

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

passed on 6 April 2021

regarding a dispute concerning the transfer of the player Jorge Renan Benguche

**BY:**

**Castellar Guimarães Neto** (Brazil), Single Judge of the PSC

**CLAIMANT:**

**Club Olimpia Deportivo, Honduras**  
Represented by Mr. Andreas Käser

**RESPONDENT:**

**Boavista FC, Portugal**

## I. FACTS OF THE CASE

1. On 11 August 2020, the Honduran club, Club Olimpia Deportivo (hereinafter: *the Claimant*), and the Portuguese club, Boavista FC (hereinafter: *the Respondent*) signed a transfer agreement by means of which the player, Mr. Jorge Renan Benguche (hereinafter: *the player*), was temporary transferred from the former to the latter (hereinafter: *the transfer agreement*).
2. Clause 2.1 of the transfer agreement established that, in consideration of the loan of the player, the Respondent undertook to pay the Claimant the sum of USD 500,000, "*to be paid when the final transfer and the ITC arrive*".
3. In accordance with the Transfer Match System (TMS) the International Transfer Certificate (ITC) of the player was issued on 4 September 2020.
4. On 22 September and 6 October 2020, the Claimant sent the Respondent e-mails informing that the ITC of the player had already been issued and requesting the payment of the transfer fee.
5. On 22 October 2020, the Claimant sent the Respondent a default notice and granted it with a 10 days' deadline in order to proceed the payment of USD 500,000, in line with clause 2.1 of the transfer agreement.
6. On 5 November 2020, the Respondent replied to the Claimant's notice, acknowledged its default and stated that the club was making its best efforts to cure the breach as soon as possible.
7. On 4 December 2020, the Claimant sent the Respondent another default notice and granted it with a final 5 days' deadline in order to pay the overdue amounts, to no avail.
8. On 23 December 2020, the Claimant filed the claim at hand before FIFA, requesting payment of USD 500,000 plus 5% interest *p.a.* as from 4 September 2020 until the date of effective payment.
9. In its claim, the Claimant referred to article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) and argued that "*costs and compensation*" should be borne by the Respondent.
10. On 3 February 2021, the Respondent presented its position to the claim and wrote, *quoted verbatim*: "[...] *this month the new Administration Board of Boavista SAD was elected, which is why the outstanding amounts have not been paid. However, we are finalizing an agreement to propose to Clube Olimpia Deportivo, in order to pay the agreed amounts. Thereby, we will provide information to the process as soon as the agreement is concluded*".

## II. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

### a. Competence and applicable legal framework

11. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 23 December 2020 and submitted for decision on 6 April 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
12. Subsequently, the Single Judge referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. f) of the Regulations on the Status and Transfer of Players (edition February 2021), the Players' Status Committee is competent to deal with the matter at stake, which concerns an international dispute between clubs belonging to different associations, *i.e.* a Honduran club and a Portuguese club.
13. 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 2 of the Regulations on the Status and Transfer of Player (edition February 2021), and considering that the present claim was lodged on 23 December 2020, the October 2020 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

### b. Burden of proof

14. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties.
15. In this respect, the Single Judge also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

### c. Merits of the dispute

16. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. 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.

#### i. Main legal discussion and considerations

17. The foregoing having been established, the Single Judge acknowledged that the amount requested by the Claimant has a clear contractual basis (cf. clause 2 of the transfer agreement) and, additionally, that it remained uncontested between the parties that the Respondent failed to remit the said payment.
18. In this respect, the Single Judge highlighted that the Respondent acknowledged its default and informed that it was "*finalizing an agreement*" to propose to the Claimant. Nevertheless, the Single Judge noted that no agreement was ever communicated to FIFA.
19. On account of the aforementioned considerations, the Single Judge decided that the Respondent failed to remit the Claimant's remuneration in the amount of USD 500,000. Consequently, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay said amount to the Claimant.
20. Furthermore, taking into consideration the Claimant's request as well as the constant practice of the Players' Status Committee in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the day following their due date (*i.e.* 5 September 2020) until the date of effective payment.
21. Therefore, the Single Judge concluded that the claim shall be partially accepted.

#### ii. Article 12bis of the Regulations

22. In continuation, taking into account the applicable Regulations, 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. To this end, the Single Judge confirmed that the Claimant put the Respondent in default in several opportunities of payment of the amounts sought, which had fallen due for more than 30 days, and granted the Respondent with 10 days to cure such breach of contract.

24. Accordingly, the Single Judge confirmed that the Respondent had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
25. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. On account of the above and bearing in mind that this is the second offence by the club within the last two years, the Single Judge decided to impose a reprimand on the Respondent in accordance with art. 12bis par. 4 lit. b) of the Regulations.
26. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

### iii. Compliance with monetary decisions

27. Finally, taking into account the Regulations, 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.
28. In this regard, the Single Judge highlighted 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.
29. 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 communicates the relevant bank details to the Respondent, provided that the decision is final and binding, 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.
30. The Single Judge recalled that the above-mentioned bans 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.

### d. Costs

31. Lastly, the Single Judge referred to article 18 par. 1 lit. i) of the Procedural Rules, according to which no costs shall be levied by the parties for claims lodged between 10 June 2020 and 31 December 2020 (both inclusive). Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.

32. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

### III. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, Club Olimpia Deportivo, is partially accepted.
2. The Respondent, Boavista FC, has to pay to the Claimant, the following amount:
  - USD 500,000 as outstanding loan fee plus 5% interest *p.a.* as from 5 September 2020 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. A reprimand is imposed on the Respondent.
5. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
6. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:
  1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the [Regulations on the Status and Transfer of Players](#)).
  2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
8. This decision is rendered without costs.

For the Single Judge of the Players' Status Committee:



**Emilio Garcia Silvero**  
Chief Legal & Compliance Officer

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### **NOTE RELATED TO THE APPEAL PROCEDURE:**

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

### **NOTE RELATED TO THE PUBLICATION:**

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

### **CONTACT INFORMATION:**

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