



Arbitration CAS 2006/A/1117 Chiapas Fútbol Club v. Criciuma Esporte Clube, award of 12 February 2007

Panel: Mr José Axtmayer (Puerto Rico), President; Mr Ricardo de Buen Rodríguez (Mexico); Ms Margarita Echeverría (Costa Rica)

Football

Transfer

Validity of a transfer agreement

A club cannot argue that no valid and enforceable transfer agreement has been concluded only because the agreement has been ostensibly negotiated through an agent, especially when the 'club's signature appears to have been placed subsequently on the transfer agreement.

The present appeal was brought by Chiapas Fútbol Club, S.A. de C.V. ("Appellant"), a company operating the Mexican first division soccer team known as "Jaguars de Chiapas," seeking a review and reversal of the decision taken by the Single Judge of the Players' Status Committee (the "Single Judge") of the Federation Internationale de Football Association ("FIFA") on 15 February 2006, on the claim presented by Criciuma Esporte Clube of Brasil ("Respondent") for amounts due under the transfer agreement entered into by and between Respondent and Appellant concerning the player R. (the "Player").

Appellant Jaguares de Chiapas of Mexico and Respondent Criciuma Esporte Clube of Brasil entered into a transfer agreement on 6 August 2004 (the "Transfer Agreement") concerning the Brazilian player R. Pursuant to the Transfer Agreement, Appellant agreed to pay Respondent the total amount of USD\$700,000 in two (2) installments, namely USD\$400,000 payable on 6 August 2004, and USD\$300,000 payable on 6 November 2004.

Appellant made the payment due under the first installment in the amount of USD\$400,000 but never paid and refused to pay the second installment in the amount of USD\$300,000, claiming that no agreement existed with Respondent; that it never received a payment receipt from Respondent for the USD\$400,000 that Appellant paid Respondent; and that the Player had never returned from a holiday in Brasil and was no longer rendering services to Appellant and was working for another club in South Korea.

In view of Appellant's contentions, Respondent filed a claim before FIFA's Players' Status Committee on 15 March 2005.

On 15 February 2006, the Single Judge of FIFA's Players' Status Committee accepted Respondent's claim and ordered Appellant to pay Respondent the outstanding amount under the Transfer Agreement, namely USD\$300,000, ruling that a valid and binding agreement did in fact exist by and between Appellant and Respondent, and that irrespective of whether the Player continued to render or not his services to Appellant, the financial terms of the Transfer Agreement had to be complied with.

The Appellant initially filed its Statement of Appeal on 12 May 2006.

LAW

Jurisdiction

1. Neither party raised any objection to the composition of the Arbitration Panel or to the jurisdiction of the CAS at any time prior to or during the Hearing.
2. The jurisdiction of the CAS derives from R47 of the Code and the FIFA Statutes and Regulations. It is further confirmed by the Order of Procedure duly signed by the parties. Accordingly, it follows that the CAS has jurisdiction to decide the present dispute.
3. Under R57 of the Code, the Arbitration Panel has full power to review the facts and the law. The Panel has exercised its rights under this provision.

Applicable Law

4. The parties did not agree on the applicable law to these proceedings, so that R58 of the Code applies hereto, and it provides in part the following:

"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".

5. Art. 59 § 2 of the FIFA Statutes and Regulations, in turn, provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and Clubs, and, additionally, Swiss law. In view of the foregoing, the Arbitration Panel determined that the FIFA Statutes and Regulations are the applicable law in the proceeding, and that Swiss law shall apply with respect to the interpretation or construction of the FIFA Statutes and Regulations.

Parties' submissions

6. The testimony and arguments presented at the hearing, and the documentary record submitted by the parties, reveal that the Appellant's argument that it never entered into a valid and enforceable agreement with Respondent because it ostensibly negotiated the Player's transfer through an agent lacks merit given that the signature of a duly authorized representative of Appellant appears on the Transfer Agreement. In addition, the Appellant was unable to submit any credible evidence regarding its contention that it had requested and Respondent refused to provide a receipt for Appellant's payment of the first installment due under the Transfer Agreement amounting to USD\$400,000.
7. With respect to Appellant's contention that it was not obligated to pay Respondent the second installment due under the Transfer Agreement because the Player failed to return to Mexico from a holiday in Brasil and was under contract with a South Korean club, such contention was not supported by the evidence presented at the Hearing. In fact, the latter revealed that Appellant had failed to pay the Player's signing bonus and monthly compensation from October 2004, had cancelled the Player's return airline ticket from Brasil, and had informed Respondent that it was no longer interested in the Player's services alleging that the Player had an undisclosed injury that rendered him unacceptable.

Conclusion

8. Based on the testimony received and the documentary evidence submitted, the Arbitration Panel reached the following conclusions:
9. The Appellant and the Respondent entered into a valid and enforceable Transfer Agreement regarding the Player, and Appellant's argument that no such agreement exists because it ostensibly negotiated with Appellant through an agent is without merit, particularly when Appellant's signature appears to have been placed subsequently on the Transfer Agreement.
10. The Appellant's additional arguments that it is not obligated to pay Respondent the amounts due under the Transfer Agreement because it never received a receipt for its payment of the USD \$400,000 and because the Player presumably left Appellant's club and never returned also lack merit. There is no documentary evidence of Appellant's request for such receipt and there is also ample documentary evidence to the effect that it was Appellant that breached its agreement with the Player by its failure to pay the Player the compensation due under their employment agreement, the cancellation of the Respondent's return airline ticket, and manifestation that it was no longer interested in the Player's services.
11. Accordingly, Appellant breached its payment obligations to Respondent under their Transfer Agreement by its refusal to pay Respondent the second installment due thereunder in the amount of USD\$300,000.

The Court of Arbitration for Sport rules:

1. The appeal filed by Chiapas Futbol Club S.A. de C.V. (Club Jaguares de Chiapas) on 12 May 2006, against the decision issued on 15 February 2006 by the Single Judge of FIFA's Players' Status Committee, is dismissed.
 2. The decision of the Single Judge of FIFA's Players' Status Committee, dated 15 February 2006, is confirmed.
- (...).