

Decision of the Players' Status Committee

passed on 6 April 2021

regarding a contractual dispute concerning the player El Hadji Assane Diousse

BY:

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

CLAIMANT:

Empoli FC, Italy

Represented by Matthias Nicolai Elsa Lex

RESPONDENT:

AS Saint Etienne, France

Represented by Mr Olivier Martin

I. Facts

1. On 28 July 2017, Empoli FC (hereinafter: *Empoli* or *the Claimant*), AS Saint Etienne (hereinafter: *ASSE* or *the Respondent*) and the Senegalese player, Mr El Hadji Assane Dioussé (hereinafter: *the player*) signed a transfer agreement in relation to the player's permanent transfer from Empoli FC to ASSE (hereinafter: *the transfer agreement*).
2. Clause 3.2 of the transfer agreement, reads as follows: "*In consideration of the Transfer, ASSE agrees, and shall pay EMPOLI the following sums according to the following conditions: EUR 250,000 if ASSE is qualified to the Europa League (group stage) at the end of one of the season where the Player is present in the professional team of ASSE. The parties acknowledge and agree that ASSE will be considered as qualified in Europa League only in the situation where the Club has the possibility to participate to the group stage of the competition. For the avoidance of any doubt, if ASSE participates to the play-offs games of this competition at the beginning of the next season and do not obtains the right to participate to the group stage, this condition will be considered as not filled. This sum will be payable by ASSE to EMPOLI the month after the last match of the championship or the date after the last play-off game which permits to ASSE to participate to the Europa League group stage. For the avoidance of any doubt, if ASSE is qualified to Uefa Champions League the condition is satisfied (and also in the case of UEFA CHAMPIONS LEAGUE PLAYOFF, because taking part to Play Off means the security to be at least in Europa League Group Stage) The parties agree that this bonus can be obtained by EMPOLI only one time during the presence of the player in the professional team of ASSE"*.
3. In accordance with the information displayed in the Transfer Matching System (TMS), the sporting season 2018/2019 in France started on 1 July 2018 and ended on 30 June 2019.
4. On 29 January 2019, the player was transferred on loan from ASSE to the Italian football club, AC Chievo Verona, until 30 June 2019,
5. On 24 May 2019, ASSE played its final match of the 2018/2019 League 1 Championship against French football club SCO Angers, finishing the said season in fourth place, which led ASSE to directly qualify for the 2019/2020 Europa League group stage.
6. Between 19 September 2019 and 13 December 2019, ASSE participated in 6 group stage matches of the 2019/2020 Europa League.
7. On 12 December 2019, the player participated –as part of the team of ASSE– in the 2019/2020 Europa League match against the German club, VfL Wolfsburg.
8. On 20 February, 16 June and 5 August 2020, Empoli put ASSE in default of payment regarding the bonus of EUR 250,000, granting ASSE –in the last 2 default notices– a 10 days' deadline to remedy the default.
9. On 6 August 2020, ASSE replied stating that the condition precedent to the accrual of the bonus has not been fulfilled, insofar the player "*has been loaned to Chievo Verone during the sports season in which AS SAINT ETIENNE obtained its qualification"*.
10. By means of its letter dated 30 September 2020, Empoli replied thereto, stating –*inter alia*– the following: "*Please be informed that Empoli FC disagrees with the attempt of AS Saint Étienne to avoid the payment of transfer compensation included in article 3.2 of the transfer agreement of 28 July 2017. In view of the above, I have been instructed by Empoli FC to file a claim at FIFA, in the event no payment is received within 10 October 2020"*.

11. On 29 October 2020, Empoli lodged a claim against ASSE before FIFA, requesting to be awarded the total amount of EUR 250,000, corresponding to the bonus contained in clause 3.2 of the transfer agreement, plus 5% interest *p.a.* as from 25 June 2019 until the date of effective payment.
12. In its claim, Empoli argued that the bonus of EUR 250,000 contained in clause 3.2 of the transfer agreement was payable upon two events occurring: (i) ASSE is required to qualify for the Europa League Group Stage at the end of a sporting season; and (ii) the player has to be present in the professional team of ASSE during the season wherein ASSE obtains its qualification to participate to the Europa League Group Stage.
13. In this context, the Claimant firstly maintained that *"it is undisputed that ASSE indeed qualified to participate to the 2019/2020 Europa League on the basis of its sporting merits during the 2018/2019 Ligue 1 Championship"*.
14. Secondly, the Claimant held that *"it is undisputable that the player participated to the 2018/2019 Ligue 1 Championship, being the season wherein ASSE obtained the qualification to participate to the 2019/2020 Europa League, considering the Player played 7 games with the first team of ASSE in 2018/2019 Ligue 1 Championship"*.
15. As to the interpretation made by ASSE in its letter dated 6 August 2020, the Claimant argued that clause 3.2 of the transfer agreement *"does not explicitly indicate the presence of the Player within the professional team of ASSE at the time of qualification to be a condition precedent to the payment of the Bonus. To the contrary, article 3.2 of the Transfer Agreement indicates that the Bonus is due if ASSE qualifies at the end of a sporting season wherein the Player is present, i.e. the Player has to be present during the season of qualification"*.
16. In view of the above, the Claimant held that *"it is evident from the aforementioned facts that that the conditions precedent to the accrual of the Bonus have been fulfilled"*. Moreover, the Claimant argued that, when drafting of the transfer agreement, the parties were free to explicitly give clause 3.2 thereof the meaning claimed by ASSE, but freely chose not to.
17. As to the request for interest to run as from 25 June 2019, the Claimant referred to the wording of clause 3.2 of the transfer agreement and stressed that, on 24 May 2019, ASSE played its final match in the 2018/2019 League 1 Championship. Therefore, explained the Claimant, the bonus should have been paid by ASSE to Empoli FC by 24 June 2019, *i.e.* one month after the last match of the championship.
18. In its reply to the claim, the Respondent rejected the claim of the Claimant and pointed out that the interpretation made by the latter with regards to clause 3.2 does not correspond to neither the wording of the clause nor the intention of the parties when agreeing on the payment of the bonus of EUR 250,000.
19. In this respect, the Respondent stressed that the following events are uncontested:
 - That the player played 7 matches with the team of the Respondent during the course of the 2018 / 2019 season;
 - That the player was not part of the team of the Respondent, neither at the time when the club qualified to Europa League, nor at the end of the season 2018 / 2019, insofar he was on loan with the Italian club, AC Chievo Verona, until 30 June 2019;
 - That the Respondent did qualify for Europa League at the end of the season 2018 / 2019.
20. In this context, the Respondent firstly argued that the wording of clause 3.2 is clear when establishing that the entitlement of the Claimant to obtain the requested bonus depends on the player being part

of the team at the end of the season that placed the Respondent in a position to qualify to Europa League. Thus, the Respondent alleged that, since the player was on loan with AC Chievo Verona at the end of the season 2018/2019, the Claimant cannot be entitled to any such bonus.

21. Furthermore –continued the Respondent– the argument of the Claimant regarding its entitlement to such bonus only because the player participated in some matches at the beginning of the season 2018/2019 cannot be upheld, insofar the wording of clause 3.2 is very clear when stating that the presence of the player at the team of the Respondent at the end of the relevant season is a condition precedent for the Claimant’s entitlement to the said bonus; condition precedent that was not fulfilled.
22. As to the intention of the parties when concluding the transfer agreement, the Respondent maintained that, contrary to what is alleged by the Claimant, clause 3.2 of the transfer agreement is very clear; and that, had it been the will of the parties to grant the entitlement to the Claimant to receive the requested bonus if the player participated in some of the matches of the relevant season with the team of the Respondent, the parties would have specified it so, which did not occur.
23. What is more –argued the Respondent–, the Claimant did not request such payment from the Respondent until 20 February 2020, *i.e.* almost 9 months after the event allegedly triggering the payment of the bonus in favour of the Claimant took place, which demonstrates that it took the Claimant an elaboration of the literal sense of clause 3.2 of the transfer agreement to reach the conclusion that it may have an entitlement thereto.

II. Considerations of the Players' Status Committee

1. First of all, the Players' Status Committee (hereinafter also referred to as: *the Single Judge*) analyzed whether he was competent to deal with the case at hand. 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.
2. Subsequently, the Players' Status Committee referred to art. 3 par. 1 of the Procedural Rules and emphasized 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, the Players' Status Committee is competent to deal with disputes between clubs belonging to different associations.
3. In continuation, the Players' Status Committee analyzed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present matter. In this respect, the Players' Status Committee confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering that the claim was lodged on 29 October 2020, the October 2020 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.
4. The above having been established, the Players' Status Committee entered into the analysis of the substance of the matter. In doing so, he started to acknowledge the facts of the case as well as the documents contained in the file. However, the Players' Status Committee emphasized that, in the following considerations, he will only refer to the facts, arguments and documentary evidence that he considered pertinent for the assessment of the matter at hand.

5. In this respect, the Single Judge noted that, on 28 July 2017, the parties concluded an agreement for the permanent transfer of the player, El Hadji Assane Dioussé, from the Claimant to the Respondent, which clause 3.2 provided the following:

"In consideration of the Transfer, ASSE agrees, and shall pay EMPOLI the following sums according to the following conditions: EUR 250,000 if ASSE is qualified to the Europa League (group stage) at the end of one of the season where the Player is present in the professional team of ASSE. The parties acknowledge and agree that ASSE will be considered as qualified in Europa League only in the situation where the Club has the possibility to participate to the group stage of the competition. For the avoidance of any doubt, if ASSE participates to the play-offs games of this competition at the beginning of the next season and do not obtains the right to participate to the group stage, this condition will be considered as not filled. This sum will be payable by ASSE to EMPOLI the month after the last match of the championship or the date after the last play-off game which permits to ASSE to participate to the Europa League group stage. For the avoidance of any doubt, if ASSE is qualified to Uefa Champions League the condition is satisfied (and also in the case of UEFA CHAMPIONS LEAGUE PLAYOFF, because taking part to Play Off means the security to be at least in Europa League Group Stage) The parties agree that this bonus can be obtained by EMPOLI only one time during the presence of the player in the professional team of ASSE"
6. Subsequently, the Single Judge observed that, on 29 October 2020, Empoli lodged a claim against ASSE before FIFA, requesting to be awarded the bonus provided in the above-quoted clause, in the amount of EUR 250,000, plus 5% interest *p.a.* as from 25 June 2019 until the date of effective payment.
7. In its claim –noted the Single Judge–, the Claimant argues that, insofar the player played in 7 games within the first team of ASSE in the 2018/2019 League 1 Championship –which had an impact on the club finishing within the first 4 positions of the said league–, it is evident that the player's contribution during the said 7 games is linked to the qualification of the Respondent to compete in Europa League during the following season and, thus, the payment of the bonus of EUR 250,000 *ex. clause 3.2* of the transfer agreement is triggered.
8. Once the Single Judge had analyzed the position of the Claimant, he turned its attention to the arguments brought forward by the Respondent, which rejected the claim of Empoli and referred to the specific wording of clause 3.2 of the transfer agreement, which states, *inter alia*, that the Claimant will be entitled to *"EUR 250,000 if ASSE is qualified to the Europa League (group stage) at the end of one of the season where the Player is present in the professional team of ASSE"*.
9. In this respect –continued the Single Judge– the Respondent maintained that, since the player was on loan with the Italian club, AC Chievo Verona, as from 29 January 2019 until the end of the season 2018/2019, it is clear that the player was not part of the team of the Respondent when the Respondent played the final match of the league, *i.e.* on 24 May 2019, nor at the end of the season 2018/2019, *i.e.* by 30 June 2019.
10. After having carefully analyzed the position of both parties, the Single Judge firstly acknowledged that the wording of clause 3.2 of the transfer agreement is rather ambiguous. Nevertheless –wished to emphasize the Single Judge– the parties having established that the transfer agreement was subject of negotiations undertaken between them, the general principle of law, *in dubio contra proferentem*, should not apply to the present case.
11. In this context, the Single Judge explained that, after a first reading of the wording of clause 3.2 of the transfer agreement and the uncontested facts, one could argue –as the Respondent does– that the Claimant should not be entitled to the requested bonus, since the player was not playing within the team of the Respondent at the end of the season 2018/2019 and since the Claimant firstly put the

Respondent in default of payment in February 2020, *i.e.* 9 months after the Respondent's qualification for Europa League for the season 2019/2020.

12. Nevertheless, after a thorough examination of the referred clause, the Single Judge determined that the relevant part of clause 3.2 of the transfer agreement (cf. point II. 8 above) should be contemplated as divided as follows: The Respondent shall pay to the Claimant
 - EUR 250,000 if the Respondent qualifies to the Europa League (group stage) at the end of one of the seasons;
 - where the player is present in the professional team of the Respondent.
13. In this regard, the Single Judge concluded that the above-mentioned interpretation is the most logical interpretation, insofar the moment in which a club qualifies to compete in Europa League for the following season takes place at the end of the running season, which may explain why the parties included the sentence "*at the end of one of the seasons*". Furthermore –continued the Single Judge– if the sentence "*at the end of one of the seasons*" referred to the second sentence, the entitlement of the player to the bonus would have been justified if, instead of having been on loan during the second half of the season 2018/2019, the player had been on loan during the first half of the said season, even though the contribution of the player to the qualification of the Respondent for Europa League for the following season could have been the same (the player could have played 7 matches during the second half of the season, as he did during the first half - be present during the last match of the relevant season and, therefore –in strict interpretation of clause 3.2 of the transfer agreement– be entitled to the requested bonus), which would be absolutely arbitrary.
14. Moreover, pointed out the Single Judge, it is undisputed that the player did contribute to the qualification of the club to compete in Europa League in the season 2019/2020 by playing 7 games during the first half of the season 2018/2019, which only confirms that the aforesaid interpretation of the clause is the most logical one.
15. Furthermore –stressed the Single Judge–, the player, albeit on loan with AC Chievo Verona during the second half of the season 2018/2019, was still under contract with the Respondent, *i.e.* ASSE was still his parent club and the player returned to ASSE upon expiration of his loan contract with AC Chievo Verona. Thus, emphasized the Single Judge, it is a matter of fact that, during the season 2018/2019, the player was still linked to the club, (since the latter held the condition of the player's parent club during the said period and insofar the player played with it during the first half of the relevant season), which should suffice to determine that the player was present at the club during the said season and contributed to the qualification of the Respondent for Europa League for the season 2019/2020.
16. In view of the above, the Single Judge determined that the Respondent shall pay to the Claimant outstanding remuneration in the amount of EUR 250,000 –corresponding to the bonus contained in clause 3.2 of the transfer agreement– in accordance with the general principle of law: *pacta sunt servanda*.
17. In addition, taking into account the Claimant's claim, as well as the longstanding jurisprudence of the Players' Status Committee in this respect, the Single Judge decided to award the Claimant interest of 5% *p.a.* on the amount of EUR 2,500,000, as from 25 June 2019 until the date of effective payment. As to the *dies a quo* regarding the obligation to pay interest, the Single Judge emphasized that the parties agreed that the said bonus would be payable one month after the last match of the championship or on the date after the last play-off game –which permits ASSE to participate in the Europa League group stage– took place. In this respect, the Single Judge noted that it was uncontested that it was on 24 May 2019 when ASSE played its final match in the 2018/2019 League 1 Championship and, therefore, the said bonus was payable until 24 June 2019. Hence, the Single Judge decided to award default interest as from the 25 June 2019 until the date of effective payment.

18. In continuation, the Single Judge of the PSC 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 relating to disputes regarding solidarity mechanism 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.
19. In this respect, the Single Judge of the PSC referred to the Covid-19 Football Regulatory Issues – FAQ, published on 11 June 2020 which establish that, for any claim lodged between 10 June 2020 and 31 December 2020 (both inclusive), there will be no requirement to pay an advance of costs and no procedural costs shall be ordered.
20. Furthermore, taking into account the previous considerations, the Players' Status Committee 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.
21. In this regard, the Players' Status Committee 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.
22. Therefore, bearing in mind the above, the Players' Status Committee decided that, in the event that the Respondent does not pay the interest 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.
23. In this respect, the Players' Status Committee recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.
24. Finally, the Single Judge of the PSC ended his deliberations by stating that the claim of the Claimant is accepted.

III. Decision of the Single Judge of the PSC

1. The claim of the Claimant, Empoli FC, is accepted.
2. The Respondent, AS Saint Etienne, has to pay to the Claimant, the following amount:
 - EUR 250,000 as outstanding remuneration plus 5% interest *p.a.* as from 25 June 2019 until the date of effective payment.
3. 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.

4. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
5. 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.
6. This decision is rendered without costs.

For the Players' Status Committee:



Emilio García Silvero
Chief Legal & Compliance Officer

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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