legal costs, the Single Judge referred to art. 18 par. 4 of the Procedural Rules as well as to its longstanding and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Players' Status Committee. Consequently, the Single Judge decided to reject the Claimant's request relating to legal costs.
15. In conclusion, the Single Judge decided that the claim of the Claimant is partially accepted and held that the Respondent has to pay to the Claimant the amount of EUR 200,000, plus interest at a rate of 5% *p.a.* on the said amount from 30 July 2015 until the date of effective payment and that any further claims lodged by the Claimant are rejected.
16. 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 the proceedings before the Players' Status Committee, including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. 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).
17. In respect of the above, and taking into account that the Claimant's claim was partially accepted, the Single Judge concluded that both the Claimant as well as the Respondent have to bear a part of the costs of the current proceedings before FIFA.
18. 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. Consequently and taking into account that the total amount at dispute in the present matter is EUR 200,000, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
19. In conclusion, and considering the particularities of the present matter, the Single Judge determined the costs of the current proceedings to the amount of

CHF 25,000. Furthermore, and in line with his aforementioned considerations and taking into account the degree of success, the Single Judge decided that the amount of CHF 7,000 has to be paid by the Claimant and the amount of CHF 18,000 by the Respondent.

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 this decision, the total amount of EUR 200,000 as well as 5% interest per year on the said amount from 30 July 2015 until the date of effective payment.
3. If the aforementioned sum, plus interest, is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further claims lodged by the Claimant, Club A, are rejected.
5. The final costs of the proceedings in the amount of CHF 25,000 are to be paid, **within 30 days** as from the date of notification of the present decision, as follows:
 - 5.1 The amount of CHF 18,000 has to be paid by the Respondent, Club C, to FIFA.
 - 5.2 The amount of CHF 7,000 by the Claimant, Club A, to FIFA. Given that the latter has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the Claimant, Club A, has to pay the amount of CHF 2,000 to FIFA.

5.3 The above-mentioned amounts under points 5.1 and 5.2 are to be paid to FIFA to the following bank account:

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

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

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
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1012 Lausanne - Switzerland
Tel: +41 21 613 50 00
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For the Single Judge of the
Players' Status Committee

Marco Villiger
Deputy Secretary General

Encl. CAS directives