



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/6720 CS Gaz Metan Medias v. Jasmin Trtovac & FIFA

AWARD ON COSTS

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Wouter Lambrecht, Attorney-at-law, Barcelona, Spain

in the arbitration between

CS Gaz Metan Medias, Mediaş, Romania

Represented by Mr Lazar Marius-Constantin, Attorney-at-law, Bucharest, Romania

- Appellant -

and

1/ Jasmin Trtovac, Novi Pazar, Serbia

Represented by Mr Balta Dragos, Attorney-at-law, Bucharest, Romania

2/ Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, Mr Jaime Cambreleng Contreras, Head of Litigation, and Mr Saverio Paulo Spera, Senior Legal Counsel, FIFA, Zurich, Switzerland

- Respondents -

I. THE PARTIES

1. CS Gaz Metan Medias (the “Appellant” or “the Club”) is a football club with its registered office in Mediaş, Romania. The Club currently plays in the first division of the Romanian football championship. It is a member of the Romanian Football Association, which itself is in turn affiliated to the Fédération Internationale de Football Association.
2. Jasmin Trtovac (“the First Respondent” or “the Player”) is a professional football player of Serbian nationality. The Player currently plays for the Serbian club FK Novi Pazar and for this arbitral procedure, he elected domicile at the registered office of AFAN, the Romanian football players’ union.
3. The Fédération Internationale de Football Association (“the Second Respondent” or “FIFA”) is an association established under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level.
4. CS Gaz Metan Medias, Mr Jasmin Trtovac and FIFA are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND OF THE DISPUTE

5. On 11 July 2016, Mr Jasmin Trtovac and CS Gaz Metan Medias concluded an employment contract valid from 1 July 2016 until 30 June 2017 (“the Contract”).
6. Article 5 letter b) of the Contract, foresaw the following bonus payment:

“The club will pay the player, by proposal of the coach, tacking into consideration the minutes played and its yield, a profit fee calculated according to the following criteria:

- *If the first team will occupy the 11th place in the final standing of the First League national Championship at the end of the 2016-17 season, the player will receive up to 20.000 euros gross*
- *For 10th place, up to 25,000 euros gross;*
- *For 9th place, up to 30,000 euros gross;*
- *For 8th place, up to 35,000 euros gross;*
- *For 7th place, up to 40,000 euros gross;*
- *For 1-6 places, up to 50,000 euros gross.*

7. Furthermore, article 12 of the Contract contained the following applicable law and jurisdiction clause:

“The present Convention will be governed and interpreted according to the Law no. 69/2000, of Physical Education and Sports, to OUG no. 205/2005 and the Romanian Football Federation regulations.

The disputes, resulting from the execution of the present Convention, are to be solved in the following order:

- *Amiably;*
- *By bringing the dispute to the justice institutions of the Romanian Football Federation and the Professional Football League;”*

8. On 25 October 2016, the local Court of Sibiu, Civil Section II (“the Syndic Judge”), by means of a decision with reference no - 898/2016, admitted the request to open insolvency procedures against CS Gaz Metan Medias. In said decision, the Syndic Judge pursuant to article 34 of the Romanian law on insolvency procedure, appointed, *inter alia*, the company RTZ & Partner SPRL, as judicial administrator for the insolvency (the “Judicial Administrator”), the latter having the duties mentioned in article 20 of the aforementioned law.
9. The Judicial Administrator prepared and submitted a reorganization plan for the Club, which was approved by the different creditors and confirmed by the Syndic Judge on 27 April 2017 by means of a decision with reference no. 314.
10. The approved and confirmed reorganization plan contained Mr Jasmin Trtovac on the list of creditors and this for the amount of 28,763 lei.
11. CS Gaz Metan Medias finished the season 2016/17 on the 8th place and according to the Player, and uncontested by the Club, *“the Club played a total of 40 matches, 3.600 minute, of which the Player played 3,380 minutes, i.e. 93.89% of the total minutes”*.
12. On 18 September 2018, AFAN, apparently on behalf of the Player, sent a request for payment to the Club and the Judicial Administrator requesting that the Player be paid the bonus payment foreseen in article 5 letter b) of the Contract.
13. The Judicial Administrator rejected the request for payment and the findings were published in the Romanian national insolvency gazette on 4 October 2018. The findings, following its publication, were neither challenged, nor appealed by the Player within the foreseen deadline established by the Romanian law on insolvency.

14. On 18 October 2018, the Player, via Mr Enache Stefan Lucian, legal counsel to AFAN, introduced a claim with the FIFA Dispute Resolution Chamber, seeking, primarily, payment of the amount of EUR 32,861.50 gross, as bonus payment for having finished in 8th place and having played in 93,89% of the minutes. In subsidiary order, the Player sought payment of the amount of EUR 25,000 gross, as per the proposal of the then head-coach, plus in any case interests at a rate of 5% p.a. as of the 5th of June 2017 until the effective date of payment.
15. In its various response to the claim, the Club, *inter alia* challenged the jurisdiction of FIFA keeping in with the jurisdiction and applicable law clause conferring exclusive jurisdiction on either the National Dispute Resolution Chamber in Romania or the Syndic Judge which, according to the Club is, due to the insolvency procedure, exclusively competent to hear all claims against the Club as per article 36 of the Romanian Insolvency law.
16. As to the merits of the complaint, the Club insisted that the conditions for the bonus payment to be triggered were not met since the coach never submitted any proposal for a bonus payment. In subsidiary order, the Club submitted that in any case, taxes at a rate of 32,5% would have to be deducted from, meaning that any amount to be awarded could not exceed EUR 16,875 whilst, in the Club's opinion, interests should only start accruing as of the day on which the legal action was brought.
17. On 30 October 2019, the FIFA Dispute Resolution Chamber ("FIFA DRC") issued a decision (the "Appealed Decision") providing as follows:
 1. *The claim of the Claimant, Jasmin Trtovac is admissible.*
 2. *The claim of the Claimant is accepted.*
 3. *The Respondent, CS Gaz Metan Medias, has to pay to the Claimant the amount of EUR 32,861.50 plus 5% interest p.a. as of 5 June 2017 until the date of effective payment.*
 4. *The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated in the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point 3 above.*
 5. *The Respondent shall provide evidence of payment of the due amount in accordance with point 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).*
 6. *In the event that the amount due plus interests in accordance with point 3 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 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 (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7. *The ban mentioned in point 6 above will be lifted immediately and prior to its complete serving, once the due amount is paid.*
8. *In the event that the aforementioned sum plus interests 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 FIFA's Disciplinary Committee for consideration and a formal decision.*

18. The grounds of the Appealed Decision were notified to the Parties on 16 January 2020.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 17 January 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "Code").
20. In its Statement of Appeal, the Appellant, pursuant to Article R37 of the Code, applied for the stay of the Appealed Decision and requested that the procedure be referred to a sole arbitrator.
21. On 23 January 2020, the CAS Court Office initiated the appeals arbitration procedure and invited the Respondents, *inter alia*, to submit their answers to the Appellant's request for stay and the request of the Appellant to submit the present matter to a sole arbitrator, within respectively seven (7) and five (5) days from receipt of the letter.
22. On 31 January 2020, the First Respondent, without putting forward any argument, objected to the stay, whilst he did not address the other request of the Appellant to appoint a sole arbitrator.
23. On 3 February 2020, the Second Respondent submitted a letter holding that that the request for stay is moot and should be dismissed whilst indicating that it agreed to refer the case to a sole arbitrator as long as he/she is selected from the football list.
24. On 17 February 2020, an Order on Request for a Stay was issued by the President of the Appeals Arbitration Division dismissing the request holding that "*under the consistent jurisprudence of the CAS (see for instance the Order on provisional measures in the case*

CAS 2004/A/780), a decision of a financial nature issued by a private Swiss association is not enforceable whenever it is appealed against.”.

25. On 21 February, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.
26. On 26 February 2020, the First Respondent, referring to Articles R55 (3) and R64.2 (2) of the Code, informed the CAS Court Office that he would not pay his share of the advance of costs and requested that the time-limit to file his answer be fixed once the Appellant covered for its share of the advance of costs. The Player’s application was granted on the same day.
27. In similar fashion, on 28 February 2020, the Second Respondent, referring to article R55 (3) of the Code, requested that the time-limit to file its answer would be set aside and fixed after the payment of the advance of costs by the Appellant. FIFA’s application was granted on the same day.
28. On 2 June 2020, and following several extensions, the Appellant paid the advance of costs whilst at the same time it requested for the suspension of the procedure for a period of one month and this pursuant to the CAS Emergency Guidelines valid as from 16 March 2020.
29. On 12 June 2020, the CAS Court Office invited the Respondents to file their Answer within 20 days from receipt of said letter.
30. In the same letter, the CAS Court Office, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, further informed the Parties that the Arbitral Tribunal appointed to decide the present case was constituted as follows:

Sole Arbitrator: Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain
31. In accordance with Article R55 of the Code, the Respondent filed their Answers, on 2 July 2020 by the First Respondent and on 6 July 2020 by the Second Respondent.
32. On 17 July 2020, the Sole Arbitrator, pursuant to Articles R44.3 of the Code, ordered the Appellant and the Second Respondent to produce certain documents.
33. In accordance with the Sole Arbitrator’s instructions, the Second Respondent submitted the requested documents on 6 August 2020 while the Appellant did so on 13 August 2020
34. On 1 October 2020 and after having consulted the Parties, the CAS Court Office informed them that the Sole Arbitrator had decided to hold a hearing, to be conducted via videoconference.

35. On 6 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, sent an Order of Procedure to the Parties, which was signed and returned by the Second Respondent on 12 October 2020, by the First Respondent on 19 October 2020 and by the Appellant on 22 October 2020,
36. On 23 October 2020, a hearing was held via videoconference. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Counsel to the CAS. The following persons attending the hearing for the Parties:
- | | |
|----------------|--|
| For the Club: | Mr Lazar Marius-Constantin, Attorney-at-law |
| For the Player | Mr Balta Dragos, Attorney-at-law |
| | Mr Jasmin Trtovac, the player |
| | Mr Enache Stefan Lucian, legal counsel AFAN & translator |
| For FIFA | Mr Jaime Cambreleng Contreras, FIFA Head of Litigation |
| | Mr Saverio Paulo Spera, FIFA Senior Legal Counsel |
37. At the opening of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel, recognised that conducting the hearing via videoconference was an acceptable means of communication and confirmed that the fact that the hearing was taking place virtually would not be used as a ground to challenge or seek the annulment of the award.
38. Prior to the opening statements, the Sole Arbitrator, *inter alia*, addressed the unsolicited documents filed by the First Respondent on 4 August 2020, *i.e.* a letter from AFAN and a decision dated 7 July 2020 by the Syndic Judge concerning the Appellant exiting the insolvency procedure, and requested, pursuant to Article R56 of the Code, whether the Appellant and FIFA either agreed or objected to said documents being added to the case file. Appellant and FIFA agreed to add the documents to the case file.
39. Subsequently, the Parties, by means of their counsels, made submissions in support of their respective cases with FIFA objecting to new arguments being introduced by the Appellant in its opening statement, arguments related to a falsified letter by the head-coach and the validity of the bonus clause, arguments which according to FIFA were not included in the Appeal Brief. Said objection was rejected by the Sole Arbitrator keeping in mind that a “Panel will normally accept the late filing of the submissions if they are related to arguments already presented by the party in the proceedings before the previous instance, if it deems that said submissions are necessary in order to establish the facts of the case”

(MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Kluwer, 2015, n. 9 ad Article R56, p. 498).

40. Following the opening statements, Mr Jasmin Trtovac, after having been invited to tell the truth, was examined by the Sole-Arbitrator.
41. In addition, the Sole Arbitrator posed several questions to the counsels of the Parties, more specifically in relation to the following topics: the alleged lack of jurisdiction of FIFA, the alleged lack of clarity of the jurisdiction clause, the insolvency proceedings and the legal interest to pursue the claim in front of CAS, the legal consequences of the publication in the official gazette of the decision taken by the Judicial Administrator, the notification by the Player of the Appealed Decision to the Syndic Judge or Judicial Administrator, the role of the Judicial Administrator, the role of AFAN acting as representative of the Player, the difference between the Appealed Decision and other FIFA decisions involving the Appellant, admissibility issues relating to the application of the principles of *res iudicata* and *electa una via, non datur recursus ad alteram* opposed to the legal principle of estoppel or *venire contra factum proprium*, the recognition of debt v. the enforcement stage and how to include the automatic and provisional transfer ban foreseen in the Appealed Decision in application of article 24bis of the FIFA Regulations on the Status and Transfer of Players (“FIFA RSTP”) in said mere “recognition of debt”.
42. Following the closing statements, and several further questions from the Sole Arbitrator to the Parties, the Sole Arbitrator asked the Club and FIFA to submit further documents:
 - For the Club:
 - Copy of the notification received either by the Club and/or the Judicial Administrator of the Appealed Decision by means of which the Player sought inclusion of it in the insolvency procedure plus a copy of any and all ensuing correspondence relating to said notification;
 - Copy of decision of the judicial administrator as to the inclusion in the insolvency procedure of the amount awarded in the Appealed Decision;
 - For FIFA:
 - Copy of all the relevant documents from the FIFA case with reference n° 18-01570/aos Player Dario Rugasevic, Croatia / Club Gaz Metan Medias, Romania based on which FIFA concludes in the decision with reference number above that "the Player had formulated a request for the before the local insolvency authorities in Romania" and that the "Player had agreed to be directly involved in the insolvency proceeding at national level".

43. At the end of the hearing, the Parties indicated that no additional evidentiary measures were considered necessary and expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.
44. Following the hearing, and still on the same day, the CAS Court Office informed the Parties that the Sole Arbitrator wished to give the Parties the possibility to start discussions in order to reach a settlement agreement and this pending the production of documents, giving the Appellant and First Respondent until 6 November 2020 to inform the Sole Arbitrator about the conclusion of a settlement, if any, and until the 10 November 2020 to produce the requested documents in case no settlement agreement was reached.
45. On 6 November, the First Respondent informed the CAS Court Office that no settlement agreement had been reached and that “*his attempt to settle this dispute amicably did not receive a response from the club’s representatives*”.
46. On 11 November 2020, the Appellant informed the CAS Court Office that an Agreement had eventually been concluded foreseeing in a payment towards the Player and a waiver “*through which these parties declared that they have no more obligations between them, including the ones from this case*” requesting “*the termination of these proceedings on the basis of the above-mentioned agreement*”. A copy of the Agreement was attached to the correspondence.
47. On the same day, the CAS Court Office acknowledged the settlement and the Appellant’s request to withdraw its appeal and to terminate the arbitral proceedings, indicating that the Sole Arbitrator would issue an Award on Costs in due course.
48. On 12 November 2020, the First Respondent confirmed that “*the Club and Player settled an Agreement*”, that “*Mr Jasmin Trtovac should receive from CS GAZ METAN MEDIAS, in 7 (seven) working days, the amount of 17.000 Euros*” and “*that the parties have agreed that they do not owe each other any taxes, fees and charges related to this litigation*”.

IV. JURISDICTION

49. Article R47 of the Code provides, *inter alia*, that “[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

50. Article 58 (1) of the FIFA Statutes reads as follows: “*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*”.
51. The jurisdiction of CAS has not been contested by the Parties and is further confirmed by the signature of the Order of Procedure by the Parties.
52. In the light of the foregoing, the CAS has jurisdiction to render the present Award on Costs.

V. COSTS

53. Article R64.4 of the Code reads as follows:

“ *At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

54. In addition, Article R64.5 of the Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

55. In light of the Appellant’s letter of 11 October 2020 and given the withdrawal of its appeal which causes the termination of these proceedings, the Sole Arbitrator considers that,

pursuant to the well-established CAS jurisprudence, the Appellant shall bear the costs of arbitration in their entirety.

56. Furthermore, pursuant to Article R64.5 of the Code and keeping in with the terms of the Appellant's and First Respondent' amicable solution, the Sole Arbitrator rules that each of them shall bear their own costs sustained for legal representation, expenses, or other costs. The same decision shall apply to the Second Respondent which was not represented by external counsel during these proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The procedure *CAS 2020/A/6720 CS Gaz Metan Medias v. Jasmin Trtovac & FIFA* is terminated and removed from the CAS roll.
2. The costs of this arbitration, to be determined and served upon the Parties by the CAS Court Office, shall be borne by CS Gaz Metan Medias in their entirety.
3. Each Party shall bear its own legal costs and other expenses incurred in connection with these arbitration proceedings.
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 1 December 2020

THE COURT OF ARBITRATION FOR SPORT

Wouter Lambrecht
Sole Arbitrator