

**Arbitration CAS 2015/A/3877 Pésci MFC v. Reggina Calcio, award of 3 August 2015**

Panel: Mr Herbert Hübel (Austria), President; Mr Gyula Dávid (Hungary); Mr Niall Meagher (Ireland)

Football

Transfer of a player

Consequence of the failure to inform a first instance body of the payment of the outstanding transfer fee

Even if the failure to inform a first instance body of the payment of all outstanding amounts related to a transfer and the failure to terminate the proceedings before that instance appears to have been an administrative oversight by the party which received the payment, it was the responsibility of that party to notify the said instance of the developments and to drop its claims before it. The failure to do so, at least until after the issuance of the first instance decision and the appeal to CAS by the other party justifies to award the costs for the appeal to the other party.

I. PARTIES

1. Pésci MFC (hereinafter referred to as the “Appellant”) is a football club in Pécs, Hungary, affiliated to the Hungarian Football Federation, which is, in turn, a member of the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”).
2. Reggina Calcio (hereinafter referred to as the “Respondent”) is a football club in Reggio Calabria, Italy, affiliated to the Federazione Italiana Giuoco Calcio (hereinafter referred to as “FIGC”), which is, in turn, a member of FIFA

II. FACTUAL BACKGROUND**A. Background Facts**

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. This case arises out of a dispute with respect to the transfer of the player L. from the Respondent to the Appellant.
5. On 31 March 2013, in order to resolve that dispute, the parties concluded an agreement (hereinafter referred to as the “Settlement Agreement”) whereby the Appellant would pay the Respondent a total of EUR 105,263.25 in installments to be paid over the course of 2013.
6. Pursuant to the Settlement Agreement, the Respondent accepted to pay the aforementioned amount as follows:
 - EUR 25,263.25 by the date of 6 May 2013;
 - EUR 20,000 by the date of 30 June 2013;
 - EUR 20,000 by the date of 30 August 2013;
 - EUR 20,000 by the date of 31 October 2013; and
 - EUR 20,000 by the date of 31 December 2013.

B. Proceedings before the Single Judge of the FIFA Players’ Status Committee

7. Since the Appellant failed to make certain of the payments stipulated in the Settlement Agreement in a timely manner, on 11 November 2013, the Respondent lodged a claim before the Single Judge of the FIFA Players’ Status Committee of seeking payment of three unpaid installments in the amount of EUR 60,000. The final installment of EUR 20,000 became due on 31 December 2013. It must however be emphasized that the Respondent did not amend its claim to include this payment.
8. While the Respondent’s claim was pending before the Single Judge of the Player’s Status Committee, the parties entered into an agreement on 25 March 2014 regarding the payment of the outstanding amount of EUR 80,000 (the amount of the outstanding payments of EUR 60,000 claimed by the Respondent and the final instalment of EUR 20,000 that had fallen due on 31 December 2013). As explained below, the Appellant paid the Respondent the amount of EUR 80,002 by bank transfer on 28 March 2014. However, the Single Judge of the Player’s Status Committee was not notified of this agreement between the parties or of the payment by the Appellant.

Accordingly, on 14 October 2014, the Single Judge of the Players’ Status Committee (Geoff Thompson (England)), issued a decision (hereinafter referred to as the “challenged decision”), which reads as follows:

“1. The claim of the Claimant, Reggina Calcio, is accepted.

2. The Respondent, Pecsí Mecsek, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 60,000.

3. *If the aforementioned amount is not paid within the stated time limit, interests at the rate of 5% p.a. will apply as of the expiry of the stipulated time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

4. *The final amount of costs of the proceedings in the amount of CHF 10,000 are to be paid by the Respondent, **within 30 days** as from the date of notification of the present decision as follows (emphasis added by FIFA):*

4.1 *The amount of CHF 1,000 directly to the Claimant.*

4.2 *The amount of CHF 9,000 to FIFA to the following account with reference to case nr. 13-03091/mba: [...].*

5. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under point 2. And point 4.1. are to be made and to notify the Single Judge of the Players Status Committee of every payment received”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. On 31 December 2014, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as “CAS”) against the Respondent with respect to the challenged decision. In its statement of appeal, the Appellant nominated Dr Gyula Dávid, attorney-at-law in Budapest, Hungary, as its arbitrator.
10. On 7 January 2015, and after the payment of the Court Office fee by the Appellant in accordance with articles R48 para. 3 and R64.1 para. 1 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), the CAS Court Office initiated an appeals arbitration procedure under the reference *CAS 2015/A/3877 Pésci MFC v. Reggina Calcio*.
11. In a letter dated 8 January 2015, the Appellant advised the CAS Court Office that its statement of appeal shall be considered as its appeal brief.
12. Despite having been invited to do so on 19 January 2015, the Respondent failed to file its answer within the twenty-day time limit prescribed by article R55 para.1 of the Code.
13. The sole communication received by the CAS Court Office was filed on 5 February 2015 where the Respondent stated that: “[...]. *To date, we have not had any response from Pecs, by FIFA or by TAS-CAS, so with this we are again asking the that the case be closed without proceeding (sic) in litigation as the company Pecs has fulfilled all its obligations and Reggina Calcio does not have any claim*”.
14. On 6 February 2015, in view of the elements set out in the Respondent’s letter of 5 February 2015, the CAS Court Office invited the Appellant, within seven (7) days upon receipt of such letter, to advise the latter whether it wished to withdraw its appeal, failing which it will be assumed that the Appellant maintained its appeal.
15. By letter of 11 February 2015, the Respondent reiterated that the Appellant had fulfilled its financial obligations and requested CAS to close the present proceedings.

16. On 16 February 2015, the Appellant informed the CAS Court Office that it wished to maintain its appeal.
17. On 27 February 2015, the CAS Court Office noted the absence of an answer from the Respondent and invited the parties to advise whether (or not) they prefer that a hearing be held in the present matter. No communications have been received by the CAS Court Office in this regard.
18. On 10 March 2015, the CAS Court Office advised the parties that the Panel appointed to adjudicate the present matter is constituted as follows:
 - President: Dr Herbert Hübel, attorney-at-law in Salzburg, Austria
 - Arbitrators: Dr Gyula Dávid, attorney-at-law in Budapest, Hungary
Mr Niall P. Meagher, attorney-at-law in Geneva, Switzerland

By letter of 15 April 2015, the Panel noted that the Respondent acknowledged receipt of the payment of EUR 60,000 from the Appellant during the course of the FIFA proceedings and confirmed that the Appellant fulfilled its financial obligations. In light of the foregoing, the Panel invited the Respondent, within a week as from receipt of such letter, to explain the reasons (a) why the latter failed to advise FIFA that the Appellant had fulfilled its financial obligations and (b) why it did not withdraw its claim.

19. By letter dated 2 June 2015, the CAS Court Office noted the absence of an answer by the Respondent within the prescribed time limit. In the same letter, and on behalf of the Panel, the parties were informed that the Panel considered itself sufficiently informed and would render its award on the basis of the parties' submissions and without a hearing.
20. On 11 June 2015, the Appellant returned its signed order of procedure to the CAS Court Office. The Respondent did not sign such order of procedure.

IV. SUBMISSIONS OF THE PARTIES

21. The parties made no legal or factual submissions other than those summarized in Section III above. The Appellant's submissions, in essence, may be summarized as follows:
 - It paid all agreed outstanding amounts to the Respondent by bank transfer dated 28 March 2014.
 - The Respondent failed to notify the Single Judge of the FIFA Players' Status Committee of the resolution of the matter or to request termination of those proceedings in a timely manner.
 - The Appellant should therefore not bear the costs of the Single Judge of the FIFA Players' Status Committee's proceedings or this appeal.

22. The Respondent's submissions are, in essence, that it acknowledges that all outstanding amounts were paid by the Appellant and it apologizes for its administrative oversight in failing to terminate its claim in the FIFA Players' Status Committee. The Respondent requests that all proceedings be terminated.

V. JURISDICTION

23. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

24. Article 67 par. 1 of the FIFA Statutes reads as follows:

"Appeal against final decision passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notifications of the decision in questions".

25. Neither party has objected to CAS's jurisdiction in this matter.

26. In view of the above, CAS has jurisdiction to adjudicate the present matter.

VI. ADMISSIBILITY

27. Article R49 of the Code provides 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

Furthermore, article 67 of the FIFA Statutes provides that an appeal with the CAS shall be lodged within 21 days as from notification of the decision in question.

28. The Appellant lodged its appeal with CAS on 17 December 2014, which was within twenty-one days of its receipt of the Decision of the Single Judge of the FIFA Single Players' Committee on 12 December 2014. The Panel therefore concluded that the appeal is admissible.

VII APPLICABLE LAW

29. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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”.

30. The parties did not make any choice as to the applicable law. Accordingly, the Panel decided the dispute in accordance with the FIFA Regulations and Swiss Law, subsidiarily.

VIII. MERITS

31. In this dispute, the Appellant asks the Panel to set aside the Decision of the Single Judge of the FIFA Players’ Status Committee, which ordered the Appellant to pay the amount of EUR 60,000 to the Respondent.
32. It is clear from the evidence provided that the Appellant paid the Respondent all outstanding amounts related to the transfer of the player concerned by bank transfer dated 28 March 2014. This is not contested by the Respondent, which stated in its letter dated 5 February 2015 that *“Pécsi has fulfilled all its obligations and Reggina Calcio does not have any claim”*. As noted above, however, the Single Judge was not notified by either party that the Appellant had fulfilled its obligations to the Respondent.
33. In these circumstances, it is clear that the Decision of the Single Judge was incorrect, albeit for lack of correct factual information, and should be set aside.
34. The Panel also considered the issue of whether costs should be awarded to the Appellant in this case. The Panel noted that the Appellant paid all outstanding amounts to the Respondent on 28 March 2014 – almost six months before the Single Judge issued his decision. There was ample time for the Single Judge to be notified and the proceedings terminated.
35. In its statement of appeal dated 17 December 2014, the Appellant stated that *“according to our last agreement signed with them on the 25th March, Reggina Calcio should have asked FIFA for closing the process”*. The record does not include a copy of a formal agreement between the parties dated 25 March 2014. However, it includes a short note from the Respondent to the Appellant stating that if the Appellant paid EUR 80,000 within five working days, the Respondent *“would not ask for anything more”*; *“otherwise, we won’t accept these conditions and ask for UEFA and FIFA to solve this situation”*. Furthermore, in its letter dated 19 December 2014, the Respondent explained that *“in the last year in our society more people have alternated in the administrative office”* and in those circumstances, the payment by the Appellant *“was not produced by our administrative office”*. The Respondent further indicated that it wished to apologize to the Appellant and to *“demand closure of the case because the company Reggina Calcio S.p.A does not have any claims”*.
36. The Panel notes that the failure to inform the Single Judge of the payment of all outstanding amounts by the Appellant and to terminate the proceedings before the Single Judge appears to have been an administrative oversight by the Respondent. Nevertheless, the Panel considers

that based on the evidence, once the Appellant paid the agreed amounts on 28 March 2014, it was then the responsibility of the Respondent to notify the Single Judge of the developments and to drop its claims before the Single Judge. However, the Respondent failed to do so, at least until after the issuance of the Single Judge's Decision and the appeal to CAS by the Appellant. In these circumstances, the Panel considers it appropriate to award costs for this appeal to the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Pésci MFC on 17 December 2014 against the decision issued by the Single Judge of the FIFA Players' Status Committee on 14 October is upheld.
2. The decision issued by the Single Judge of the FIFA Players' Status Committee on 14 October 2014 is set aside.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office in a separate letter, shall be borne by Respondent in their entirety.
4. Each party shall bear its own legal expenses incurred by the present arbitral procedure.
5. All other motions for relief are dismissed.