

Decision of the Players Status Chamber

passed on 13 September 2023

regarding a dispute concerning the transfer of the player Gabriel Dal Toe
Busanello

BY:

Julie Jørgensen (Denmark)

CLAIMANT:

Associação Chapecoense de Futebol, Brazil

Represented by Marcelo Amoretty Souza

RESPONDENT:

Malmö FF, Sweden

I. Facts of the case

1. On 19 January 2023, Associacao Chapecoense de Futebol (hereinafter: *Claimant*) and Malmö FF (hereinafter: *Respondent*) concluded an agreement (hereinafter: *transfer agreement*) regarding the definitive transfer of the player, Gabriel Dal Toe Busanello (hereinafter: *player*) from the Claimant to the Respondent.
2. According to the transfer agreement, the Respondent undertook to pay the Claimant an amount of EUR 700,000, payable in two instalments as follows:
 - EUR 400,000 to be paid within 7 days after the player's registration with the Respondent;
 - EUR 300,000 to be paid on or before 31 August 2023.
3. Clause 1.4 of the agreement stipulates the following:

"The amounts indicated in Clause 1.3 above, must be paid upon bank deposit identified in the bank account of CHAPECOENSE, as follows:

Intermediary Bank: Commerzbank AG

Intermediary Bank's Address: Kaiserplatz, 60261 Frankfurt-.Germany

Intermediary Bank's Swift Code: COBADEFF

Final Bank: Banco Daycoval S/ A

Final Bank's Address: Av. Paulista, 1793, in the city of Sao Paulo, State of Sao Paulo, Brazil, CEP 01311-200

Final Bank's Account: 400871827200EUR

Final Bank's Swift Code: DAYCBRSP

IBAN: BR78 6223 2889 0000 1000 7215 152C 1

Beneficiary: Associação Chapecoense de Futebol

Beneficiary's Address: Rua Clevelandia, nº 656-E, in the city of Chapecò, State of Santa Catarina, Brazil"

4. According to the information available in the FIFA Transfer Matching System (TMS), the bank details of the Claimant are confirmed as follows:

"Account name: Associação Chapecoense de Futebol

Bank name: Banco Daycoval SA

Account number: 400871827200EUR

Account Holder: Associação Chapecoense de Futebol

IBAN: BR7862232889000010007215

Swift Code: DAYCBRSP

Country: Brazil

Branch name: Sao Paulo - SP

Bank's Address: Av. Paulista, 1793, Sao Paulo – SP"

5. Clause 1.5 of the agreement stipulates the following:

The Parties covenant and agree that in the event that MALMO fails to pay any of the amounts set forth by Clause 1.3 of this Agreement within 5 (five) days of the relevant payment becoming due, MALMO shall pay an incidence of interest arrears at a rate of 1% (one percent) per month, as from default until the date of actual payment. MALMO hereby waives its right to contest the amount of the fine before the judging bodies. SWIFT copy proves that the payment is made timely.

6. Clause 7.2 of the agreement stipulates the following:

“No waiver, termination or exemption in connection with this Definitive Transfer of any of its terms or provisions shall be binding upon the Parties, unless expressed through a written instrument. No waiver by either party in connection with the terms or provisions of this instrument, nor the tolerance of any default pursuant to the terms hereof shall affect the right such party has to, in the future, enforce the term or provision in question or to exercise any right of remedy in the case of any other non-compliance, either similar or not. This instrument can only be amended or modified by celebrating a written instrument to be signed by all parties to the agreement.”

7. On 24 January 2022, an email was received by the Respondent, allegedly from the lawyer of the Claimant, which email stipulated the following:

“Dear Daniel,

Chapecoense just informed me that the bank account used for our contract is blocked due to an earlier transaction with a Russian club.

Payments can no longer be received on the bank account thus and have updated their bank account via attached letter.

Thus 1.4 of the contract has been amended to reflect the updated banking details.

The attached is the Updated contract and also the earlier letter requesting for the update.

Take note”

8. On 31 January 2023, the Claimant indicated that it received an e-mail from the Respondent's Director of Football, Mr. Daniel Andersson *“forwarding a false proof of payment for the first instalment.”*
9. On 13 February 2023, due to the fact that the payment did not reflect in the Claimant's account, the Claimant requested information from the Respondent about the payment of the first instalment.

10. The Respondent informed the Claimant that the amount was paid in the bank account, according to an e-mail, supposedly sent from the lawyer of the Claimant, dated 24 January 2023, requesting to change the bank account for the payment.
11. According to the Claimant, the e-mail (and the documents attached) as per the aforesaid email are false, which was confirmed as per the forensic analysis it conducted.
12. On 12 April 2023, the Claimant sent a default notice to the Respondent, granting it a deadline of 10 days to comply with the financial obligation, i.e., EUR 400,000 (four hundred thousand euros), plus interests of 1% (one per cent) per month, as from 21 February 2023.
13. On 21 April 2023, the Respondent sent a letter to the Claimant *“informing it, that they do not agree with the Digital Forensic Analysis, upon which the Claimant requested an additional forensic report.”*
14. The Claimant in its claim mentions that *“the Respondent failed to provide the Claimant with the proof of payment of the amount for the first instalment, neither to the real bank account or the forged bank account. Consequently, the Respondent is still owing the Claimant the amount of EUR 400,000 (four hundred thousand euros), plus interests of 1% (one per cent) per month, as from 21 February 2023 until the date of the effective payment.”*

II. Proceedings before FIFA

15. On 15 June 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

16. In its claim, the Claimant held that *“after the Respondent received the modified transfer agreement, with the new bank account, Mr. Andersson did not ask anybody from the Claimant to check if everything was correct, even despite having the WhatsApp contact from Mr. Amoretty Souza.”*
17. The Claimant argued that Mr. Andersson confirmed, by WhatsApp conversation dated 13 February 2023, to Mr. Amoretty Souza that he received the modified Transfer Agreement, with the new bank account, already with his signature on it. According to the Claimant, it found it questions the fact that, *“Mr. Andersson did not find strange to receive the Transfer Agreement modified already signed by him.”*
18. The requests for relief of the Claimant, were the following:

*“a) condemns the Respondent to pay the Claimant the amount of EUR 400,000 (four hundred thousand euros), plus interests of 1% (one per cent) per month, as from 21 February 2023 until the date of the effective payment
b) imposes on the Respondent the sanctions established in paragraph 4 of article 12bis of the FIFA Regulations on the Status and Transfer of Players
c) orders the Respondent to repay to the Claimant any contribution towards the legal and other costs incurred and regarding the ongoing proceeding in an amount to be duly established at discretion of this Court”*

b. Position of the Respondent

19. According to the Respondent, on 18 January 2023, the parties agreed that all communications regarding the transfer agreement, would be sent to the email address: marcelo@amorettysoouza.com.br.
20. On 19 January 2023, the Claimant returned the signed version of the transfer agreement to the Respondent.
21. On 24 January 2023, the Respondent received the following email:

“Dear Daniel,

Chapecoense just informed me that the bank account used for our contract is blocked due to an earlier transaction with a Russian club.

Payments can no longer be received on the bank account thus and have updated their bank account via attached letter.

Thus 1.4 of the contract has been amended to reflect the updated banking details.

The attached is the Updated contract and also the earlier letter requesting for the update.

Take note”

22. According to the Respondent, the email had two attachments: (i) a letter dated 20 January 2023 signed by the president of the Claimant and (ii) a copy of the Transfer Agreement with a modified Clause 1.4, both providing the new banking details. The letter stipulated the following:

“Today, we receivd attached correspondence from our bankers Banco Daycoval S/A informing us of the suspension of banking services/international remittance on our accounts with them.

Their intermediary bank, Commerzbank AG has redflagged our last transaction with Russian Club, FC Akhmat Grozny due to the ongoing international sanctions against Russia.

Thus, they have suspended our bank account also putting the Tax Office on notice.

Hence, for now we cannot receive payments here on the account and in Brazil until further notice.

Please note that going forward, our Euro subsidiary Bank Account details listed below should be used for our international transactions.”

BENEFICIARY: COMPUTEX SRO ASSOCIACAO CHAPECOENSE

BANK NAME: UNICREDIT BANK CZ AND SK, SK BRANCH SANCOVA, 1/A BRATISLAVA SLOVAKIA

BENEFICIARY ADDRESS: OSADNA 267/2, 83103 BRATISLAVA SLOVAKIA

EUR IBAN: SK42 1111 0000 0017 2529 8005 SWIFT CODE: UNCRSKBXXXX”

23. The Respondent indicated that the new bank account did not raise any red flags as: *“(i) it was received directly using the Amoretty Email Address (the exact same email address used in all correspondence exchanges up until that point); and (ii) the bank account included a reference to the Claimant as the beneficiary. ”*
24. On 26 January 2023 (i.e., two days after receiving the payment instruction), the Respondent requested an invoice for the first payment.
25. On 30 January 2023, the Respondent made the payment of the first instalment to the new bank account as per the correspondence it received from the Claimant of 20 January 2023 and the invoice.
26. On 6 February 2023, the Respondent received a request from the Claimant to check with its own bank about the whereabouts of the payment of the first installment as it was not in their bank account, in terms of which it replied that the payment had not been returned to its bank account. The Respondent furthermore *“received confirmation from its bank that the payment had been paid to the new bank account and so informed the Claimant.”*
27. In conclusion the Respondent stipulated the following:
 - *Mr Amoretty was the legal representative of Chapecoense in relation to the Transfer Agreement. Hence, any actions taken by Mr Amoretty bound Chapecoense and Malmö is entitled to rely in good faith on the behaviour of Mr Amoretty.*
 - *The emails related to the Transfer Agreement were received by Malmö from the Amoretty Email address, including the Payment Instruction and an invoice by which Mr Amoretty instructed Malmö to pay the First Instalment to the New Bank Account and which Malmö did on 31 January 2023.*
 - *There is conclusive evidence that the Amoretty Email address did not suffer any security breach. There is no explanation whatsoever from Chapecoense as to any potential alternative source of the emails (or even a clear indication as to which emails would be authentic and which would*

be allegedly fraudulent). As such, it has to be concluded that all the emails from the Amoretty Email Address were sent by Mr Amoretty.

- *Even if it had been established that the Payment Instruction was not sent by Mr Amoretty, quod non, any credible alternative explanation considering the elements on file strongly suggests that the sending of said Payment Instruction would in any case be attributed to exercise due care (either by not having identified a potential compromise of Chapecoense's systems or by not having duly protected hid own organization)*
- *Even if it had been established that (i) it was not Mr Amoretty who sent the Payment Instruction; and (ii) that said Payment Instruction had been sent through an unauthorized access to Mr. Amoretty's systems for which he bears no responsibility whatsoever, still Malmö was entitled to rely in good faith on the Payment Instruction.*
- *It follows that Malmö has complied with its obligation to pay the First Instalment as instructed*
- *The Claim must therefore be rejected in its entirety.*

III. Considerations of the Players Status Chamber

a. Competence and applicable legal framework

28. First of all, the Single Judge of the Player's Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 15 June 2023 and submitted for decision on 13 September 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
29. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players May 2023 edition), the Single Judge is competent to deal with the matter at stake, which concerns an international dispute between clubs belonging to different associations, a Brazilian club and a Swedish club.
30. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (May 2023 edition), and considering that the present claim was lodged on 15 June 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

31. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 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. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

32. Her 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 she will refer only to the facts, arguments and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

33. The foregoing having been established, the Single Judge moved to the substance of the matter and took note that the case at hand pertains to a claim of a club against another club for payment of the first instalment of the transfer fee in terms of the agreement concluded between the parties on 19 January 2023.
34. In this context, the Single Judge observed that the amount in question is undisputed, but that the Respondent, upon an amended payment instruction it received on 24 January 2023, allegedly from the email address of the legal representative of the Claimant, remitted the payment to a different bank account than what was indicated in the transfer agreement.
35. The Single Judge noted that the Claimant argued the aforesaid email, the new payment details reflected therein, and documents attached thereto was false as it was not sent by the legal representative of the Claimant, alleging that latter's email was manipulated by third parties which in turn modified the payment details and the transfer agreement which was already signed by both clubs.
36. The Single Judge noted that the Respondent on the other hand, argued that it acted in good faith when it remitted the payment to the Claimant, moreover that it did not see any red flags upon receipt of the amended payment instruction, since the new bank details and invoice came from the email-address established as the communication channel between the parties. Moreover, the Respondent argued that it duly remitted the payment of the first instalment of the transfer fee to the bank account as per the amended payment instruction.
37. The Single Judge turned then to the evidence on file and underlined that following the amended payment instruction the Respondent received, it did not seem to have undertaken any other verification steps with the Claimant to double-check the payment details before remitting the amount, especially since the banking details had changed to an account located in Slovakia.
38. On analysis of the amended payment details, the Single Judge noted that same is reflected as follows:

"OUR BANK ACCOUNT DETAILS FOR PAYMENT:

IBAN: SK41 1111 000 0017 2529 8005

BENEFICIARY: COMPUTEX SRO

BANK NAME: UNICREDIT BANK CZ AND SK, SK BRANCH

SANCOVA, 1/A BRATISLAVA, SLOVAKIA

BENEFICIARY ADDRESS: OSADNA 267/2, 83103 BRATISLAVA, SLOVAKIA

SWIFT CODE: UNCRSKBXXXX

FURTHER CREDIT: ASSOCIACAO CHAPECOENSE"

39. In this Regard, the Single Judge emphasized that the Respondent had to notice that the bank account to which it paid the amounts was an account in Slovakia, while the Claimant was a club based in Brazil, moreover due to the fact that transfer agreement already established the payment details for purposes of payment of the transfer compensation. The Single Judge found thus, once given a new bank account, especially located in Slovakia, the Respondent had to, at least, further clarify this issue before executing any payments.
40. Additionally, the Single Judge made reference to the provisions of clause 7.2 of the transfer agreement which specifically mentions that *"no waiver, termination, or exemption in connection with this Definitive Transfer of any of its terms or provisions shall be binding upon the Parties, unless expressed through a written instrument. No waiver by either party in connection with the terms or provisions of this instrument, nor the tolerance of any default pursuant to the terms hereof shall affect the right such party has to, in the future, enforce the term or provision in question or to exercise any right of remedy in the case of any other non-compliance, either similar or not. This instrument can only be amended or modified by celebrating a written instrument to be signed by all parties to the agreement."*
41. In this context, the Single Judge mentioned that as the parties agreed that a term of the contract can only be varied in writing and signed by all parties, the Respondent as the debtor carrying the duty of risk regarding payment to the Claimant as the creditor, should have been more diligent to ensure that such an essential change is amended in writing and signed by all parties, hence any other change to the terms of the transfer agreement can be considered as of having no effect.
42. The Single Judge found it important to note that it is for clubs to be diligent when making payments, which means, for instance, checking information accurately and reviewing relevant data, such as the bank details included in TMS, as well as taking the necessary precautionary steps to question the Claimant via any other communication channels.
43. In continuation, the Single Judge referred to the jurisprudence of CAS as per CAS 2020/A/7442, in terms of which the Sole Arbitrator made reference to the obligation of the *"reasonable third person"*, *inter alia*, mentioning that:
- "The obligation to act diligently therefore requires from the performing party, namely the Appellant, to verify the correctness of the Second Invoice. By not doing so, the Appellant breached its obligation of due diligence and is liable thereof according to Article 99 SCO. As the payment of the first instalment was not credited to the Respondent's bank account due to the Appellant breach, the later did not discharge its contractual obligation regarding the payment of the first instalment."*
44. On account of the aforementioned considerations and the documentary evidence on file, the Single Judge established that the Respondent failed to act with the required skill and

diligence, and therefore should be held liable to pay to the Claimant the outstanding amount of EUR 400,000.

ii. Consequences

45. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the agreement i.e. EUR 400,000
46. In addition, the Single Judge decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amount as from 21 February 2023 until the date of effective payment.
47. Lastly, the Single Judge established that that the Respondent made a bona fide payment to the Claimant albeit using the amended details as provided, therefore, in casu, the provisions of art.12bis of the Regulations shall not be taken into account.

iii. Compliance with monetary decisions

48. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with her 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.
49. 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
50. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
51. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
52. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

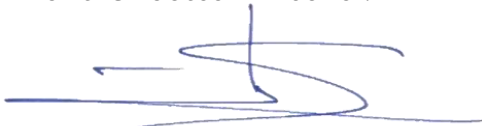
d. Costs

53. Finally, the Single Judge referred to art. 25 par. 1 and 2 of the Procedural Rules, according to which in disputes between clubs, costs in the maximum amount of USD 25,000 are levied. As per art. 25 par. 5 of the Procedural Rules, the Single Judge will decide the amount that each party is due to pay, in consideration of the parties' degree of success and their conduct during the procedure, as well as any advance of costs paid.
54. Taking into account that the claim of the Claimant has been accepted to a considerable extent, the Single Judge concluded that the Respondent shall bear the costs of the current proceedings before FIFA.
55. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 15,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.

Decision of the Players Status Chamber

1. The claim of the Claimant, Associacao Chapecoense de Futebol, is partially accepted.
2. The Respondent, Malmö FF, must pay to the Claimant the following amount(s):
 - **EUR 400,000 as outstanding amount** plus 5% interest *p.a.* as from 21 February 2023 until the date of effective payment
3. Any further claims of the Claimant are rejected.
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 art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to 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 made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
7. The final costs of the proceedings in the amount of USD 15,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf. note relating to the payment of the procedural costs below).

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 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 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

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