Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 26 February 2020,

by

Roy Vermeer (the Netherlands)

Single Judge of the Players' Status Committee,

on the claim presented by the coach

Adolfo Abad Barrios, Spain,
represented by Mr Juan de Dios Crespo Pérez and Mr Alejandro Pascual Madrid

as "*Claimant*"

against the club

Qingdao Huanghai Football Club, China PR

as "*Respondent*"

regarding an employment related dispute between the parties

I. Facts of the case

1. On 1 January 2019, the Spanish coach, Mr Adolfo Abad Barrios (hereinafter: *the coach* or *the Claimant*) and the Chinese club, Quingdao Huanghai (hereinafter: *the club* or *the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from the date of its signature until 31 December 2020.

2. In this respect, the coach was part of a technical staff composed of the head coach, Mr Jordi Vinyals, as well the assistant coaches Messrs. Mikel Touzon Núñez and Mr Arnau Navarro Cabre.

3. In accordance with clause 5.1 of the contract, the club undertook to pay to the coach, *inter alia*, the following remuneration:
   For the season 2019:
   - EUR 120,000 net *per annum* as base salary.
   For the season 2020:
   - EUR 120,000 net *per annum* as base salary.

4. In addition, clause 5.2 of the contract reads as follows: "*Upon signature of the present contract,* [the club] *undertakes to pay the 15% of* [the coach's] *salary for* [season 2019]*. Likewise, in the beginning of every sporting season,* [the club] *shall pay the 15% of the base salary determined for each year of the contract. The remaining salary will be paying monthly from February to December of each year*".

5. Clause 5.3 of the contract provides some bonuses payable to the coach depending on the place the club ends up in at the end of the Super League competition of each season, as follows:
   - If the club gets the 6th position at the end of Super League, the coach would be paid 20% more of his base annual salary;
   - If the club gets the 5th position at the end of Super League, the coach would be paid 25% more of his base annual salary;
   - If the club gets the 4th position at the end of Super League, the coach would be paid 30% more of his base annual salary;
   - If the club gets the 3th position at the end of Super League, the coach would be paid 40% more of his base annual salary;
   - If the club gets the 2th position at the end of Super League, the coach would be paid 50% more of his base annual salary;
   - If the club gets the 1th position at the end of Super League, the coach would be paid 100% more of his base annual salary.

6. In addition to the above-mentioned conditions, clause 5.4 of the contract states that "[The club] *shall also pay* [the coach] *bonus for each official match win and draw, in the same amounts as the other assistant coaches of* [the club]*".*

7. In this regard, and according to clause 5.2.1 of the contracts signed in 2016 by the 2 other assistant coaches, Mr Arnau Navarro Cabre and Mr Mikel Touzon Núñez, the parties agreed that, for each match won, the coach would be entitled to a bonus of EUR 2,000 net. Further to the aforementioned, according to clause 5.2.2 of the said contracts, the parties agreed that, for each tie match, the coach would be entitled to a bonus of EUR 1,000 net.

8. Moreover, clause 5.7.1 of the contract states that the club "*will provide three business class airline tickets (round trip from Qingdao-Spain) for* [the coach] *for each calendar year during the term of the contract*".

9. In addition, clause 9.2 of the contract reads as follows:
"*During the contract period, except irresistible reason,* [the coach] *leave without* [the club's] *authorization,* [the coach] *needs to pay* [the club] *EUR 300,000 at once. If* [the coach's] *commitment and obligations do not meet the expectations of the Head Coach Mr Jordi Vinyals,* [the club] *has the right, previous written authorization of the Head Coach, to terminate the contract paying two month's salaries to* [the coach]. *In case another head coach which is not Jordi Vinyals or the club proves that* [the coach's] *commitment and obligations do not meet the expectations*, [the club] *shall pay* [the coach] *50% of the remaining salaries*".

10. By means of his letter dated 28 May 2019, the main coach, Mr Jordi Vinyals, tackled the alleged situation they were facing at that time with the club, *i.e.* the club not respecting the coaches' technical decisions and threatening the coaches with terminating the contract. On the said correspondence, Mr Jordi Vinyals, requested the club to no longer interfere in the coaches' technical decisions, since the club –allegedly- wants to decide which player should play on each match.

11. On 30 May 2019, the club sent a correspondence to the players, coach and assistant coaches, by means of which the club complained about the performance of the team and urged the player and coaches to "*sum up*" and "*go all out to complete the team's established goals*". In addition, according to the said correspondence, the club communicated the team the following: "*if the team could win [the next match], they the team will have a break according to the original plan, otherwise all coaches and players have to come back to Qingdao to have a meeting summary and waiting for the work arrangements. If the above decision is violated, there will be a punishment in accordance with the regulations of Qingdao Huanghai FC*".

12. By means of his letter dated 31 May 2019, Mr Jordi Vinyals replied to the correspondence of the club and informed it that he would comply with the instructions provided by the club. Notwithstanding, the main coach also stressed that him, as the coach, is responsible for organizing the team's resting days, since it is highly important for the team that the players are well rested. In addition, the main coach stated that the team had already organized their

holidays following his instructions and that, if the clubs decide not to allow them go on holidays, the club would be "*interfering with the coach team 's contractual functions which remains a severe violation of* [the contract]".

13. On 29 July 2019, the club unilaterally terminated the contract -in writing- on the basis of the "*poor team performance*". In this context, the club held that during "*the last five rounds of the league* [the team] *only acquired six points*" and that "*the team's skills and tactics in the game is monotonous, the coaching staff did not change any measures and the team's unity and cooperation is not smooth, the team's leading edge advantage has been narrowed again and again, the advantage was lost and it goes far gradually from the object of the club this year. At the same time, for various reasons, the club and players have lost their trust in coaching staff*".

14. On 26 August 2019, the coach lodged a claim against the club before FIFA, requesting outstanding remuneration and compensation for breach of contract in the total amount of EUR 177,963.63 plus 5% interest *p.a.* as from 29 July 2019 until the date of effective payment, broken down by the coach as follows:
Outstanding remuneration: EUR 9,000 and Chinese Yuan Renminbi (CNY) 2,600
- EUR 9,000 net as bonus;
- CNY 2,600 corresponding to flight tickets;
Compensation for breach of contract: EUR 166,365
- EUR 46,365 net corresponding to the monthly salaries of August, September, October, November and December 2019 in the amount of EUR 9,273 each [(120,000 x 0.85) / 11 = 9,273; 9,273 x 5 = 46,365];
- EUR 120,000 net corresponding to the residual value of the contract, *i.e.* the coach's remuneration for the season 2020.

15. As to the calculation of the bonus, the coach referred to clauses 5.2.1 and 5.2.2 of the contracts of the other 2 assistant coaches and held that, during the season 2019, the team won 2 matches and played 5 tied games. Hence, according to the calculation of the coach, taking into consideration the aforementioned clauses of the former contract, he would be entitled to bonuses in the amount of EUR 9,000, corresponding to:
- EUR 4,000 "*for the 2 win games*" (2,000 x 2 = 4,000);
- EUR 5,000 net "*for the 5 tied games*" (1,000 x 5 = 5,000).

16. In his claim, the coach held that the club terminated the contract without just cause on the basis of the alleged poor performance of the team. In this regard, the coach argued that "*the sporting performance of the team can be never considered as a just cause for terminating a contract*".

17. Furthermore, the coach argued that, as a consequence of the unlawful breach of contract by the club, the latter "*shall be condemned to pay compensation in favor of the coach*".

18. In its reply to the claim, the club held that the contract of the coach, Mr Adolfo Abad Barrios, was "*bound*" to the contract of the main coach, Mr Jordi Vinyals. In this respect, the club argued that, "*once the employment contract of Head Coach Jordi is terminated, the contracts of the coach team will be terminated also*".

19. Furthermore, the club stated that it has always respected the contract and "*fully paid all salaries before the contract's termination*". In this context, the club referred to clause 9.2 of the contract and stated that, in compliance therewith, the club will compensate the coach with 50% of the remaining value of the contract, *i.e.* EUR 79,300, calculated by the club as follows:
- EUR 19,300 corresponding to 50% of the amount of EUR 38,600, which corresponds –according to the club- to the coach's entitlements for the remaining part of the season 2019:
- EUR 60,000 corresponding to 50% of the amount of EUR 120,000, which corresponds –according to the club- to the coach's entitlements for the season 2020.

20. In addition to the above, the club also stated that it would compensate the coach with the amount of RMB 36,600 corresponding to the bonus for having obtained 5 ties during matches of the season 2019.

21. Finally, the coach did not sign any new contract whereby he could have mitigated his damages as he remained unemployed.

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 26 August 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 Chinese 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. 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 26 August 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. 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 it considered pertinent for the assessment of the matter at hand.

5. In this respect, the Single Judge acknowledged that, on 1 January 2019, the coach and the club had concluded an employment contract valid until 31 December 2020 which provided for the coach to work as assistant to the head coach against a seasonal remuneration of EUR 120,000 for the 2019 and 2020 season each.

6. In addition, the Single Judge took note of the other financial entitlements provided by clause 5.2, 5.3, 5.4 and 5.7.1 of the contract, as well as clause 5.2.1 of the contracts signed in 2016 by the 2 other assistant coaches, Mr Arnau Navarro Cabre and Mr Mikel Touzon Núñez, according to which the parties agreed that, for each match won, the coach would be entitled to a bonus of EUR 2,000 net. Moreover, the Single Judge further noted that in addition to the aforementioned, according to clause 5.2.2 of the said contracts, the parties agreed that, for each tie match, the coach would be entitled to a bonus of EUR 1,000 net.

7. Moreover, the Single underlined as well the content of clause 9.2 providing the conditions of an early termination of the contract by means of the club's decision.

8. In continuation, the Single Judge remarked that, in his claim to FIFA, the Claimant had accused the Respondent of having terminated their contractual relationship without just cause on 29 July 2019 invoking *"poor team performance"*, which in the coaches' opinion, occurred without just cause as "*the sporting performance of the team can be never considered as a just cause for terminating a contract*" and, therefore, as a consequence of the unlawful breach of contract by the club, the latter "*shall be condemned to pay compensation in favor of the coach*".

9. The Single Judge also noted that, as such, the Claimant deemed *inter alia* being entitled to claim from the Respondent the payment of outstanding remuneration in the amount of EUR 9,000 and CNY 2,600, together with 5% interest p.a. as from 29 July 2019, and of compensation for breach of contract in the sum of EUR 166,365 corresponding to the residual value of the contract, together with 5% interest p.a., as well as from 29 July 2019.

10. In addition, the Single Judge noticed that, for its part, the Respondent, had rejected the claim of the Claimant arguing that the contract of the coach was bound to the contract of the main coach, Mr Jordi Vinyals, and once the contract with the latter was terminated, the contract with Mr Adolfo Abad Barrios was also terminated.

11. Furthermore, the club referred to clause 9.2 of the contract, in accordance with which the club is entitled to terminate the contract if the coach does "*not meet the expectations*" and shall only pay to the coach "*50% of the remaining salaries*".

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 Respondent had terminated the contract with or without just cause on 29 July 2019.

13. In this regard, the Single Judge recalled that the Respondent considered having rightfully terminated the contract due to *"poor team performance"*, and equally that as the contract of the coach was bound to the contract of the main coach, Mr Jordi Vinyals, once the contract with the latter was terminated, the contract with Mr Adolfo Abad Barrios was also terminated.

14. In this context, the Single Judge acknowledged that it had to examine whether the reason put forward by the Respondent could justify the termination of the contract in the present matter.

15. 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. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

16. As such, the Single Judge also recalled that, still in accordance to its longstanding jurisprudence, sporting team results / sporting team performance cannot be retained as a valid reason to justify an early termination of an employment contract.

17. Furthermore, the Single judge referred to clause 9.2 of the contract, as put forward by the club in order to justify its action, and underlined that said clause granted the club the right to unilaterally terminate the contract should the coach not meet the expectations of the club. In this respect, the Single judge considered said clause to be unilateral, not reciprocal, and based on a subjective element as the performance of the coach. Consequently, in accordance with its constant jurisprudence, the Single judge deemed said clause to be considered null and void.

18. As a consequence and considering the above, the Single Judge held that, despite the club's provided explanations and arguments, the reason put forward by it on 29 July 2019, i.e. *"poor team performance"*, cannot be considered as a valid reason for unilateral contract termination.

19. In view of all the aforementioned, the Single Judge was of the firm opinion that the club did not have just cause to prematurely terminate the employment contract with the coach.

20. After having established the foregoing, the Single Judge went on analysing the consequences of the termination of contract without just cause committed by the club.

21. 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.

22. In this regard, the Single Judge underlined that the coach had requested from the club the payment of EUR 9,000 corresponding to the bonus for having won 2 games and tied 5 games and CNY 2,600 as flight tickets expenses, both amounts together with 5% interest p.a. as from 29 July 2019, as from the date of termination, i.e. 29 July 2019. As such, having duly evidenced the aforementioned requests in accordance with art. 12 par. 3 of the Procedural Rules, the Single judge ruled that the coach was entitled to the above in accordance with the principle of "*pacta sunt servanda*".

23. As a consequence, and having established the aforementioned, the Single Judge turned his attention to the compensation payable to the coach by the club following the termination without just cause of contract 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.

25. In this sense, the Single Judge underlined the absence of any compensation clause included in the contract. Consequently, the Single Judge held that no compensation clause being applicable to the case at hand, the compensation can 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 without just cause by the Respondent until its natural expiration. Bearing this in mind, the Single Judge deemed that he would have received in total EUR 166,365 as remuneration for the period as from August 2019 until the end of the 2020 season, said amount consisting of the monthly salaries as from August until December 2019 in the amount of EUR 9,273 each (total of EUR 46,365), plus the value of the contract for the season 2020, *i.e.* EUR 120,000. At this point, the Single Judge was eager to emphasize that said amount corresponded to what the coach claimed as compensation. Consequently, the Single Judge concluded that the amount of EUR 166,365 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 been dismissed by the club on 29 July 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. The Single Judge recalled that, after termination of the contract, the coach was not able to mitigate his damages, as he remained unemployed.

29. In view of the above, the Single Judge concluded that the amount of EUR 166,365 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 as from 29 July 2019, 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 166,365 until the date of effective payment, however as from the date of claim, i.e. 26 August 2019, instead of the initially requested date of termination, i.e. 29 July 2019.

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 included between CHF 150,000 and CHF 200,000, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 20,000.

35. In conclusion and in view of the invalidity of the reason advanced by the club for the early termination of the contract occurred without just cause, the Single Judge determined the costs of the current proceedings to the amount of CHF 20,000.

36. Consequently, the Single Judge determined that the club has to pay the amount of CHF 20,000 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, Adolfo Abad Barrios, is partially accepted.

2. The Respondent, Qingdao Huanghai Football Club, 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 9,000 and CNY 2,600, plus 5% *p.a.* on said amounts as from 29 July 2019 until the date of effective payment.

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 166,365 plus 5% *p.a.* on said amount as from 26 August 2019 until the date of effective payment.

4. Any further claim lodged by the Claimant, is rejected.

5. In the event that the aforementioned sums plus interest are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent, as follows:

    1. The amount of CHF 4,000 has to be paid to the Claimant.

    2. The amount of CHF 16,000 has to be paid directly to FIFA to the following bank account with reference to case nr. 19-01695/jaa:

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

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 6.1. 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 (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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