

Decision of the Single Judge of the Players' Status Committee

passed on 15 October 2019,

by

Mr 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 in connection with overdue payables

I. Facts of the case

1. On 27 July 2018, the club of Country B, Club A (hereinafter: *the Claimant*) and the club of Country D, Club C (hereinafter: *the Respondent*) signed a loan agreement regarding the temporary transfer of the player Player E (hereinafter: *the player*) from the Claimant to the Respondent.
2. In accordance with the loan agreement, the Respondent undertook to pay to the Claimant the total amount of EUR 350,000, as follows:
 - a) EUR 100,000 by 30 August 2018;
 - b) EUR 100,000 by 30 November 2018;
 - c) EUR 150,000 by 30 April 2019.
3. According to clause 17 of the loan agreement, *"it is agreed that should [the Respondent] fail to proceed timely payment of a part or the full amount of the Loan Fee [...], a penalty fee of 10% shall apply to the total outstanding debt"*.
4. By correspondence dated 4 January 2019, the Claimant put the Respondent in default of payment of EUR 200,000, corresponding to the first two instalments of the loan agreement, setting a 10 days' time limit in order to remedy the default.
5. By correspondence dated 5 June 2019, the Claimant put the Respondent in default of payment of EUR 385,000, corresponding to the three instalments of the loan agreement, as well as *"a penalty fee corresponding to 10% of the amounts in default"* setting a time limit expiring on 17 June 2019 in order to remedy the default.
6. On 24 June 2019, the Claimant lodged a claim against the Respondent in front of FIFA, asking that the Respondent be ordered to pay to it overdue payables in the amount of EUR 392,600, as follows:
 - a) EUR 350,000, as *"principal"*;
 - b) EUR 35,000, as *"penalty on default"*;
 - c) EUR 7,600, as *"accrued interests on default rate of 5% p.a. until 15 June 2019"*, as follows:
 - i. EUR 4,000, as *"interest on default – 1st Installment (4%)"*;
 - ii. EUR 2,700, as *"interest on default – 2nd Installment (2.7%)"*;
 - iii. EUR 900, as *"interest on default – 3rd Installment (0.6%)"*.
7. The Claimant further asked to be awarded interest of 5% p.a. *"over the amount of EUR 385,000 counted from 15 June 2019"*, and that the Respondent be ordered to reimburse the advance of costs in the amount of CHF 5,000.
8. Despite requesting an extension to reply to the claim, the Respondent failed to provide its position to the Claimant's claim.

II. Considerations of the Single Judge of the Player's Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter: *Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 24 June 2019. Consequently, the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the Single Judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and par. 4 in conjunction with art. 22 lit. f of the Regulations on the Status and Transfer of Players (edition June 2019) he is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations.
3. Furthermore, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition June 2019), and considering that the present claim was lodged on 24 June 2019, the June 2019 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Single Judge and the applicable regulations having been established, the Single Judge entered into the substance of the matter. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on 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. Having said this, the Single Judge acknowledged that the Claimant and the Respondent signed a loan agreement in accordance with which the Claimant was entitled to receive from the Respondent the total amount of EUR 350,000, payable in three instalments as follows: (i) EUR 100,000 on 30 August 2018, (ii) EUR 100,000 on 30 November 2018 and (iii) EUR 150,000 on 30 April 2019.
6. In addition, the Single Judge acknowledged that the loan agreement contains a clause stipulating that "*should [the Respondent] fail to proceed timely payment of a part or the full amount of the Loan Fee [...], a penalty fee of 10% shall apply to the total outstanding debt*".

7. The Single Judge further acknowledged that the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards it in the amount of EUR 392,600, corresponding to: (a) EUR 350,000 as principal outstanding amount, (b) EUR 35,000 as “penalty on default” and (c) EUR 7,600 as accrued interest.
8. In this context, the Single Judge took particular note of the fact that, after having put the Respondent in default of payment of EUR 200,000 on 4 January 2019, on 5 June 2019, the Claimant put again the Respondent in default, this time of payment of EUR 385,000, corresponding to the three instalments of the loan agreement, as well as “a penalty fee corresponding to 10% of the amounts in default” setting a time limit expiring on 17 June 2019 in order to remedy the default.
9. Consequently, the Single Judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligations.
10. Subsequently, the Single Judge took into account that, for its part, the Respondent failed to present its response to the claim of the Claimant, despite having been invited to do so. In this way, so the Single Judge deemed, the Respondent renounced its right to defence and, thus, accepted the allegations of the Claimant.
11. Moreover, and as a consequence of the aforementioned consideration, the Single Judge established that, in accordance with art. 9 par. 3 of the Procedural Rules, he shall take a decision upon the basis of the documents already on file.
12. On account of the aforementioned considerations and the documents on file, the Single Judge established that the Respondent failed to remit the amount of EUR 350,000 to the Claimant, corresponding to the loan fee.
13. In addition, bearing in mind the considerations under numbers II./8. and II./9. above, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
14. Consequently, the Single Judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the amount of EUR 350,000.
15. In continuation, the Single Judge focused his attention on the Claimant’s request for payment of the penalty amount of EUR 35,000 in accordance with clause 17 of the loan agreement.

16. In this respect, the Single Judge deemed it appropriate to stress that penalty clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. In this respect, the Single Judge highlighted that in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the deciding body shall also be taken into consideration.
17. In the specific case at hand, the Single Judge deemed that the penalty fee of 10% of the outstanding instalment in the case at hand is both proportionate and reasonable. Therefore, the Single Judge concluded that the Respondent has to pay to the Claimant the penalty fee amounting to EUR 35,000.
18. In continuation, the Single Judge addressed the remaining request of the Claimant, namely, its request for interest on the penalty fee as of its due date. The Single Judge started by underlining that the penalty fee clause did not provide for any interest to be due in case of its late payment, regardless of the fact that no due date for payment of the penalty amount was included in the transfer agreement. What is more, the Single Judge recalled the jurisprudence of the Players' Status Committee according to which no interest is due over a late payment of a penalty fee. Therefore, the Single Judge was of the opinion that this request could not be granted, and consequently rejected the Claimant's request for interest on the penalty fee.
19. As a consequence of the foregoing considerations, the Single Judge decided that, in addition to the amount of EUR 350,000 as outstanding loan fee, the Respondent has to pay to the Claimant the amount of EUR 35,000 as the penalty fee agreed by both parties in clause 17 of the relevant loan agreement.
20. In this regard, the Single Judge wished to highlight that the aforementioned contractual penalty in the amount of EUR 35,000 does not fall within the scope of art. 12bis of the Regulations.
21. In addition, taking into account the Claimant's request as well as the constant practice of the Players' Status Committee, the Single Judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of EUR 385,000 as from the day following the relevant due date until the date of effective payment.
22. In continuation, taking into account the consideration under number II./13. above, the Single Judge referred to art.12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.

23. The Single Judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. In this context, the Single Judge highlighted that on several occasions within the past 2 years the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis, as a result of which, on 11 September 2019, a fine had been imposed on the Respondent by the Single Judge of the Players' Status Committee.
24. Moreover, the Single Judge referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.
25. Bearing in mind the above and taking into account art. 12bis par. 5 of the Regulations, according to which sanctions provided for in par. 4 of art. 12bis may be applied cumulatively, the Single Judge decided to impose a warning as well as a proportionally more severe fine on the Respondent in accordance with art. 12bis par. 4 lit. a) and lit. c) of the Regulations, respectively. On account of the above and taking into consideration the amount due of EUR 350,000 as overdue payables, the Single Judge regarded a fine amounting to CHF 30,000 as appropriate and hence decided to impose said fine on the Respondent.
26. Having established the above, 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 and which states that 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.
27. Taking into account that the responsibility of the failure to comply with the payment of the amounts as agreed in the transfer agreement can entirely be attributed to the Respondent, the Single Judge concluded that the Respondent has to bear the costs of the current proceedings before FIFA. 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 385,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
28. Considering the particular circumstances of the present matter, the Single Judge determined the costs of the current proceedings to the amount of CHF 25,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.
29. The Single Judge concluded his deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

30. What is more, taking into account the consideration under number II./3. above, the Single Judge 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.
31. In this regard, the Single Judge 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.
32. Therefore, bearing in mind the above, the Single Judge 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.
33. Finally, the Single Judge 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 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 overdue payables in the amount of EUR 350,000 plus 5% interest *p.a.* as follows:
 - a. on the amount of EUR 100,000, as from 31 August 2018 until the date of effective payment;
 - b. on the amount of EUR 100,000, as from 1 December 2018 until the date of effective payment;
 - c. on the amount of EUR 150,000, as from 1 May 2019 until the date of effective payment.
3. The Respondent has to pay to the Claimant the penalty amount of EUR 35,000.

4. Any further claim lodged by the Claimant is rejected.
5. A warning is imposed on the Respondent.
6. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under points III./2. and III./3. above.
7. The Respondent shall provide evidence of payment of the due amounts in accordance with points III./2. and III./3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
8. In the event that the amounts due plus interest in accordance with points III./2. and III./3. above are not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned 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 (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
9. The ban mentioned in point III./8. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
10. In the event that the aforementioned sums, plus the relevant interest, are 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 FIFA's Disciplinary Committee for consideration and a formal decision.
11. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, **within 45 days** of notification of the present decision, as follows:

11.1 The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case no XX-XXXXX/XXX:

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

11.2 The amount of CHF 5,000 has to be paid to the Claimant.

12. In the event that the aforementioned amount of costs 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

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
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Single Judge
of the Players' Status Committee:

Emilio García Silvero
Chief Legal and Compliance Officer

Encl: CAS directives