

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

Passed on 6 October 2020,

regarding a contractual dispute concerning the player Dylan Felipe Borrero Caicedo

**BY:**

**Geoff Thompson** (England), Single Judge of the PSC

**CLAIMANT:**

**INDEPENDIENTE SANTA FE, Colombia**

**RESPONDENT:**

**CLUBE ATLÉTICO MINEIRO, Brazil**

Represented by Mr. Breno Tannuri

## I. FACTS OF THE CASE

1. On 5 January 2020, the Colombian club, Independiente Santa Fe (hereinafter: *Claimant*), and the Brazilian club, Clube Atlético Mineiro (hereinafter: *Respondent*), signed a transfer agreement (hereinafter: *the contract*) for the permanent transfer of the player Dylan Felipe Borrero Caicedo (hereinafter: *the player*).
2. In accordance with the contract, the Respondent undertook to pay to the Claimant *inter alia* EUR 1,000,000, as follows:
  - 1<sup>st</sup> instalment: EUR 300,000;
  - 2<sup>nd</sup> instalment: EUR 200,000 on 31 January 2020;
  - 3<sup>rd</sup> instalment EUR 100,000 on 28 February 2020;
  - 4<sup>th</sup> instalment: EUR 100,000 on 31 March 2020;
  - 5<sup>th</sup> instalment: EUR 100,000 on 30 April 2020;
  - 6<sup>th</sup> instalment: EUR 100,000 on 31 May 2020; and
  - 7<sup>th</sup> instalment: EUR 100,000 on 30 June 2020.
3. Additionally, in accordance with clauses 3.2 and 3.3. of the contract, the parties respectively agreed upon the following:
  - If a payment was delayed for more than 15 days, a penalty of 5% on the amount due would apply;
  - If a payment was delayed for more than 60 days, a penalty of 10% on the amount due would apply.
4. By correspondence dated 1 July 2020, the Claimant put the Respondent in default of payment of EUR 645,000, broken down as follows:
  - EUR 400,000, corresponding to the instalments of January, February, March and April 2020, plus EUR 40,000 as penalty fee of 10% on the amount of EUR 400,000, as more than 60 days had elapsed as of the due date of the respective instalments;
  - EUR 100,000, corresponding to the instalment of May 2020, plus EUR 5,000 as penalty fee of 5% on the amount of EUR 100,000, as more than 15 days had elapsed as of the due date of said instalment;
  - EUR 100,000, corresponding to the instalment of June 2020.
5. The Claimant granted the Respondent with a deadline of 12 days to remedy its default.
6. On 24 July 2020, and amended on 28 July 2020, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay overdue payables in the amount of EUR 645,000, broken down as follows:

- EUR 400,000, corresponding to the instalments of January, February, March and April 2020, plus EUR 40,000 as penalty fee of 10% on the amount of EUR 400,000, as more than 60 days had elapsed as of the due date of the respective instalments;
  - EUR 100,000, corresponding to the instalment of May 2020, plus EUR 5,000 as penalty fee of 5% on the amount of EUR 100,000, as more than 15 days had elapsed as of the due date of said instalment;
  - EUR 100,000, corresponding to the instalment of June 2020.
7. The Claimant further asked to be awarded interest of 5% interest *p.a.* on the outstanding amounts as of the due dates until the date of effective payment.
8. The Respondent, for its part, did not contest that it owed the Respondent the amounts sought, but argued that the fine established in the contract is disproportionate, as it is "*vague and arbitrary*".
9. In addition, the Respondent argued that in accordance with the principle of *non ultra petita*, as the Claimant allegedly did not request interest, these could not be awarded. Equally, the Respondent argued that since the Claimant did request for the imposition of sanctions under art. 12bis, these could not be imposed.
10. The request for relief of the Respondent were as follows:

*"FIRST – To REJECT the Statement of Claim in its entirety; and  
SECOND – To order the Claimant to bear all FIFA PSC administrative and procedural fees".*

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

11. First of all, the Single Judge of the Players' Status Committee (hereinafter: *the Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 24 July 2020. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition June 2020; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
12. Subsequently, the Single Judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and par. 4 in conjunction with art. 22 lit. f of the Regulations on the Status and Transfer of Players (edition October 2020) he is competent to deal with the present matter, which concerns a dispute between two clubs affiliated to different associations, i.e. a Colombian club and a Brazilian club.
13. Furthermore, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1

and par. 2 of the Regulations on the Status and Transfer of Players (edition October 2020), and considering that the present claim was lodged on 24 July 2020, the June 2020 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

14. The competence of the Single Judge and the applicable regulations having been established, the Single Judge entered into the substance of the matter. 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.
15. Having said this, the Single Judge acknowledged that the Claimant and the Respondent signed a transfer agreement, in accordance with which the Claimant was entitled, *inter alia*, to receive from the Respondent EUR 1,000,000 in several instalments.
16. The Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards it in the total amount of EUR 645,000 corresponding to the instalments due between January and June 2020 (i.e. EUR 600,000), as well as contractual penalties in accordance with clauses 3.2 and 3.3 of the contract (i.e. EUR 45,000).
17. In this context, the Single Judge took particular note of the fact that, on 1 July 2020, the Claimant put the Respondent in default of payment of the aforementioned amounts, setting a time limit of 12 days in order to remedy the default.
18. Consequently, the Single Judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).
19. Subsequently, the Single Judge took into account that the Respondent, for its part, did not contest that it owed the Respondent the amounts sought, but argued that the fine established in the contract is disproportionate, as it is "*vague and arbitrary*".
20. In addition, the Single Judge observed that the Respondent argued that in accordance with the principle of *non ultra petita*, as the Claimant allegedly did not request interest, these could not be awarded.
21. In this regard, the Single Judge noted that the principal amounts sought by the Claimant are not contested by the Respondent.
22. Having said this, the Single Judge acknowledged that, in accordance with the contract provided by the Claimant, the Respondent was obliged to pay to the Claimant EUR 600,000 as part of the transfer fee in connection with the transfer of the player.

23. On account of the aforementioned considerations, the Single Judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 600,000 corresponding to the instalments of the transfer fee which fell due respectively between January and June 2020.
24. In addition, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
25. In continuation, the Single Judge turned to the issue of the contractual penalties established under the contract, and noted that they had not only been freely agreed upon by and between the parties, but also that they are fair and proportionate pursuant to the solid jurisprudence of the Players' Status Committee in this regard.
26. The Single Judge therefore considered that the arguments raised by the Respondent cannot be considered a valid reason for non-payment of the monies claimed by the Claimant, in other words, the reasons brought forward by the Respondent in its defence do not exempt the Respondent from its obligation to fulfil its contractual obligations towards the Claimant.
27. Consequently, the Single Judge decided to reject the argumentation put forward by the Respondent in its defence and, in accordance with the general legal principle of *pacta sunt servanda*, to determine that the Respondent is liable to pay to the Claimant overdue payables in the total amount of EUR 645,000, broken down as follows:
  - EUR 100,000 corresponding to the instalment due in January 2020;
  - EUR 10,000 as a penalty fee for late payment of the January 2020 instalment;
  - EUR 100,000 corresponding to the instalment due in February 2020;
  - EUR 10,000 as a penalty fee for late payment of the February 2020 instalment;
  - EUR 100,000 corresponding to the instalment due in March 2020;
  - EUR 10,000 as a penalty fee for late payment of the March 2020 instalment;
  - EUR 100,000 corresponding to the instalment due in April 2020
  - EUR 10,000 as a penalty fee for late payment of the April 2020 instalment;
  - EUR 100,000 corresponding to the instalment due in May 2020;
  - EUR 5,000 as a penalty fee for late payment of the May 2020 instalment;
  - EUR 100,000 corresponding to the instalment due in June 2020.
28. In addition, taking into account the Claimant's request as well as the constant practice of the Players' Status Committee, the Single Judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of EUR 600,000 as from the due dates of each instalment under the contract until the date of effective payment. The Single Judge was eager to emphasize that conversely to the argumentation brought forward by the Respondent, the Claimant had indeed requested to be awarded interest at the rate of 5% *p.a.* on the amounts due.

29. Notwithstanding the above, the Single Judge recalled that pursuant to the longstanding jurisprudence and well-established practice of the Players' Status Committee, no interest shall be awarded on the penalties.
30. In continuation, taking into account the consideration under number 18. above, 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.
31. The Single Judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. In this context, the Single Judge highlighted that, on several occasions within the past 2 years, the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis, as a result of which, on, 12 April 2019, a fine and a registration ban (with however a probation period) had been imposed on the Respondent by the Bureau of the Players' Status Committee.
32. Moreover, the Single Judge referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.
33. Bearing in mind the above, the Single Judge decided to impose a proportionally more severe fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. On account of the above and taking into consideration the amount due of EUR 645,000, the Single Judge regarded a fine amounting to CHF 25,000 as appropriate and hence decided to impose said fine on the Respondent.
34. 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.
35. Lastly, the Single Judge referred to the temporary amendments outlined in art. 18 par. 2 lit. ii) of the Procedural Rules, which entered in force in 10 June 2020, according to which no procedural costs shall be levied for any claim lodged between 10 June 2020 and 31 December 2020 (both inclusive), and determined given that the claim at hand was lodged on 24 July 2020, the decision shall be rendered free of costs.

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

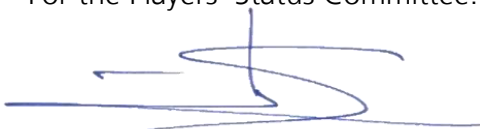
1. The claim of the Claimant, INDEPENDIENTE SANTA FE, is partially accepted.
2. The Respondent, CLUBE ATLÉTICO MINEIRO, has to pay to the Claimant the following amounts:
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 February 2020 until the date of effective payment;
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 March 2020 until the date of effective payment;
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 April 2020 until the date of effective payment;
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 May 2020 until the date of effective payment;
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 June 2020 until the date of effective payment;
  - EUR 100,000 as outstanding remuneration plus interest of 5% p.a. as from 1 July 2020 until the date of effective payment;
  - EUR 45,000 as penalty fee.
3. Any further claims of the Claimant are rejected.
4. The Respondent is ordered to pay a fine in the amount of CHF 25,000. The fine is to be paid **within 45 days** of notification of the present decision **to FIFA** to the following bank account with reference to case nr. 20-01059:

UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A
5. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
6. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the [Regulations on the Status and Transfer of Players](#)).
2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

8. The decision is rendered free of costs.

For the Players' Status Committee:



**Emilio García Silvero**

Chief Legal & Compliance Officer



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**NOTE RELATED TO THE APPEAL PROCEDURE:**

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

**NOTE RELATED TO THE PUBLICATION:**

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

**CONTACT INFORMATION:**

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