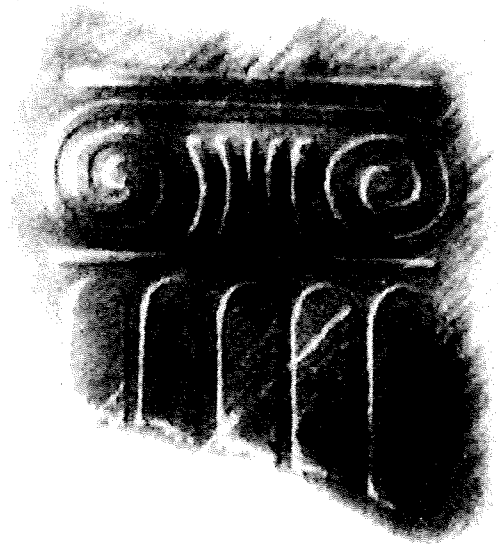


TAS / CAS

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Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Vegalta Sendai, Sendai, Japan

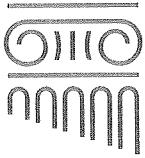
v.

PFC CSKA Moscow, Moscow, Russia

&

Fédération Internationale de Football Association, Zurich, Switzerland

CAS 2021/A/8306 - Lausanne, May 2022



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/8306 Vegalta Sendai v. PFC CSKA Moscow & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

in the arbitration between

Vegalta Sendai, Sendai, Japan

Represented by Mr Gorka Villar, Attorney-at-Law, Madrid, Spain

Appellant

1/ PFC CSKA Moscow, Moscow, Russia

Represented by Mr Denis Postnov, Legal Counsel, Moscow, Russia

First Respondent

and

2/ Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and by Ms Cristina Pérez González, Senior Legal Counsel

Second Respondent

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I. PARTIES

1. Vegalta Sendai (the “Appellant” or “Sendai”) is a professional Japanese football club affiliated with the Japan Football Association, which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”). The club is currently participating in the J1 League, which is the tier-1 league of Japanese football.
2. PFC CSKA Moscow (the “First Respondent” or “CSKA”) is a professional Russian football club affiliated with the Russian Football Union, which in turn is affiliated with FIFA. The First Respondent is currently participating in the Russian Premier League, which is the tier-1 league of Russian football.
3. FIFA (the “Second Respondent”) is the world governing body of football, based in Zurich, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the Single Judge of the Players’ Status Committee (the “FIFA PSC”) on 10 August 2021 (the “Appealed Decision”), the written submissions of the Parties and the evidence adduced. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain its reasoning.
5. In August 2018, the services of the Japanese professional football Player Takuma Nishimura (the “Player”) were transferred from Sendai to CSKA, and from the beginning of January 2020, the Player, who was then still under contract with CSKA, was loaned out to the Portuguese football club Portimonense Sporting Clube (“Portimonense”).
6. On 19 March 2020, Sendai, CSKA, Portimonense and the Player entered into a loan agreement entitled Professional Football Player Registration Sub-Loan and Loan Agreement (the “Loan Agreement”), which stated, *inter alia*, as follows:

“[...]”
WHEREAS:

i. CSKA is the owner of all the “Federative and Economic Rights” in respect of the PLAYER’s registration;

ii. The PLAYER is a temporarily registered professional football player with PORTIMOENSE on Loan transfer from CSKA pursuant to an employment

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contract registered with the Portuguese Football Federation;

iii. SENDAI wishes to temporary acquire the PLAYER'S registration pursuant to an employment contract (s) to be entered into between SENDAI and the PLAYER for the Loan Periods as defined herein;

[...]

v. The parties hereto, provided that the registration period of the Russian Football Union is closed at the execution date hereof, for the purpose of the Player's temporary registration with SENDAI have agreed a) to execute the PLAYER'S Sub-loan transfer from PORTIMONENSE to SENDAI until the end of the loan period pursuant to the initial transfer agreement between CSKA and PORTIMONENSE dated 8 January and b) to execute the PLAYER'S Loan transfer from CSKA to SENDAI.

[...]

1) CSKA consents to transfer on Sub-Loan from PORTIMONENSE to SENDAI, for the period commencing on the 20 March 2020 and ending on 30 June 2020 (hereinafter: the Loan period 1), the registration of the professional football player TAKUMA NISHIMURA to SENDAI.

2) Pursuant hereto PORTIMONENSE shall temporarily transfer the PLAYER's registration to SENDAI for the Loan Period 1 and fulfill all obligations to execute the PLAYER's temporary transfer to SENDAI according to applicable FIFA regulations.

3) In connection herewith, SENDAI does not have to pay to both CSKA and PORTIMONENSE any amount unless otherwise expressly agreed herein.

[...]

5) Following the Loan Period 1, the PLAYER shall recommence his registration with CSKA on 1 July 2020, and then shall be temporarily transferred to SENDAI for the period from 2 July 2020 until 1 January 2021 (Loan Period 2). Loan Period 1 and Loan Period 2 are together jointly referred to as the Loan Periods.

6) In case the PLAYER during the Loan Periods participates in less than 50% (Fifty percent) matches for SENDAI in the J-League sporting season 2020, provided that only the matches in which the PLAYER played 45 (Forty-five) or more minutes shall be taken into account, SENDAI shall pay CSKA a conditional transfer compensation in the amount of 100,000 (One hundred thousand) Euros NET, i.e. exclusive of any solidarity contributions, training compensations, taxes, levies or bank commissions, etc., no later than 31 January 2021.

7) The PLAYER's Sub-loan transfer to SENDAI for the Loan Period 1 is subject to the medical examination. SENDAI shall notify CSKA and PORTIMONENSE of the results of the medical examination immediately via email.

[...]

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12) During the Loan periods, SENDAI agrees and shall be the sole party responsible for payment of any remuneration (including but not limited to salary, possible prize monies, subsidies etc.) to the PLAYER according to the Employment Agreement (s) concluded between them.”

[...]”

7. In the spring of 2020, the FIFA TMS Department requested Sendai and CSKA to submit their respective positions with regard to a potential breach of Article 18bis (1) of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”), with regard to Clause 6 of the Loan Agreement and additionally, if established, with regard to the possible breach of Article 4 (3) of Annex 3 of the FIFA RSTP.
8. On 23 July 2020, the FIFA Disciplinary Committee (the “FIFA DC”) rendered its decisions (the “FIFA DC Decisions”) and found both Sendai and CSKA responsible for the infringement of the relevant provisions regarding third-party influence by entering into Clause 6 of the Loan Agreement. In addition, the FIFA DC decided that Sendai failed to provide mandatory information in TMS (Article 4 par. 3 of Annex 3).
9. The FIFA DC was, *inter alia*, of the “*firm opinion that [Clause 6] prevents Sendai from freely making a decision as to which players to select in a match with the aim of achieving the best result possible, given that Sendai is instigated to select a certain player because of the possible negative financial impact that not doing would involve.*”
10. The FIFA DC ordered Sendai to pay a fine of CHF 10,000, while CSKA was ordered to pay a fine of CHF 12,500, and both clubs, in application of Article 6 par. 1 (a) of the FIFA Disciplinary Code, were warned about their future conduct.
11. The FIFA DC Decisions did not set out any direct legal consequences *inter partes* between the two clubs with regard to the Loan Agreement.
12. By letter of 22 October 2020, CSKA asked Sendai why the Player “*has been not in the squad in last three matches.*”
13. On 30 October 2020, Sendai informed CSKA that the Player was injured and forwarded, *inter alia*, a copy of a medical certificate of the Player.
14. On 17 February 2021, Sendai and CSKA concluded a Player Transfer Agreement (the “Transfer Agreement”), under which the Player’s services were transferred from CSKA to Sendai on a definitive basis and without an unconditional transfer fee to be paid.
15. By letter of 19 March 2021, CSKA forwarded a letter to Sendai, which stated, *inter alia*, as follows:

“[...]

[The Loan Agreement] contain inter alia clause 6, which reads as follows:

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“6) In case the PLAYER during the Loan Periods participates in less than 50% (Fifty percent) matches for SENDAI In the J-League sporting season 2020, provided that only the matches in which the PLAYER played 45 (Forty-five) or more minutes shall be taken into account, SENDAI shall pay CSKA a conditional transfer compensation in the amount of 100,000 (One hundred thousand) Euros NET, i.e. exclusive of any solidarity contributions, training compensations, taxes, levies or bank commissions, etc., no later than 31 January 2021.”

Thus, the Player participated only in 39 % of matches of FC Vegalta Sendai in J-League sporting season 2020. Therefore, the conditional transfer compensation of 100,000 (one hundred thousand) Euros NET became due on 31 January 2021. However, PFC CSKA has not yet received the mentioned amount.

As you are certainly aware, both FC Vegalta Sendai and PFC CSKA were found to be in breach of Art. 18bis of FIFA Regulations on the Status and Transfer of Players (“RSTP”) by FIFA Disciplinary Committee (“FIFA DC”) by including this clause 6 into the Agreement. Nevertheless, the corresponding decisions of FIFA DC did not establish clause 6 of the Agreement to be invalid and/or void.

We consulted with experienced sports lawyers from the European Club Association, who concluded that even if the clause was considered to be in breach of Art. 18bis of the RSTP, this does not mean that it will be considered as “unlawful”. In that regard, clauses with similar nature as the clause 6 of the Agreement have been consistently held as valid by FIFA’s deciding bodies.

In connection herewith we propose you to resolve this situation amicably and conclude an addendum to the Agreement whereby the conditional transfer compensation is to be decreased to 75,000 (Seventy-five thousand) Euros NET. We are also ready to discuss a comfortable payment schedule. [...]

We kindly ask to send us your answer to this proposal within 10 (Ten) days as of the date of this letter by sending an email to [...]. If we do not receive your response within the mentioned time limit, we will have no other choice but to proceed with a formal claim to your club at FIFA deciding bodies.”

16. By letter of 25 March 2021, Sendai answered CSKA, *inter alia*, as follows:

“LOAN AGREEMENT concluded on March 19th 2020 clause 6 states following condition [...]

[H]as been known, the above statement has breached Art. 18bis of FIFA RSTP. Vegelta Sendai’s opinion is implementing article violate FIFA Rules is simple violation,

Following terms is been written in judgment between Vegalta Sendai and PFC CSKA on 23rd of July

“Should such infringements occur again in the future, the Committee would be left with no other option than to impose harsher sanctions on the Club.”

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Therefore, implementing violated article is repeat of violation, Vegalta Sendai cannot implement Loan Agreement clause 6.

Player has been injured on 3rd October, date came back from injury was 1st of December. During this period 11 games where held, player could not participate due to injury.

From the date reiterated to until injury, Player participated in every 14 games. Among them Player participated more than 45mins in 9 games. There was no doubt player was military strength of Vegalta Sendai.

Assuming participation went over 50% if there wasn't injury to player. This article designate player did not participate, even player was in the condition to participate in the game. Referring to 11 games Player was not in the condition to participate in the game Therefore, games held during injury period shouldn't be included in percentage. FIFA DC indicated [Contract 1] Clause 6 has violated Art. 18bis of FIFA RSTP. Following are statement from PFC CSKA.

“Clause 6 of [Contract 1] does not prohibit the Player to participate in a match against a particular club. This clause is aimed to protect the Player's right to participate in matches to maintain his sporting value”.

PFC CSKA insist, objective of this option is to guarantee the games for player and maintain the value of player. This objective was achieved until player carried an injury. If there was no injury by the end of season objective was possibly achieved.

From two point of view, Vegalta Sendai has no responsibility to make a payment.”

17. By letter of 26 March 2021 to Sendai, CSKA maintained its position regarding its claim setting a ten (10) day time limit for Sendai to remedy its default, with reference to the principle of *pacta sunt servanda* and referring to Article 12bis (3) of the Regulations on the Status and Transfer of Players (the “FIFA RSTP”).
18. Finally, by letter of 30 March 2021, Sendai responded, *inter alia*, that “It seems difficult to solve it if it goes on like this, so we recommend that the parties ask FIFA deciding bodies to solve it.”

B. Proceedings before the FIFA Players' Status Committee

19. On 8 April 2021, CSKA lodged a claim against Sendai before the FIFA PSC on the basis that the Player did not play at least 50% of the matches in the J-League in the 2020 sporting season, requesting the following:”

- 1) To establish that [Sendai...] shall pay to [CSKA] 100,000 (One hundred thousand) Euros NET plus a 5% interest per annum proportionately per diem from 1 February 2021 until the date of the effective entire payment.
- 2) To impose on [Sendai] an applicable sanction(s) pursuant to Art. 12bis (par. 4) of the RSTP.

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3) *To order that all costs in connection with these proceedings shall be borne by [Sendai].*”

20. In support of its claim, CSKA submitted, *inter alia*, that the wording of Clause 6 of the Loan Agreement was clear and that the same contract did not contain any provisions by which the parties agreed to exclude from the calculation the matches missed by the Player due to a possible injury or suspension.
21. CSKA was moreover of the opinion that any argument related to whether the Player would have been fielded had he not been injured was hypothetical.
22. In its reply to the claim, Sendai referred to the Player’s injury during the season in question. Furthermore, it submitted, *inter alia*, that the obligation (to field the Player) became null as it was impossible to be complied with according to the principle of *impossibilium nulla obligatio est*.
23. Equally, Sendai argued that in line with Article 119 of the Swiss Code of Obligations (the “SCO”), it became impossible to comply with the payment obligation on account of the ulterior impossibility (arising from the Player’s injury), for which the Appellant bore no fault or negligence.
24. Consequently, Sendai requested that the claim be dismissed.
25. Having established its competence to deal with the matter, the FIFA PSC then concluded that since the claim was filed in April 2021, the February 2021 edition of the FIFA RSTP was applicable to the matter at hand.
26. The FIFA PSC then referred to the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “FIFA Procedural Rules”) and recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.
27. With regard to the substance of the matter, the FIFA PSC took note of the fact that the Parties were disputing whether the payment obligation set out in Clause 6 of the Loan Agreement had been triggered or not.
28. In this respect, Sendai argued that under Article 119 of the SCO, such payment obligation could not be performed for circumstances beyond its control, viz. the injury of the Player. Furthermore, it was not disputed that the Player had played less than 50% of the matches in the relevant season for its team, but Sendai instead argued that the participation percentage should be calculated based on the matches where the Player had in fact been available/eligible to play, thus excluding the games where he was, for instance, injured.
29. However, the FIFA PSC observed that the contractual clause at stake was clear and unequivocal in the sense that no exception was included therein in the calculation of matches. Thus, no interpretation was needed, in line with the principle of *in claris non*

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fit interpretatio, in order to conclude that the matches to be considered were all those played in the relevant season, and not only those where the Player was available to play.

30. With that in mind, the FIFA PSC highlighted, *inter alia*, that if the parties had wanted the contingent fee to be payable upon calculation of the Player's eligible matches, they should have explicitly stated so. As the Parties had failed to do so, the FIFA PSC could only conclude that the matches to be considered were all those played in the relevant season and not only those where the player was available to play.
31. Based on the above, the FIFA PSC was comfortable to set aside Sendai's line of argumentation that it was affected by an unpredictable circumstance beyond its sphere of control as the possibility that a player might be injured during the course of a season certainly is not unforeseeable.
32. In view of these circumstances, the FIFA PSC found that the Player had indeed played less than 50% of the matches for Sendai of the relevant season, hence triggering the contingent payment under the Loan Agreement.
33. In view of the above, the FIFA PSC established that Sendai, in accordance with the principle of *pacta sunt servanda*, was liable to pay to CSKA the contractually agreed contingent fee of EUR 100,000.
34. Furthermore, and in line with its constant practice, the FIFA PSC decided to award CSKA interest at the rate of 5% p.a. as from one day after the due date and until the date of effective payment.
35. With regard to the consequences, the FIFA PSC took note of the fact that CSKA had duly proceeded in accordance with Article 12bis (3) of the FIFA RSTP, as CSKA had put Sendai in default of payment of the relevant amount while setting a time limit of ten (10) days to remedy the default.
36. The FIFA PSC then referred to Article 12bis (2) of the FIFA RSTP, 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 Article 12bis (4) of the same regulations. In this regard, the FIFA PSC established its competence by virtue of the said provision to impose sanctions on Sendai and thus decided to impose a warning on the club.
37. Furthermore, the FIFA PSC decided that, in the event that Sendai does not pay the amount due to CSKA within 45 days from the moment when the latter communicates the relevant bank details to Sendai, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods will be applicable to Sendai in accordance with Article 24bis (2), (4) and (7) of the regulations.
38. On 10 August 2021, the FIFA PSC rendered the Appealed Decision and decided, *inter alia*, that:

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- “1. *The claim of [CSKA] is accepted.*
2. *[Sendai] has to pay to [CSKA], the following amount:*
 - *EUR 100,000 as outstanding payment plus 5% interest p.a. as from 1 February 2021 until the date of effective payment.*
3. *A warning is imposed on [Sendai].*
4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
5. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*
 1. *[Sendai] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.*
6. *The consequences shall only be enforced at the request of [CSKA] in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.*
7. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid by [Sendai] to FIFA.*

39. On 6 September 2021, the grounds of the Appealed Decision were communicated to the two clubs.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 25 September 2021, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”) against the Appealed Decision.
41. On 27 October 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
42. On 6 and, respectively, 7 December 2021, the Respondents filed their Answers in accordance with Article R55 of the CAS Code.

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43. On 7 December 2021, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

44. On 10, 13 and 14 December 2022 respectively, the Parties informed the CAS Court Office that no hearing was needed and that the Sole Arbitrator was allowed to render an arbitral award based on their written submissions.
45. By letter of 16 December 2021, the Parties were informed that the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions without the need to hold a hearing, which was in line with the preference of the Parties.
46. On 16 February 2022, the CAS Court Office invited the Parties to sign and return the Order of Procedure.
47. On 16, 17 and 22 February 2022 respectively, the Parties signed and returned the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

48. In its Appeal Brief, the Appellant requested the CAS:

- I. To confirm that the present appeal is admissible, and CAS has jurisdiction to rule on the merits.*
- II. To review the present case as to the facts and the law, in compliance with Article R57 of the Code of Sports-related Arbitration.*
- III. To set aside [the Appealed Decision], annulling all points of its findings [Section IV of the Appealed Decision, points from I. to 7 (both included), to be annulled.]*
- IV. To establish that the costs of Arbitration procedure should be borne by the Respondents.*
- V. To grant to the Appellant a contribution towards its legal expenses, incurred in connection with these arbitral proceedings, not less than 5.000 CHF."*

49. The Appellant's submissions, in essence, may be summarised as follows:

- By decisions of the FIFA Disciplinary Committee, both Sendai and CSKA were sanctioned, *inter alia*, for a violation of Article 18bis (1) of the FIFA RSTP, considering that Clause 6 of the Loan Agreement violated the rules concerning third party influence.

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- As such, Clause 6 of the Loan Agreement is null and void as it is unlawful and cannot be enforced.
- In an ordered legal system, it is inconsistent if, on the one hand, one of its norms establishes that a behaviour is prohibited and sanctions it while, on the other hand, the same system, based on another norm or legal principle, recognises the same behaviour as valid and effective. This should not be the case.
- In the present case, the FIFA RSTP does not establish the legal consequences of a contravention of Article 18bis (1) of the same regulations, and this gap therefore needs to be filled with the application of Swiss law in order to be able to avoid the inconsistencies that the exclusive application of the FIFA RSTP without any complementary principles can cause.
- Pursuant to Article 19 of the SCO “*1. The terms of a contract may be freely determined within the limits of the law. 2. Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy.*”
- However, such contractual freedom is not without limits since Article 20 refers to the nullity of contracts or their clauses, stating that “*1. A contract is void if its terms are impossible, unlawful or immoral. 2. However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.*”
- As Article 18bis (1) of the FIFA RSTP is a mandatory and prohibitive rule, any agreement concluded by the two clubs in contravention there should be considered null and void in application of Article 19 (2) of the SCO.
- This interpretation is the only possible way to provide the applicable law with a systematic and coherent interpretation and to avoid the appearance of severe antinomies.
- Furthermore, and in line with the principle of *Ad impossibilia nemo tenetur*, a contractual obligation is null and void due to the so-called objective impossibility, if the performance of such obligation is already impossible at the time of the conclusion of the contract or, in time, becomes objectively impossible to perform by the party committed to do so.
- This legal principle is embodied in Article 119 of the SCO.
- In order for the conditions of Article 119 of the SCO to be met, the impossibility of fulfilling the contractual obligations must occur after the date of the conclusion of the contract and must be unrelated to any liability of the debtor.

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- In the present case, Sendai was faced with a supervening impossibility, not attributable to it, which prevented it from fielding the Player in at least 50% of the J-League matches in the 2020 season for 45 minutes or more in each of them, which means that Article 119 of the SCO is applicable, leaving Sendai exonerated from the payment of the amount claimed by CSKA based on Clause 6 of the Loan Agreement.
- Since his registration with Sendai, the Player was one of the most relevant players of the team.
- Out of the total of 20 matches in which the Player was fit to play without injury and without having to serve any disciplinary sanctions, the Player played in all 20 matches and in at least 13 of them more than 45 minutes, which is equivalent to 65% of the total number of matches in which the Player was fit to play.
- The Player missed some of the J-League matches in the 2020 season only for injury reasons and based on the medical decision of, *inter alia*, the team doctor.
- Therefore, and in any case, it must be the number of matches in which the Player had the possibility to participate that should form the basis for the calculation of the percentage of participation in accordance with Clause 6 of the Loan Agreement.
- With regard to the content of Clause 6 of the Loan Agreement, the FIFA PSC was wrong in deciding on the intention of the two clubs based on what was expressly agreed upon in the said contract without taking into consideration other fundamental elements.
- As such, and in accordance with the principle of *pacta sunt servanda*, in the present case, by reference to Swiss law and Article 119 of the SCO, the appeal must be upheld on the grounds that the performance has become impossible and therefore the obligation contained in Clause 6 of the Loan Agreement was extinguished *ex lege* by becoming impossible.
- In any case, and if Article 119 of the SCO is not found applicable to this dispute, the rules of contract interpretation must be applied, no matter whether the wording of the provision is clear or not.

B. The Respondents

50. In its Answer, the First Respondent requested the CAS to rule as follows:

- i. *The appeal submitted by [Sendai] against [CSKA] and FIFA is dismissed in full.*
- ii. *[The Appealed Decision] is upheld.*
- iii. *The costs of the arbitration are borne by [Sendai] in their entirety.*

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iv. *[Sendai] is ordered to reimburse [CSKA] its legal costs in the amount of CHF 10 000 (Ten thousand Swiss Francs)."*

51. The First Respondent's submissions, in essence, may be summarised as follows:
- It is correct that the FIFA Disciplinary Committee found CSKA, together with Sendai, to be in breach of Article 18bis of the FIFA RSTP in relation to Clause 6 of the Loan Agreement.
 - Clause 6 is to be understood as a condition precedent in the sense of Article 151 of the SCO.
 - In this regard, it must be stressed that the principle of contractual freedom is a fundamental legal principle of Swiss law on which the decisions of the FIFA decision-making bodies are based.
 - In order to decide whether Clause 6 of the Loan Agreement is valid and enforceable, it must be analysed whether such a clause is lawful and does not entail an excessive commitment for Sendai.
 - CAS jurisprudence (CAS 2018/A/6027) has already decided that *"Article 18bis is not concerned with the issue of the validity and/or the binding nature of the contractual provisions enabling a party to an agreement to exercise undue influence on its counter party-football club. [...] It is perfectly possible that said contractual agreed provisions are enforceable under a set of applicable (civil law) rules and at the same time fall foul of Article 18bis of the FIFA Regulations (which at any case does not and cannot determine whether they are illegal, invalid or unenforceable.) [...]"*
 - Moreover, and also in line with CAS jurisprudence (CAS 2020/A/7158), an infringement of Article 18bis of the FIFA RSTP presupposes, *inter alia*, a limitation of a club's independence and that such limitation undermines the integrity of the relevant competition in the sense of Article 2(g) of the FIFA Statutes.
 - Clause 6 of the Loan Agreement did not affect or limit Sendai's independence to the extent that the integrity of a competition could be at risk.
 - As such, and even if Clause 6 of the Loan Agreement was considered to be in breach of Article 18bis of the FIFA RSTP, this does not mean that it is to be considered as *"unlawful"*.
 - Moreover, the same clause has been consistently held valid by FIFA's decision-making bodies.
 - Moreover, and in line with the Swiss Federal Tribunal, Clause 6 of the Loan Agreement does not entail an excessive commitment from Sendai as the said club was not subject to CSKA's arbitrariness, did not give up its financial freedom and did not curtail it to such an extent that the foundation of its financial existence was jeopardised. No evidence to the contrary has been provided by Sendai.

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- As such, Clause 6 of the Loan Agreement is enforceable, valid and binding upon the Parties.
 - The performance of the said clause does not depend upon the Player's injury, and whether or not the Player was injured during his stay with Sendai in the 2020 season is irrelevant with regard to Sendai's payment obligation pursuant to Clause 6 of the Loan Agreement.
 - The wording of the clause, which was agreed by the two clubs under the principle of contractual freedom, is clear and specific and does not state that any matches should be excluded from the calculation of the 50% participation. Sendai never suggested any other meaning before signing the Loan Agreement.
 - The wording of Clause 6 of the Loan Agreement leaves no room for any other interpretation.
 - In any case, Sendai's assumption that the Player, had he not been injured, would have played at least 50% of the matches in question, is purely hypothetical.
52. In its Answer, the Second Respondent requested the CAS to issue an award on the merits:"
- (a) *Rejecting the reliefs sought by [Sendai];*
 - (b) *Confirming the Appealed Decision; and*
 - (c) *Ordering [Sendai] to bear the full costs of these arbitration proceedings."*
53. The Second Respondent's submissions, *in essence*, may be summarised as follows:
- Sendai mainly disputes having to pay any amount pursuant to Clause 6 of the Loan Agreement for several reasons, mainly its alleged nullity and the alleged non-fulfilment of the condition set out in the said clause.
 - As these issues pertain to the strictly horizontal dispute between Sendai and CSKA, FIFA leaves it to the Sole Arbitrator to determine whether or not such an amount is due by Sendai.
 - In any case, should the amount in question in fact be due, Sendai does not dispute having failed to pay such an amount to CSKA or that Article 12bis of the FIFA RSTP is applicable based on such failure.
 - As CSKA fully complied with the formalities foreseen in Article 12bis of the said regulations, the FIFA PSC was entitled to impose a warning on the Appellant.
 - Sendai does not specifically contest the disciplinary sanction in its appeal to the CAS, but only generically requests the annulment of the Appealed Decision.

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- For Article 12bis of the FIFA RSTP to be applied, a club must a) have delayed a due payment for more than 30 days without a *prima facie* contractual basis, and b) the creditor must have put the debtor in default in writing and have granted a deadline of at least ten days for the debtor to comply with its financial obligations.
- Both conditions have been met in the present case as the conditional transfer compensation became due on 31 January 2021 and has not yet been paid to CSKA, and because CSKA, on 19 March 2021, put Sendai in default, granting the latter a ten-day deadline to comply with the payment of the said conditional transfer compensation.
- Based on the above, the FIFA PSC correctly imposed a proportionate sanction on Sendai in accordance with Article 12bis (4) of the FIFA RSTP, which is in fact the less severe of the possible sanctions set out in the said article, and noting that Sendai was not a repeat offender.

V. JURISDICTION

54. Article R47 of the CAS Code provides, *inter alia*, as follows:

“An 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.”

55. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 (1) of the FIFA Statutes. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

56. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

VI. ADMISSIBILITY

57. Article R49 of the CAS Code provides, *inter alia*, as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.[...]”

58. It follows from Article 58 of the FIFA Statutes (2020 edition), *inter alia*, that:

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“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.

59. The grounds of the Appealed Decision were notified to the Appellant on 6 September 2021, and the Appellant’s Statement of Appeal was lodged on 25 September 2021, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 58 of the FIFA Statutes, which is not disputed.
60. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
61. It follows that the appeal is admissible.

VII. APPLICABLE LAW

62. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

63. Article 57 (2) of the FIFA Statutes determines the following:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.”

64. The Sole Arbitrator further notes that Clause 15 of the Loan Agreement states as follows:

“This Agreement is subject to and governed by and in accordance with the FIFA Regulations. Any and all disputes will be handled by the competent FIFA body. In the event that FIFA shall not be competent to hear any particular dispute arising out of or in connection with this Agreement, such dispute shall be finally settled in accordance with the Rules of the Code of Sports-related Arbitration of the Court of Arbitration for Sport (CAS), located in Lausanne, Switzerland, the language of the proceedings shall be English, and the decision of the CAS shall be final and binding on the parties hereto.”

65. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

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VIII. MERITS

66. Initially, the Sole Arbitrator notes that the factual circumstances pertaining to this dispute are undisputed by the Parties.
67. In rendering this award, the Sole Arbitrator has therefore taken into account the following non-exhaustive list of factors and considerations:
- On 19 March 2020, Sendai and CSKA, among others, entered into the Loan Agreement regarding the loan of the Player, which agreement stated, *inter alia*, as follows in Clause 6:

“In case the PLAYER during the Loan Periods participates in less than 50% (Fifty percent) matches for SENDAI In the J-League sporting season 2020, provided that only the matches in which the PLAYER played 45 (Forty-five) or more minutes shall be taken into account, SENDAI shall pay CSKA a conditional transfer compensation in the amount of 100,000 (One hundred thousand) Euros NET, i.e. exclusive of any solidarity contributions, training compensations, taxes, levies or bank commissions, etc., no later than 31 January 2021.”
 - The Player ended up participating in less than 50% of Sendai’s matches in the J1 League in the sporting season 2020, however, according to Sendai, the Player was not fit to participate in 11 matches of the said season due to an injury.
 - On 23 July 2020, the FIFA DC rendered the FIFA DC Decisions and found Sendai and CSKA in breach of Article 18bis (1) of the FIFA RSTP since the said clause was found to prevent *Sendai from freely making a decision as to which players to select in a match with the aim of achieving the best result possible, given that Sendai is instigated to select a certain player be-cause of the possible negative financial impact that not doing would involve.*
 - Both clubs were fined by the FIFA DC and were warned about their future conduct in the same regard.
 - Following CSKA’s claim against Sendai for the payment of EUR 100,000 pursuant to Clause 6 of the Loan Agreement, the FIFA PSC rendered the Appealed Decision, which read, *inter alia*, as follows:”
 1. *The claim of [CSKA] is accepted.*
 2. *[Sendai] has to pay to [CSKA], the following amount:*
 - *EUR 100,000 as outstanding payment plus 5% interest p.a. as from 1 February 2021 until the date of effective payment.*
 3. *A warning is imposed on [Sendai].. [...]”.*
68. While it is not disputed that Sendai and CSKA freely decided to enter into the Loan Agreement, the two clubs now disagree on whether Clause 6 of the same agreement is

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to be considered null and void and unlawful as a result of the FIFA DC Decision, and consequently, not enforceable.

69. Furthermore, and in case the said clause is not considered null and void and unlawful, the two clubs are in disagreement with regard to the alleged payment obligation of Sendai since the latter submits that, *inter alia*, the conditional transfer compensation set out in Clause 6 of the Loan Agreement never fell due as a result of the Player's injury.

70. Thus, the main issues to be resolved by the Sole Arbitrator are:

a) Is Clause 6 of the Loan Agreement enforceable regardless of the FIFA DC Decisions?

and in the affirmative;

b) Did conditional transfer compensation pursuant to Clause 6 of the Loan Agreement fall due?

A. Is Clause 6 of the Loan Agreement enforceable regardless of the FIFA DC Decisions?

71. To reach a decision on this issue, the Sole Arbitrator has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the information and evidence gathered during the proceedings before the FIFA DC and the FIFA PSC.

72. Initially, the Sole Arbitrator notes that the FIFA DC Decisions are not under appeal and thus not a part of these proceedings, and the Sole Arbitrator is therefore not in a position to consider whether Sendai and CSKA did in fact infringe Article 18bis (1) of the FIFA RSTP when entering into Clause 6 of the Loan Agreement. This has already been established by the FIFA DC.

73. As mentioned by the Panel in CAS 2020/A/7417, it seems clear "*that the main purpose of article 18bis of the [FIFA RSTP] is to preserve the integrity of the competition as a whole by aiming at strengthening the autonomy of clubs in diverse aspects, including in relation to the transfer of players*".

74. However, and with regard to the question of contractual freedom, the Sole Arbitrator notes that Article 19 and Article 20 of the SCO have the following wording:

"Article 19:

1. The terms of a contract may be freely determined within the limits of the law.

2. Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy.

Article 20:

1. A contract is void if its terms are impossible, unlawful or immoral.

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2. However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.”

75. The CAS has confirmed the application of this principle of contractual freedom to football contracts, including excessive self-commitment, as being contrary to this principle (CAS 2015/A/4042).
76. As such, and in general, when negotiating, *e.g.* a transfer agreement governed by Swiss law, the two clubs are allowed to freely set the essential conditions, the nature and the non-essential elements of the contract they wish to enter into, without being subject to any limitations or conditions, except against entering into an unlawful contract (i.e. one that is against the law, moral standards or customary practice).
77. However, it also follows, *inter alia*, from Article 60 (2) of the Swiss Civil Code (the “SCC”) that a private association legally established under Swiss law, like FIFA, has the power to self-govern and to lay down its own rules in articles, which must be done in writing and indicate the objects of the association, its resources and its organisation.
78. As such, FIFA is entitled to lay down its own rules and regulations, but these are subject to and must observe Swiss law, and any prohibitions like those set out in Article 18bis of the FIFA RSTP must be understood and interpreted as an exception to the principle of contractual freedom.
79. In this regard, the Sole Arbitrator notes first of all that the FIFA RSTP does not deal with the possible consequences, *inter partes*, between contractual parties in case a contractual provision is considered to be in breach of Article 18bis of the same regulations.
80. Moreover, the Sole Arbitrator notes that the Appealed Decision apparently did not take the FIFA DC Decisions into consideration when deciding on CSKA’s claim against Sendai.
81. Furthermore, the Sole Arbitrator notes that the Panel in CAS 2018/A/6027 found that “Article 18bis is not concerned with the issue of the validity and/or the binding nature of the contractual provisions enabling a party to an agreement to exercise undue influence on its counter party-football club. This is a matter to be settled under the applicable law, which is the task of the FIFA Players’s Status Committee when called to examine the validity and the binding nature of the same contractual provisions in the context of a contractual dispute that is brought before the FIFA PSC. It is perfectly possible that said contractual agreed provisions are enforceable under a set of applicable (civil law) rules and at the same time fall foul of Article 18bis of the FIFA Regulations (which at any case does not and cannot determine whether they are illegal, invalid or unenforceable.”
82. The Sole Arbitrator concurs with the Panel in CAS 2018/A/6027 and is thus satisfied that Clause 6 of the Loan Agreement is not to be considered *per se* “unlawful”, based alone on the FIFA DC Decisions.

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83. Moreover, the Sole Arbitrator concurs with CSKA that the said clause does not entail an “*excessive commitment*” for Sendai, which could have made the clause unenforceable.
84. The Sole Arbitrator notes in this regard, and with reference to 4A_558/2011 of 27 March 2012 from the Swiss Federal Tribunal, that Clause 6 of the Loan Agreement did not make Sendai subject to CSKA’s arbitrariness and that Sendai did not give up its financial freedom or curtailed it to such an extent that the foundations of its financial existence were jeopardised.
85. Based in the above, the Sole Arbitrator finds no legal grounds for setting aside Clause 6 of the Loan Agreement as null and void and unlawful or for any other reasons.

B. Did the conditional transfer compensation pursuant to Clause 6 of the Loan Agreement fall due?

86. The Sole Arbitrator notes that since Clause 6 of the Loan Agreement is considered to be valid and in force, he now has to address whether the conditional transfer compensation set out in this provision fell due by the end of the 2020 sporting season of the J1 League.
87. While the two clubs do not dispute that the Player did in fact participate “*in less than 50% matches for Sendai in the J-League sporting season 2020*”, Sendai, on the one side, submits that its payment obligation is null and void in accordance with the legal principle of *ad impossibilia nemo tenetur* as its performance of the contractual obligation, i.e. the fielding of the Player, became in time objectively impossible due to the Player’s injury, over which Sendai had no control. This principle is further embodied in Article 119 of SCO. In the alternative, Sendai submits that it should be the number of matches in which the Player had the possibility to participate that should form the basis for the calculation of the percentage of participation in accordance with Clause 6 of the Loan Agreement, which would bring the participation percentage well above 50%.
88. CSKA, on the other side, submits that whether or not the Player was injured during his stay with Sendai in the 2020 sporting season is irrelevant with regard to the calculation of the percentage of matches in which he did in fact participate and, by extension, irrelevant with regard to the payment obligation of the conditional transfer compensation, which fell due when the Player did not participate in at least 50% of the matches in the J1 League in the said sporting season. The wording of the clause is clear and specific, and it was never suggested by Sendai before the signing of the Loan Agreement that any matches could possibly be excluded when calculating the percentage of the matches in which the Player would eventually have participated.
89. With regard to the possible application of the legal principle of *ad impossibilia nemo tenetur* and Article 119 (1) of the SCO, which reads “*An obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor*”, the Sole Arbitrator first of all is not convinced that Clause 6 of the Loan Agreement does in fact set out a contractual obligation for Sendai to field

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the Player in a certain number of matches during the 2020 sporting season, for which reason the question of whether such an alleged obligation was eventually *made impossible by circumstances not attributable to the obligor* is of no relevance to this dispute.

90. Pursuant to the Loan Agreement, which was signed in March 2020, the Player was loaned for free from CSKA to Sendai for the 2020 sporting season without the two clubs agreeing anything about the contractual future of the Player for the following season(s). As such, the Sole Arbitrator understands that the said clause was agreed on as a sort of incentive for Sendai to field the Player in order to “safeguard” or even “contribute” to the actual and future value of the Player as it is considered important for a player to play regularly.
91. In case the Player, for any reason and as it happened, was eventually fielded *in less than 50% matches for Sendai in the J-League sporting season 2020*, the conditional transfer compensation would fall due, in which situation Sendai would in fact be obligated to pay the agreed amount of EUR 100,000 as a sort of loan fee.
92. Further on, and with regard to the alleged objective impossibility for Sendai to field the Player in a sufficient number of matches due to the Player’s injuries, the Sole Arbitrator notes that pursuant to the information submitted by Sendai, there seem to be at least five matches in the period from July 2020 until September 2020 in which the Player was fielded but did not play at least 45 minutes of each match, even if the Player was not injured at that time.
93. As such, the Sole Arbitrator is not convinced that the alleged objective impossibility was not, at least in part, attributable to Sendai at all.
94. Based on the above, the Sole Arbitrator does not agree with Sendai that the club’s payment obligation pursuant to Clause 6 of the Loan Agreement is to be considered null and void due to Sendai’s alleged objective impossibility to fulfil its alleged obligation.
95. With regard to the actual meaning of the said clause, the Sole Arbitrator agrees with the two clubs that Clause 6 of the Loan Agreement must be interpreted in accordance with the principles of Swiss law in order to decide this matter.
96. In this connection, the Sole Arbitrator notes that Article 18 of the SCO stipulates as follows:

“When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.”
97. The Sole Arbitrator furthermore observes that this is in line with the consistent CAS jurisprudence on how to interpret contractual clauses, which he fully endorses:

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“According to the interpretation given to this article by CAS jurisprudence, “(u)nder this provision, the parties’ common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (Winiger, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (Winiger, op. cit., n. 26 ad art. 18 CO; Wiegand, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger, op. cit., n. 33, 37 and 134 ad art. 18 CO; Wiegand, op. cit., n. 29 and 30 ad art. 18 CO)” (CAS 2005/A/871, pg. 19, para. 4.29).

By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party’s declaration must be given the sense its counterparty can give to it in good faith (‘Treu und Glauben’: WIEGAND W., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124 III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party” (CAS 2005/A/871, pg. 19, para. 4.30).” (CAS 2008/A/1518, paras 46-47 of the abstract published on the CAS website.)”

98. Based on the above and on the wording of the said clause, which reads “*matches for Sendai in the J-League sporting season 2020*”, the Sole Arbitrator, on the basis of a good faith interpretation, finds no basis for concluding that it was the mutual intentions of the two clubs, when signing the Loan Agreement, that only matches in which the Player had a possibility to be fielded should be included when assessing the percentage of matches in which the Player ended up being fielded for at least 45 minutes.
99. The Sole Arbitrator notes in this regard that he finds that “*matches for Sendai in the J-League sporting season 2020*”, as stated in the said clause, most naturally must be understood as referring to all matches in the J1 League during the season in question.
100. Moreover, the Sole Arbitrator notes that the risk of a player suffering from injuries during a season is something both clubs must have been aware of when signing the Loan Agreement, and it was therefore up to Sendai to make sure that the alleged exemption was set out clearly in the Loan Agreement if so intended.
101. Even if Sendai did not have any influence on the Player being injured during the 2020 season, the Sole Arbitrator finds that Sendai is the closest party to bear the risk for not

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being able to field the Player in several matches, not least taking into account that CSKA did not have any influence at all on the Player during his stay with Sendai.

102. Based on that, the Sole Arbitrator agrees with CSKA that whether the Player was injured during the 2020 sporting season is irrelevant with regard to Sendai's conditional payment obligation pursuant to Clause 6 of the Loan Agreement.
103. As such, and as it is undisputed that the Player did not participate in at least 50% of Sendai's matches in the J1 League during the 2020 season, the Sole Arbitrator concurs with the FIFA PSC that Sendai, in accordance with the principle of *pacta sunt servanda*, is liable to pay to CSKA the contractually agreed conditional transfer compensation in the amount of EUR 100,000.
104. Furthermore, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the interest rate and, therefore, confirms that CSKA is entitled to receive interest on the said amount at the rate of 5% p.a. from 1 February 2021 until the date of effective payment.
105. With regard to the warning imposed on Sendai in the Appealed decision, and thus also with regard to the application of Article 12bis of the FIFA RSTP, the Sole Arbitrator notes that Sendai in fact does not dispute its failure to pay to CSKA the conditional transfer compensation, which fell due on 31 January 2021 pursuant to Clause 6 of the Loan Agreement.
106. Moreover, Sendai does not dispute that it was in fact put in default by CSKA with regard to the outstanding amount and was granted a deadline of at least ten days to comply with its payment obligation.
107. As such, the Sole Arbitrator agrees with FIFA that the conditions for applying Article 12bis of the FIFA RSTP have been met, and the Sole Arbitrator therefore finds no legal grounds for setting aside the warning imposed on Sendai, noting at the same time that such a warning is in fact the less severe of the possible sanctions set out in the said article.
108. Finally, and for the sake of good order, the Sole Arbitrator notes that Sendai did not raise any specific arguments against the ban from registering any new players which will be imposed in case the club fails to pay the amounts due within the prescribed deadline. As such, the Sole Arbitrator finds no reason not to confirm this part of the Appealed Decision, as well.

IX. COSTS

109. Article R64.4 of the CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs 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

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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.”

110. Article R64.5 of the CAS 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 re-sources of the parties.”

111. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne by the Appellant in their entirety.

112. Furthermore, as a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Taking into account that FIFA was not represented by outside counsel, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondent’s legal fees in the amount of CHF 4,000 (four thousand Swiss francs), while the Second Respondent must bear its own legal fees and expenses.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 September 2021 by Vegalta Sendai against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 10 August 2021 is dismissed.
2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 10 August 2021 is confirmed.
3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by Vegalta Sendai.
4. Vegalta Sendai is ordered to pay to PFC CSKA Moscow a total amount of CHF 4,000 (four thousand Swiss francs) as a contribution towards its legal fees and expenses incurred in connection with these arbitration proceedings.
5. The Fédération Internationale de Football Association shall bear its own legal fees and expenses incurred in connection with these arbitration proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 23 May 2022

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator