

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

Passed on 11 August 2020,

regarding a contractual dispute concerning the player Yimmi Javier Chará Zamora

BY:

Roy Vermeer (the Netherlands), Single Judge of the PSC

CLAIMANT:

CD Popular Junior FC, Colombia

Represented by Ms Melanie Schärer

RESPONDENT:

Clube Atlético Mineiro, Brazil

Represented by Mr Breno Costa Ramos Tannuri

I. FACTS

1. On 9 June 2018, the parties concluded an agreement regarding the permanent transfer of the player Yimmi Javier Chará Zamora from the Claimant to the Respondent (hereinafter: *the transfer agreement*).
2. Said transfer agreement, *inter alia*, defined a 30% sell on fee in case of a future transfer of the player, payable by the Respondent to the Claimant, as follows:

“CUARTA.- PARTICIPACION EN FUTURAS TRANSFERENCIAS: Además de la cantidad prevista en la Cláusula Tercera, el CESIONARIO, como parte del pago de la transacción contenida este Convenio, transfiere de forma irrevocable, ilimitada e incondicional al CEDENTE una participación equivalente al treinta por ciento (30%) de todas las sumas que recibirá el CESIONARIO en relación con futuras transferencias temporales o definitivas del JUGADOR a clubes terceros. La participación prevista en esta Clausula Tercera será transferida al CEDENTE a título de ‘Sell on Fee’, de conformidad con las normas de la FIFA. La participación mantenida por el CEDENTE del treinta por ciento (30%) se calculará sobre el importe de la potencial transferencia que realice el CESIONARIO, después de aplicar la proporción correspondiente de impuestos, tasas de Federaciones, comisión de agentes intermediarios, deducciones en que necesariamente deba incurrir el CESSIONARIO para perfeccionar la potencia transferencia. Es obligación del CESIONARIO informar completa y oportunamente al CEDENTE de todas y cada una las negociaciones vinculantes que celebre sobre los derechos del JUGADOR, así como su precio real, de tal manera que no se vulneren de ninguna forma los derechos del CEDENTE bajo esta cláusula. El CEDENTE tendrá acceso a la información y documentos soporte de las potenciales transferencias temporales o definitivas, y el CESIONARIO está obligado a entregar las evidencias documentales que las soporten”.

“FOURTH - PARTICIPATION IN FUTURE TRANSFERS: In addition to the amount provided for in Clause Three, the [Respondent], as part of the payment of the transaction contained in this Agreement, irrevocably, unlimitedly and unconditionally transfers to the [Claimant] a 30% share of all amounts to be received by the [Respondent] in connection with future temporary or definitive transfers from the PLAYER to third party clubs. The participation provided for in this Third Clause shall be transferred to the [Claimant] as a 'Sell on Fee' in accordance with the rules of FIFA. The thirty percent (30%) stake held by the [Claimant] will be calculated on the amount of the potential transfer made by the [Respondent], after applying the corresponding proportion of taxes, Federations' fees, intermediary agents' fees, deductions that the [Respondent] must necessarily incur to perform the potential transfer. It is the obligation of the [Respondent] to fully and timely inform the [Claimant] of any and all binding negotiations it enters into regarding the rights of the PLAYER, as well as their real price, so that the rights of the [Claimant] under this clause are not infringed in any way. The [Claimant] shall have access to the information and documents supporting the potential temporary or definitive transfers, and the [Respondent] is obliged to provide the documentary evidence supporting them”. [free translation from Spanish]

3. In accordance with clause 3, sole paragraph, of the transfer agreement (i.e. the clause by means of which the parties agreed on the conditions and payment of the transfer fee) the following would take place in case of late payment by the Respondent:

PARAGRAFO: Un retraso superior a treinta (30) días en el pago oportuno y completo de cualquiera de las cuotas del precio sometidas a plazo, causara en favor del CEDENTE y a cargo del CESIONARIO: (i) Intereses moratorios del 15% sobre saldo insoluto; (ii) Aceleración inmediata del plazo de las restantes cuotas, consideraran por tanto como vencidas y en mora, dando lugar a la exigibilidad del saldo del precio; (iii) Penalidad especial equivalente al doble del valor de cada cuota del precio vencida e impagada."

PARAGRAFO: A delay of more than thirty (30) days in the timely and complete payment of any of the installment price fees, will cause in favor of THE [Claimant] and in charge of the [Respondent] : (i) 15% default interest on the outstanding amount; (ii) Immediate acceleration of the time limit of the remaining installments which shall therefore be regarded as overdue and in arrears, resulting in the enforceability of the price balance; (iii) Special penalty equivalent to twice the value of each installment of the overdue and unpaid price. "

4. In December 2019, the player was transferred from the Respondent to the American club Portland Timbers (hereinafter: *the subsequent transfer agreement*). Said transfer agreement, *inter alia*, reads as follows:

" ... a transfer fee of Six Million And No/100 Dollars (U.S. \$6,000,000.00) (the "Transfer Fee"), which shall be payable net of any and all deductions as follows:

a. Four Million And No/100 Dollars (U.S. \$4,000,000.00), which shall be payable on or before January 15, 2020.

b. One Million And No/100 Dollars (U.S. \$1,000,000.00), which shall be payable on or before January 15, 2021.

c. One Million And No/100 Dollars (U.S. \$1,000,000.00), which shall be payable on or before January 15, 2022. "

5. Clause 5 of the subsequent transfer agreement reads as follows:

"a. following the Player's registration with MLS, MLS and/or the MLS Team may potentially be liable to make payments to the Player's former clubs and national associations, pursuant to Chapter VII, Article 20 ("Training Compensation") and/or Chapter VII, Article 21 ("Solidarity Mechanism") of the FIFA Regulations on the Status and Transfer of Players (as it may be amended from time to time, the "FIFA Regulations"), and it is agreed between the parties that the Club shall settle any and all such liabilities for and on behalf of MLS and/or the MLS Team from the sums payable to it hereunder, and;
b. the Club shall indemnify MLS and the MLS Team immediately on demand in respect of any claims, actions, demands, losses, costs, expenses, liabilities, penalties, and damages which are brought against them individually or jointly by any of the Player's former clubs and/or national associations for solidarity mechanism contribution and/or training compensation pursuant to the FIFA Regulations, including in respect of any claims, actions, demands, losses, costs, expenses, liabilities, penalties, and damages incurred by MLS and/or the MLS Team in connection therewith".

6. On 19 March 2020, the Claimant contacted the Respondent requesting both information about the above-mentioned transfer in relation to the sell-on fee due to the Claimant, as well as payment of the amounts due, giving a deadline of 10 days for the Respondent, but said correspondence remained unanswered.

7. In this framework, the Claimant lodged a claim against the Respondent requesting the payment of the sell-on fee already due.
8. On 5 May 2020, the Claimant lodged a claim before FIFA against the respondent and requested the following:

“1. The Players’ Status Committee shall oblige Clube Atletico Mineiro to pay Deportivo Popular Junior FC 30% of the amount that Clube Atletico Mineiro has already received in connection with the transfer of the player Yimmi Chará to the club Portland Timbers, plus interest of 15% per year (eventualiter 5% per year), as of 30 March 2020 until the date of effective payment.

2. The Players’ Status Committee shall confirm Deportivo Popular Junior FC’s right to receive from Clube Atletico Mineiro 30% of any payment that Clube Atletico Mineiro receives from Portland Timbers in the future, payable immediately upon receipt of any such amount.

3. Sanctions shall be included into the findings of the decision in accordance with art. 24bis of the FIFA Regulations on the Status and Transfer of Players.”

9. In its reply, the Respondent outlined that the Claimant is supposedly trying to collect the sell-on fee on amounts that were not yet paid by Portland Timbers. In this regard, the Respondent argued that it would represent an undue and unjust enrichment of the Claimant to receive 30% of amounts that are still unpaid. The Respondent further referenced decisions of the Swiss Federal Tribunal and CAS in this regard, and highlighted, in short, that *“It would be inequitable for a club to be obliged to pay the entire sell-on fee immediately upon first request of the creditor even before it received any amounts under the transfer fee from the third club”*.
10. In continuation, the Respondent addressed the contents of clause 4 of the transfer agreement, and argues that it was entitled to deduct the following:
 - a. intermediary fees paid to the agent involved in the conclusion of the subsequent transfer agreement in the amount of USD 1,200,000;
 - c. 5% of solidarity contribution, amounting to USD 300,000;
 - d. Bank fees and charges of USD 15,200
11. As such, the Respondent is of the position that it should pay to the Claimant USD 745,440, which comprises of the pro-rata amount the Claimant is allegedly entitled to, calculated as follows:

USD 4,000,000—transfer fee received up to date

USD 1,200,000 –agent/intermediary fees

USD 300,000 –solidarity contribution

USD 15,200 –taxes/fee (IOF)

USD 2,484,800

USD 2,484,800 x 30% = USD 745,440

12. With regards to the interest rates, the Respondent was of the opinion that 15% *“is extremely high within a usual context pursuant to the CAS jurisprudence”*. The Respondent further argued that *“In the case at hand, though, it is even worse, considering that the Transfer Agreement does not clarify how exactly it shall (or should) apply”*. As such, the Respondent submitted that the 15% interest refers, as per the transfer agreement, to the payment of the transfer fee under its clause 3 only, and not to the

payment of the sell on fee. Hence, the Respondent concluded that the applicable interest shall be 5% p.a. as from the date of the decision of the PSC.

13. Lastly, the Respondent rejected to the imposition of any sanctions, and requested that the costs of the proceeding be borne in equal shares by the parties.

14. Specifically, the Respondent made its request as follows:

- i. To partially accept the claim filed by the Claimant;
- ii. To confirm that the Claimant is entitled to the "Sell on Fee" on pro-rata basis.
- iii. To order the Respondent to pay USD 745,440 (seven hundred and forty-five thousand four hundred forty US Dollars) as "Sell on Fee", plus default interest at the rate of 5% per annum applicable as from the decision by the FIFA PSC; and
- iv. To confirm that the Claimant and the Respondent shall jointly and proportionally afford with the payment of costs (cf. Art. 18 par. 1 of the FIFA Procedural Rules).

II. CONSIDERATIONS OF THE PLAYERS' STATUS COMMITTEE

1. First of all, the Single Judge of the PSC (hereinafter also referred to as *the Single Judge*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 4 May 2020. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the Single Judge of the PSC referred to art. 3 par. 1 of the Procedural Rules and emphasised that, in accordance with art. 24 par. 1 in combination with art. 22 lit. e) of the Regulations on the Status and Transfer of Players, the Single Judge of the PSC is competent to deal with disputes between clubs belonging to different associations.
3. In continuation, the Single Judge of the PSC analysed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present matter. In this respect, the Single Judge of the PSC confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering that the claim was lodged on 5 May 2020, the January 2020 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.
4. With the above having been established, the Single Judge of the PSC entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the Single Judge of the PSC emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
5. In this respect, Single Judge noted that, on 9 June 2018, the parties concluded an agreement regarding the permanent transfer of the player Yimmi Javier Chará Zamora from the Claimant to the Respondent which, *inter alia*, defined a 30% sell on fee in case of a future transfer of the player.

6. Subsequently, the Single Judge observed that, in December 2019, the aforementioned player was transferred from the Respondent to the American club, Portland Timbers, for a transfer fee of USD 6,000,000, payable as follows:
 - a. USD 4,000,000, on or before January 15, 2020.
 - b. USD 1,000,000, on or before January 15, 2021.
 - c. USD 1,000,000, on or before January 15, 2022. “
7. In relation to said transfer, the Single Judge consequently observed that only the first amount of USD 4,000,000, due on 15 January 2020, was payable at the date of the present decision
8. Thereafter, the Single Judge took note that the Claimant lodged a claim before FIFA, by means of which it requested “30% of the amount that [the Respondent] has already received in connection with the transfer of the player Yimmi Chará to the club Portland Timbers.”
9. In relation to said request, the Single Judge noted that the Respondent did not object to the existence of the aforementioned sell-on clause, but that it is not yet due as for the second instalments (i.e. b. USD 1,000,000, on or before January 15, 2021 and c. USD 1,000,000, on or before January 15, 2022).
10. At this stage, the Single Judge deemed it to be necessary to clarify the scope of the request made by the Claimant. In this respect, and after duly examining the arguments provided by the latter, the Single Judge observed that, contrarily to the arguments raised by the Respondent, the Claimant is not claiming the collection of the sell-on fee regarding the instalments that have not yet fallen due pursuant to the subsequent transfer agreement, but that it is merely requesting declaratory relief in regard to those payments, while simulatenously requesting the execution/collection of the sell-on fee for the first instalment (a), for the amount of USD 1,200,000, which corresponds to 30% of USD 4,000,000.
11. Consequently, the Single Judge noted it is essentially undisputed that the Claimant is in principle entitled to 30% of the first amount received by the Respondent from Portland Timbers, i.e. USD 1,200,000 as 30% of 4,000,000.
12. Nevertheless, the Single Judge observed that the Respondent further objected to certain elements as to how said amount of 30% shall be deducted.
13. In particular, the Single Judge noted that the Respondent argued that, in line with clause 4 of the Transfer Agreement, it was entitled to deduct some amounts (i.e. in Spanish: *impuestos, tasas de Federaciones, comisión de agentes intermediarios, deducciones en que necesariamente deba incurrir el CESSIONARIO para perfeccionar la potencia transferencia*).
14. In relation to said clause, the Single Judge understood that, in order to properly address its possible application, it shall, first of all, observe whether the Respondent effectively incurred in the aforementioned costs.
15. Therefore, at this stage, the Single Judge of the PSC reminded the parties of the contents 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”.

16. In application of the aforementioned provision, the Single Judge observed the evidence brought forward by the Respondent and noted the following elements:
 - (a) The intermediary fees were agreed in an unilateral authorization letter issued by the Respondent in favor of an agent, and no evidence that those fees have been indeed paid was produced by the Respondent, which denotes that it remains unproven whether these costs were indeed incurred;
 - (b) There is no evidence that the Respondent either paid to Portland Timbers and/or to third parties any amounts as solidarity mechanism or training compensation. In addition, and under any circumstances, the Single Judge noted in this respect that, under the Regulations and the longstanding jurisprudence in this respect, the new club is always liable to pay training rewards to clubs, and any arrangement to the contrary is merely *inter partes*, hence not generating *erga omnes* effects on third parties such as, in the case at hand, the Claimant;
 - (c) The banking extracts filed by the Respondent not provided in an official FIFA language and consequently, in application of art. 9 par. 1 of the Procedural Rules, cannot be taken into account.
17. As a result, and despite the fact that the Respondent could be contractually entitled to deduct amounts incurred in order to calculate the 30% to which the Claimant is entitled to, the Single Judge understood that, ultimately, the Respondent did not meet its burden of proof.
18. Consequently, the Single Judge established that no amounts shall be deducted from the transfer fee paid by Portland Timbers, and as a result, the outstanding amount shall be calculated as 30% of the first instalment of USD 4,000,000, i.e. USD 1,200,000.
19. Thus, in application of the principle of *pacta sunt servanda*, the Single Judge established that the Respondent shall pay to the Claimant the outstanding amount of USD 1,200,000.
20. In addition, as to the payable interest, the Single Judge noted the transfer agreement did not regulate any default interest for the payment of the sell-on fee, insofar the agreed default interest of 15% (clause 3 of the transfer agreement) is not applicable in this context. Consequently, in line with its longstanding jurisprudence in this respect, the Single Judge decided to award 5% interest p.a. over said amount as from 30 March 2020, as requested by the Claimant.
21. Moreover, and in relation to the applicability of the sell-on fee in relation to the amounts due of “USD 1,000,000” due “on or before January 15, 2021” and “USD 1,000,000”, due “on or before January 15, 2022”, the Single Judge considered that he was not in a position to grant any declaratory relief for payment that are due in a future date.
22. In continuation, the Single Judge of the PSC 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 Dispute Resolution Chamber relating to disputes regarding solidarity mechanism 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.
23. In this respect, the Single Judge of the PSC referred to the Covid-19 Football Regulatory Issues – FAQ, published on 11 June 2020 which establish that, given the current circumstances, for any claim lodged prior to 10 June 2020 which has yet to be decided, the maximum amount of the procedural costs shall be equivalent to any advance of costs paid. Thus, considering that the amount of CHF 5,000 was paid

at the beginning of the proceedings, the decided to imposed the payment of CHF 1,000 by the Claimant and CHF 4,000 by the Respondent.

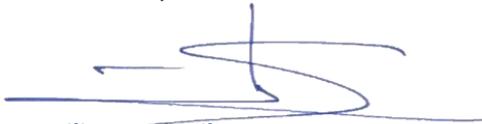
24. Furthermore, taking into account the previous considerations, the Single Judge of the PSC referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
25. In this regard, the Single Judge of the PSC pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.
26. Therefore, bearing in mind the above, the Single Judge of the PSC decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
27. Finally, the Single Judge of the PSC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.

III. DECISION OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, CD Popular Junior FC, is partially accepted.
2. The Respondent, Clube Atlético Mineiro, has to pay to the Claimant the following amount:
 - USD 1,200,000 as outstanding remuneration plus 5% interest *p.a.* as from 30 March 2020 until the date of effective payment.
3. Any request for relief by the Claimant regarding payment of amounts concerning 15 January 2021 and 15 January 2022 is premature.
4. Any further claims of the Claimant are rejected.
5. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
6. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

7. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:
1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid (cf. art. 24bis of the [Regulations on the Status and Transfer of Players](#)).
 2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
8. The final costs of the proceedings in the amount of CHF 5,000 are to be paid by the parties to FIFA (cf. note relating to the payment of the procedural costs below) as follows:
1. CHF 1,000 by the Claimant.
 2. CHF 4,000 by the Respondent.

For the Players' Status Committee:



Emilio Garcia Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the [FIFA Statutes](#), this decision may be appealed against before the [Court of Arbitration for Sport \(CAS\)](#) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may [publish](#) this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

NOTE RELATING TO THE PAYMENT OF THE PROCEDURAL COSTS:

If applicable, payments to FIFA should be made by wire transfer in Swiss francs (CHF) to the following bank account:

366.677.01U (FIFA Players' Status) UBS Zurich,
SWIFT: UBSWCHZH80A, Clearing number 230, IBAN: CH 27 0023 0230 3666 7701U
Please mention the applicable reference number

CONTACT INFORMATION:

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