



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

passed in Zurich, Switzerland, on 22 January 2020,

by

**Roy Vermeer** (The Netherlands)

Single Judge of the Players' Status Committee,

on the claim presented by the coach

**José María Gutiérrez Hernández**, Spain,  
represented by Senn Ferrero Asociados Sports & Entertainment SLP

as "*Claimant*"

against the club

**Besiktas J.K.**, Turkey,  
represented by Koray Akalp

as "*Respondent*"

regarding a contractual dispute arisen between the parties.

## I. Facts of the case

1. On 2 July 2018, the Spanish coach, José María Gutiérrez Hernández (hereinafter: *the coach* or *the Claimant*), concluded an employment contract (hereinafter: *the contract*) with the Turkish club, Besiktas J.K (hereinafter: *the Respondent* or *the club*) (hereinafter jointly referred to as *the parties*). The contract was valid as from 1 July 2018 until 30 June 2020.
2. According to Art. 5 of the contract, the coach was entitled to the following remuneration:
  - i. EUR 25,000 per month, payable *“within the last 5 business days of each month”*;
  - ii. EUR 14,400 on 15 January 2019;
  - iii. EUR 14,400 on 15 January 2020;
  - iv. EUR 3,000 as *“prepaid monthly rent support”*.
3. As per Art. 5.6 of the contract, the coach *“will be entitled to terminate the contract if the club is in default of the payment in more than 60 days and [the club] has not regularized the payments 15 days after coach have put club in default writing. Should this occur, [the] coach will be entitled to terminate the contract with a just cause [...]”*.
4. Article 9 of the contract stipulates the following: *“If the coach terminates his contract [...] with just cause [he] will be entitled [to] request the breaching party the amount of all the salaries and bonuses pending at the date of termination until 30 June 2020 in accordance with Article 5 [...] In case the coach enters into a new employment relationship with a third club after such termination, the remuneration that will be received by the coach from the third club until 30 June 2020 will be deducted from the total pending salary and bonus payments that will be paid by the club to the coach.”*
5. On 27 September 2018, the parties signed a settlement agreement (hereinafter: *the settlement agreement*), by which it was agreed that the club would pay to the coach the amount of EUR 82,800, in two instalments, as follows:
  - i. EUR 57,800 on 12 October 2018;
  - ii. EUR 25,000 on 31 January 2019.
6. By means of a letter dated 12 February 2019, the coach informed the club that the total amount of EUR 125,400 remained outstanding and granted the club 15 days to remedy the situation.

7. By means of a second letter dated 7 May 2019, the coach granted the club 15 days to pay him the amount of EUR 112,000, corresponding to 4 monthly salaries and “*prepaid monthly rent support*” (hereinafter: *rent support*).
8. On 24 May 2019, the coach terminated the contract in writing (hereinafter: *the termination notice*). In the termination notice, the coach held that the club had failed to pay him the total amount of EUR 126,400, corresponding to the monthly salaries of January until April 2019, as well as the amount of EUR 14,400 due on 15 January 2019. In this context, the coach granted the club an additional 5 days to pay the amount of EUR 126,400, as well as EUR 406,400 as compensation for breach of contract.
9. On 30 May 2019, the coach sent a final default letter to the club, reiterating the content of his previous letter, and granted the club a final deadline of 5 days to make the relevant payment.
10. On 29 July 2019, the Claimant lodged a claim against the Respondent in front of FIFA, requesting the following:
  - i. EUR 129,400 as outstanding remuneration, plus 5% interest *p.a.* as follows:
    - On the amount of EUR 3,000 corresponding to the rent support for January 2019 as from 1 January 2019;
    - On the amount of EUR 14,400 corresponding to the instalment due on 15 January 2019 as from 15 January 2019;
    - On the amount of EUR 25,000 corresponding to the January 2019 salary as from 1 February 2019;
    - On the amount of EUR 3,000 corresponding to the rent support for February 2019 as from 1 February 2019;
    - On the amount of EUR 25,000 corresponding to the February 2019 salary as from 1 March 2019;
    - On the amount of EUR 3,000 corresponding to the rent support for March 2019 as from 1 March 2019;
    - On the amount of EUR 25,000 corresponding to the March 2019 salary as from 1 April 2019;
    - On the amount of EUR 3,000 corresponding to the rent support for April 2019 as from 1 April 2019;
    - On the amount of EUR 25,000 corresponding to the April 2019 salary as from 1 May 2019;
    - On the amount of EUR 3,000 corresponding to the rent support for May 2019 as from 1 May 2019.

- ii. EUR 403,400 as compensation for breach of contract, plus 5% interest *p.a.* as from 25 May 2019.
11. The coach also requested that the club bears all the costs of the proceedings.
  12. In his claim, the coach stated that he had always fulfilled his contractual obligations. On the other hand, the coach argued that the club started breaching its payment obligations as from September 2018.
  13. According to the coach, following the club's failure to remedy the situation after his default letter dated 7 May 2019, he was left with no other alternative but to terminate the contract on 24 May 2019, by which time the club had failed to pay *"both different outstanding salaries from January to April 2019, monthly rent support from January to May 2019, as well as the agreed payment in the amount of EUR 14,400"*.
  14. In reply to the claim, the club firstly referred to the default letters sent by the coach on 12 February 2019, 7 May 2019 and 30 May 2019 respectively, and held that it was *"unable to locate these letters in its records"*.
  15. In continuation, the club held that on 12 July 2019, it paid to the coach the amount of EUR 149,331.14, corresponding to his salaries of January 2019 to June 2019, and that *"the difference of EUR 668.86 reflects the total expenses incurred by the [club] on behalf of the [coach] (which was acknowledged by the [coach] as well)"*. In this context, the club further explained that the expenses incurred by the club on behalf of the coach in the amount of EUR 668.86 included *"Highway Toll Costs", "Polyclinic examination cost", and "Match Ticket cost"*.
  16. Furthermore, the club held that on the same day, *i.e.* 12 July 2019, it also paid in favour of the coach the amounts of EUR 14,400, *"reflecting the fee with the due date of 15 January 2019"*, and EUR 15,000 *"reflecting his monthly rent fees from January 2019 until May 2019"*.
  17. In support of the above, the Respondent submitted untranslated bank statements. In this regard, the club explained that it *"was unable to translate these documents in time"*. However, the club considered that it had paid to the coach all the *"overdue receivables until 30 June 2019. Therefore, the [club] rejects the request of the [coach] for overdue remuneration"*.
  18. With regard to the coach's request for compensation for breach of contract, the club referred to Articles 5.6 and 9 of the contract, and argued that, in

accordance with said Articles, the coach is only entitled to *“salary and bonuses at the date of termination”*.

19. In this regard, the club argued that the coach is not entitled to future rent support as compensation, given that the coach *“no longer resides and pays rent in Turkey and does not incur these costs”*. Moreover, according to the club, *“considering that the coach was already paid all his remuneration under the contract until 30 June 2019, the residual value [...] can only be considered as EUR 300,000”*.
20. Referring to the part of Article 9 of the contract which stipulates that *“(i)f the coach terminates his contract [...] with just cause [he] will be entitled [to] request the breaching party the amount of all the salaries and bonuses pending at the date of termination until 30 June 2020 in accordance with Article 5”*, the club interpreted it as meaning that in case the coach is entitled to compensation for breach of contract, such compensation should be received in accordance with the instalments established in Article 5 of the contract.
21. In view of the above, the Respondent requested that the Claimant’s claim be rejected. However, in the alternative, the club asked that the compensation due to the coach is limited to EUR 300,000 *“and to reduce the total amount payable by the club to the coach by at least 50% [...] taking into consideration the failure of the coach to mitigate his damages, although he had reasonable time to do so”*.
22. On 10 December 2019, the coach informed FIFA that he concluded an employment contract with the Spanish club UD Almería S.A.D., valid as from 5 November 2019 until 30 June 2020. In accordance with said employment contract, the coach is entitled to 8 monthly instalments of EUR 18,750, payable *“within the first week of the following month”*.

## **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 took note that the present matter was submitted to FIFA on 29 July 2019. Consequently, the Single Judge concluded that the 2018 edition of the 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. 1 and 2 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and 4 in combination

with art. 22 lit. c) of the 2020 edition of the Regulations on the Status and Transfer of Players, he is competent to deal with the matter at stake which concerns an employment-related dispute of an international dimension between a Spanish coach and a Turkish club.

3. Furthermore, the Single Judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable to the matter at hand. In this respect, he referred, on the one hand, to art. 26 par. 1 and 2 of the 2020 edition 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 29 July 2019. In view of the foregoing, the Single Judge concluded that the June 2019 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the case at hand (cf. art. 26 par. 1 and 2 of the Regulations).
4. The Single Judge also recalled the content of art. 9 par. 1 lit. e) of the Procedural Rules, according to which all documents of relevance to the dispute must be submitted in the original version, and, if need be, translated into one of the four official FIFA languages (English, Spanish, French, and German). In this regard, the Single Judge highlighted that failure to provide the necessary translation may result in the documents in question being disregarded.
5. 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 emphasized that in the following considerations it will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
6. In this respect, the Single Judge acknowledged that the coach and the club had concluded an employment contract valid as from 1 July 2018 until 30 June 2020, according to which the coach was entitled to receive a monthly salary of EUR 25,000, a monthly rent support of EUR 3,000, as well as two payments of 14,400, payable on 15 January 2019 and 15 January 2020 respectively.
7. Moreover, the Single Judge noted that the Claimant unilaterally terminated the contract on 24 May 2019, invoking the non-payment of 4 monthly salaries, *i.e.* January until April 2019, as well as the amount of EUR 14,400 due on 15 January 2019.
8. In continuation, the Single Judge noted that in his claim, the Claimant maintained that the Respondent was in breach of its payment obligations and as such, requested outstanding remuneration and compensation for breach of contract in the amounts of EUR 129,400 and EUR 403,400 respectively.

9. The Single Judge noticed that, for its part, the Respondent had rejected the claim of the Claimant, arguing in particular that it had made various payments to the coach on 12 July 2019 and that as such, all outstanding remuneration had been paid to the Claimant.
10. Moreover, the Single Judge also took note of the Respondent's interpretation of Articles 5.6 and 9 of the contract, whereby the Claimant should only be entitled to *"salary and bonuses at the date of termination"*, excluding the rent support as the Claimant *"no longer resides and pays rent in Turkey and does not incur these costs"*.
11. Finally, the Single Judge acknowledged the Respondent's view that the residual value of the contract should be limited to EUR 300,000 and that the amount due as compensation for breach of contract should be reduced by 50% should the coach's claim be accepted, considering that the latter was unable to mitigate his damages.
12. After having thoroughly analysed the submissions of the parties as well as the documentation at his disposal, the Single Judge deemed that the first question to be addressed in the present matter was whether the Claimant had terminated the contract with or without just cause on 24 May 2019.
13. At this stage, the Single Judge recalled the content of Art. 5.6 of the contract, which stipulates that the coach *"will be entitled to terminate the contract if the club is in default of the payment in more than 60 days and [the club] has not regularized the payments 15 days after coach have put club in default writing. Should this occur, [the] coach will be entitled to terminate the contract with a just cause [...]"*.
14. This said, the Single Judge recalled that the Claimant considered having rightfully terminated the contract as the Respondent failed to pay 4 monthly salaries, as well as another contractually agreed amount, *i.e.* EUR 14,400, despite the two default letters addressed to the Respondent to remedy said situation.
15. In this context, the Single Judge acknowledged that it had to examine whether the reasons put forward by the Claimant could justify the termination of the contract in the present matter. In this respect, the Single Judge referred to his well-established jurisprudence and emphasised that, as a general rule, only a breach or misconduct which is of a certain severity justifies the termination of a contract without notice.
16. First, the Single Judge emphasised that prior to the termination of the contract, the Claimant had put the Respondent in default twice. In particular, the Single Judge noted that in the second default notice dated 7 May 2019, the Claimant granted the Respondent 15 days to pay 4 monthly salaries and rent support in



the total amount of EUR 112,000. With this established, the Single Judge concluded that on the date of the termination notice, *i.e.* 24 May 2019, four monthly salaries and four monthly rent support were outstanding in favour of the coach, which is considerably more than the 60 days as set out in Art. 5.6 of the contract.

17. Second, the Single Judge took into account the alleged payments made by the Respondent in favour of the Claimant on 12 July 2019. In this regard, the Single Judge found it important to note that said alleged payments were made after the contract termination. In addition, the Single Judge observed that the bank statements submitted by the Respondent were not translated into an official language of FIFA (English, Spanish, French or German), which is contrary to Art. 9 par. 1 lit. e) of the Procedural Rules.
18. Therefore, in view of all the aforementioned, the Single Judge was of the firm opinion that the Claimant terminated the contract with just cause on 24 May 2019. As such, the Respondent should be held liable for the early termination of the contract.
19. Nevertheless, before entering the analysis of the consequences of the unjust termination of contract on the part of the club, the Single Judge deemed it appropriate to first assess whether any outstanding remuneration was still due by the club to the coach.
20. In this regard, the Single Judge underlined that the coach had requested from the club the payment of EUR 129,400 as outstanding remuneration for the monthly salaries of January until April 2019, the monthly rent support for the months of January until May 2019, as well as the amount of EUR 14,400 due on 15 January 2019.
21. With this established, the Single Judge noted the club's argument that an amount of EUR 668.86 had been deducted from the payments allegedly made to the coach. However, the Single Judge observed that no contractual basis or any other form of evidence justified the deduction of said amount from the outstanding remuneration due to the Claimant. As such, the Single Judge considered that this amount should not be taken into account.
22. In addition and taking into consideration the Claimant's request, the Single Judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of EUR 129,400 as from the due dates until the effective date of payment.
23. As a consequence, and having established the aforementioned, the Single Judge turned his attention to the compensation payable by the club to the coach following the termination with just cause by the latter.



24. In this respect, the Single Judge held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Single Judge established that no such compensation clause was included in the contract at the basis of the matter at stake.
25. As a consequence, the Single Judge determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed on the basis of the residual value of the contract in line with the jurisprudence of the Players' Status Committee.
26. Bearing in mind the foregoing, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the employment contract as from the date of termination with just cause by the Claimant until its natural expiration. Bearing this in mind, the Single Judge deemed that the coach would have received in total EUR 406,400 as remuneration for the period as from May 2019 until 30 June 2020, said amount consisting of 14 monthly salaries of EUR 25,000, plus the monthly rent support, as well as the amount of EUR 14,400 due on 15 January 2020. Consequently, the Single Judge considered that the amount of EUR 406,400 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
27. Equally, the Single Judge verified as to whether the coach had signed a new employment contract after having terminated the contract on 24 May 2019 by means of which he would have been enabled to reduce his loss of income. According to his constant practice, such remuneration under a new employment contract would be taken into account in the calculation of the amount of compensation for breach of contract in connection with the coach's general obligation to mitigate his damages.
28. In this respect, the Single Judge noted that indeed the coach had concluded a new employment contract with the Spanish club UD Almería S.A.D, valid as from 5 November 2019 until 30 June 2020, according to which he was entitled to eight monthly instalments of EUR 18,750. As such, the Single Judge deemed that the Claimant was able to mitigate his loss in the amount of EUR 150,000. In this regard, the Single Judge concluded that the mitigated compensation of the Claimant would amount to EUR 256,400.
29. In view of the above, the Single Judge concluded that the amount of EUR 256,400 is to be paid by the club to the coach as compensation for breach of contract.

30. Equally and with regard to the coach's request for interest, the Single Judge, in accordance with his well-established jurisprudence, decided that the club has to pay to the coach 5% interest p.a. on the amount of EUR 256,400 as from 29 July 2019 until the date of effective payment.
31. In addition, the Single Judge established that any other request of the coach had to be rejected.
32. 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 and the 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 and are normally to be paid by the unsuccessful party.
33. In this respect, the Single Judge reiterated that the claim of the coach is partially accepted and that the club is at fault. Therefore, the Single Judge decided that the club has to bear the costs of the current proceedings in front of FIFA.
34. 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 higher than CHF 200,001, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.
35. Consequently, the Single Judge determined that the club has to pay the amount of CHF 25,000 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, José María Gutiérrez Hernández, is partially accepted.
2. The Respondent, Besiktas J.K., has to pay to the Claimant, **within 30 days** as from the date of notification of the present decision, outstanding remuneration in the amount of EUR 129,400, plus interest at the rate of 5% *p.a.* until the date of effective payment, as follows:
  - a) From 1 January 2019, on the amount of EUR 3,000;
  - b) From 16 January 2019, on the amount of EUR 14,400;
  - c) From 1 February 2019, on the amount of EUR 28,000;
  - d) From 1 March 2019, on the amount of EUR 28,000;
  - e) From 1 April 2019, on the amount of EUR 28,000;
  - f) From 1 May 2019, on the amount of EUR 28,000.
3. The Respondent has to pay to the Claimant **within 30 days** as from the date of notification of the present decision, compensation for breach of contract in the amount of EUR 256,400, plus 5% interest *p.a.* on the said amount as from 29 July 2019 until the date of effective payment.
4. If the aforementioned sums, plus interest as established above, 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.
5. Any further claim lodged by the Claimant is rejected.
6. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, Besiktas J.K., as follows:
  - 6.1 The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case nr. 19-01559/osy:

UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A
  - 6.2 The amount of CHF 5,000 has to be paid directly to the Claimant.

7. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points 2, 3 and 5.2 above are to be made and to notify the Players' Status Committee of every payment received.

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#### **Note related to the publication:**

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, 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 Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

#### **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). 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. 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.

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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Emilio García Silvero  
Chief Legal & Compliance Officer