

Decision of the Single Judge of the Players' Status Committee

passed on 6 April 2021

regarding a dispute concerning the transfer of the player Daniel Mancini

BY:

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

CLAIMANT:

Tours FC, France

Represented by Mr. Jan Schweele

RESPONDENT:

Aris FC, Greece

Represented by Mr. Konstantinos Zemberis

I. FACTS OF THE CASE

1. On 27 April 2020, the French club, Tours FC (hereinafter: *the Claimant*), and the Greek club, Aris FC (hereinafter: *the Respondent*), signed a settlement agreement related to the decisions rendered by the FIFA Dispute Resolution Chamber on cases ref. TMS 5376 and TMS 5378 (hereinafter: *the settlement agreement*).
2. In accordance with clause 1 of the settlement agreement, the Respondent undertook to pay the Claimant the total amount of EUR 53,062.40, as follows:
 - a. EUR 26,500 on 10 May 2020; and
 - b. EUR 26,562.40 on 15 June 2020.
3. Additionally, clause 3 of the settlement agreement established as follows: *"In case of delay of payment of any of the installments stipulated in Clause 1 for more than ten (10) calendar days, [the Claimant] shall set - by written notice - to [the Respondent] a ten (10) days deadline for the payment of the outstanding and delayed installment. If [the Respondent] fails to pay in full the outstanding and due installment within the set deadline of ten (10) days, [the Respondent] shall automatically be in default and all remaining instalments shall become immediately outstanding and due. In such case, [the Claimant] would be entitled to claim the total outstanding and due amount at that time before the competent bodies of FIFA. [The Claimant] then also has the right to claim a sum of 20% over the outstanding amount on the date of the breach of contract, as contractual penalty fee, as well as 10% interest p.a. on the said penalty fee amount as of the day the Settlement Agreement is breached"*.
4. On 19 May 2020, the Claimant put the Respondent in default and granted it with a 10 days' deadline in order to proceed the payment of EUR 26,500 (i.e. the first instalment of the settlement agreement).
5. On 7 July 2020, the Respondent paid both the first and the second instalments.
6. On 10 September 2020, the Claimant sent the Respondent a default notice requesting payment of the penalty fee in the amount of EUR 10,612.48, which allegedly fell due because of the late payments, as well as accrued interest in the amount of EUR 305.64. The Claimant granted the Respondent another 10 days' deadline in order to proceed the payment, to no avail.

II. PROCEEDINGS BEFORE FIFA

7. On 22 December 2020, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. The claim of the Claimant

8. In its claim, the Claimant stated *inter alia* that the Respondent did not timely comply with its financial obligations, so that it became "*liable to pay a percentage of 20% over the outstanding amount on the date of the breach of contract, as contractual penalty fee, as well as 10% interest p.a. on the said penalty fee amount*".
9. In support of the above, the Claimant referred to the two default notices sent to the Respondent and argued that the requisites of clause 3 of the settlement agreement and of art. 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) were duly met in the case at hand.
10. Based on the foregoing, the Claimant requested payment of the following amounts:
 - a. EUR 10,612.48, corresponding to the penalty fee described in clause 3 of the settlement agreement;
 - b. EUR 601,73, corresponding to the accrued interest at a rate of 10% p.a. (also in accordance with clause 3 of the settlement agreement); and
 - c. "*interest at a rate of 5% p.a. on, and from the respective due date(s) of the claimed sum (or its parts)*".
11. Finally, the Claimant claimed sporting sanctions to be imposed on the Respondent.

b. Position of the Respondent

12. In its reply, the Respondent stressed that the claim should be deemed inadmissible, due to the fact that it is "*unacceptable and contrary to the understanding of the parties and, in any case, [is] evidently abusive and contrary to the necessary good faith that football clubs and parties in general shall have in their conduct and of course to the previous conduct of the Claimant on the matter*".
13. Accordingly, the Respondent pointed out that it failed to make the payments on the due dates "*due to the cash flow problems created by the continuous suspension of any sporting activity as a consequence of Covid-19 pandemic*", but then, when the payments were finally made, the club was left to believe that the "*the Claimant would not claim the penalty and any additional interest for the late payment*".
14. What is more, the Respondent held that "*the penalty of 20% on the unpaid amount that is stipulated in the Settlement Agreement, in combination with the interest of 10% p.a. on such penalty, constitute an invalid clause since the said penalty is an excessive and unacceptable penalty*".

III. CONSIDERATIONS OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

a. Competence and applicable legal framework

15. 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.
16. 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 French club and a Greek club.
17. 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

18. 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.
19. 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

20. 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

21. The foregoing having been established, the Single Judge moved to the substance of the matter and initially took note of the fact that the Respondent referred to the COVID-19 pandemic in order to justify the lack of payment of the Claimant's remuneration.
22. Having said this, the Single Judge highlighted that FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.
23. In this context, the Single Judge observed that the Respondent did not file together with its reply any documentation pertaining to the question of the COVID-19 pandemic. Consequently, the Single Judge underlined that the Respondent failed to meet its burden of proof in accordance with the aforementioned art. 12 par. 3 of the Procedural Rules insofar as the FIFA COVID FAQ, in its question no. 1, establishes that the Bureau of the FIFA Council did not determine that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure; rather, it provides that whether or not a force majeure situation (or its equivalent) exists in the country or territory is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement.
24. Additionally, the Single Judge wished to outline that the payments at stake were already renegotiated by the parties in the settlement agreement and, even so, the Respondent failed to meet its financial duties. Thus, the Single Judge found that the position of the Respondent could not be upheld.
25. For the sake of completeness, the Single Judge also found it important to establish that the Respondent's arguments regarding the alleged belief that *"the Claimant would not claim the penalty and any additional interest for the late payment"* due to the letters sent to the FIFA Dispute Resolution Chamber, do not have relevance to the case at hand as they only refer to the cases ref. TMS 5376 and TMS 5378. On the other hand, the case at stake pertains a contractual dispute based on the settlement agreement concluded by the parties in order to settle the outstanding payments due by the Respondent to the Claimant.

26. On account of the aforementioned considerations, the Single Judge acknowledged that, in accordance with clause 3 of the settlement agreement, the Claimant put the Respondent in default on 19 May 2020, granting it a 10 days' deadline in order to proceed the payment (*i.e.* until 29 May 2020).
27. Consequently, the Single Judge was firm to determine that, as the Respondent did not proceed the payment within said deadline, the second instalment of the settlement agreement became immediately outstanding and due, as well as the penalty fine of 20% on the overdue payables (*i.e.* EUR 10,612.48).
28. In this regard, the Single Judge stressed that penalty clauses, in principle, may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. Accordingly, the Single Judge added that in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the deciding body shall also be taken into consideration.
29. In the specific case at hand and taking into account that the Respondent repetitively breached its commitments towards the Respondent, the Single Judge concluded that a penalty fine of 20% on the overdue payables is reasonable, proportionate and stays in line with the Players' Status Committee's jurisprudence.
30. To this extent, in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge outlined that the Respondent shall be deemed liable for the payment of EUR 10,612.48, corresponding to the penalty fee described in clause 3 of the settlement agreement.
31. Finally, the Single Judge once again referred to the Players' Status Committee long-standing jurisprudence and established that no interest is due over penalty fees (*ne bis in idem*).
32. Therefore, the Single Judge concluded that the claim shall be partially accepted.

ii. Art. 12bis of the Regulations

33. In continuation, 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.
34. To this end, the Single Judge confirmed that the Claimant put the Respondent in default of payment of the amounts sought, which had fallen due form more than 30 days, and granted the Respondent with 10 days to cure such breach of contract.
35. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in

mind that this is the second offense 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.

36. In this connection, the Single Judge wished to highlight 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

37. Finally, taking into account the consideration the Regulations, the Single Judge referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with his 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.
38. 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.
39. 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.
40. 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.
41. At the end, the Single Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

d. Costs

42. 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.

43. 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.

IV. DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE

1. The claim of the Claimant, Tours FC, is partially accepted.
2. The Respondent, Aris FC, has to pay to the Claimant, the following amount:
 - EUR 10,612.48 as contractual penalty.
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, 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 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:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777