



**Arbitration CAS 2012/A/3025 Club Galatasaray A.S. v. Hugo Issa, award of 30 August 2013**

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

*Football*

*Representation agreement and agency contract*

*Limits of the de novo review to the claims brought before the previous instance*

*Common practice of players being loaned from one club to another club*

*Deduction of a players' agent fee while the player is on loan*

- 1. Pursuant to Art. R57 of the CAS Code, the Panel has the ability to hear the matter at hand on a *de novo* basis, but this does not extend to bringing new claims or prayers for relief that could have been made before FIFA.**
- 2. The FIFA Regulations on the Status and Transfer of Players demonstrate the common place practice of players being loaned from club to club. The original contract remains in force, but key obligations such as paying the player and the player providing his services are suspended, whilst the player provides his services elsewhere and is remunerated elsewhere; further, clubs often deduct sums from a player's contract and make payments on his behalf direct to third parties, such as agents. Extracts of various legal systems demonstrate that if the loan club fails to pay the salary of the player, then his original club remains liable under the original contract.**
- 3. As is common in football, a club can be requested by a player to deduct the commission at source and pay it on behalf of the player to the latter's agent. If the player is on loan, there is no salary from which to make such deductions.**

**I. THE PARTIES**

1. Club Galatasaray A.S. (the "Club" or the "Appellant") is a football club with its registered office in Istanbul, Turkey. It is a member of the Turkish Football Federation (the "TFF") and plays in the Super Lig.
2. Mr. Hugo Issa (the "Agent" or as the "Respondent") is a players' agent licensed with the Argentine Football Association (the "AFA").

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator 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. On 1 October 2005, the Argentinian professional football player, M. (the "Player") and the Respondent entered into a representation agreement valid until 1 October 2007 (the "Representation Agreement").
5. On 26 July 2006, the Appellant and the Player, signed a professional contract valid from 1 August 2006 until 31 May 2011 (the "Contract").
6. The Appellant, Respondent and Player all entered into a Player's Agent Contract (the "Payment Contract") which stated:

*"This Contract is signed between Adnan POLAT and Adnan Sezgin residing at Florya Matin Oklay Premises, Istanbul, whom are authorised to act on behalf of Galatasaray Spor ve Futbol Isletmeciligi Ticaret Anonim Sirketi which will be referred hereinafter called as the "Company" and the player's agent Mr Hugo ISSA with Argentinian nationality hereinafter called as the "Agent" in regards of the transfer issue of the player M.*

  - *The obligations of the Company,*
    - (a.) *Company agrees [sic] to pay to the agent 110.000 USD in cash as a commission for the first and second years of the contract of the Player.*
    - (b.) *The rest of the commission will be paid at the end of each season as %10 (for 2008-2009, 2009-2010 and 2010-2011 seasons) during the duration of the contract.*
  - *Any dispute related to this contract will be held by FIFA".*
7. At some stage following the signing of the Contract, it is undisputed that the Appellant made a payment of USD 110,000 to the Respondent.
8. On an unknown date, the Player signed a short letter (the "Player's Letter") which, as translated for the Appellant, stated:

*"According to the accepted conditions of the contract signed between the parties in 26 July 2006, M. hereby authorizes Galatasaray Spor Kulubu to make payment of commission to HUGO ISSA on behalf of himself".*
9. On 7 July 2008, the Player was loaned by the Appellant to Club Deportivo Cruz Azul FC until 31 May 2009 (the "First Loan").

10. On 4 August 2009, the Player was loaned by the Appellant to Estudiantes De La Plata until 30 June 2010 (or the end of the Torneo Clausura 2010 or until the end of Estudiantes De La Plata's involvement in the Copa Libertadores) (the "Second Loan").
11. On 21 August 2009, the Respondent lodged an official claim with the FIFA Players' Status Committee (the "FIFA PSC") requesting the payment of USD 210,000 corresponding to 10% of the remuneration of the Player from the Appellant for the 2008/2009, 2009/2010 and 2010/2011 seasons.
12. On 12 July 2010, the Appellant stated to the FIFA PSC that there were ongoing negotiations for the temporary transfer of the Player for the 2010/11 season.
13. On 27 July 2010, the FIFA PSC asked the Appellant for copies of the loan agreements for the First Loan and Second Loan.
14. On 4 August 2010, the Appellant submitted the loan agreements for the First Loan and Second Loan to the FIFA PSC.
15. On an unknown date, the Player was loaned from the Appellant to Club Atlético Banfield until 31 May 2011 (or the end of the Torneo Clausura 2011 or until the end of Club Atlético Banfield's involvement in the Copa Libertadores) (the "Third Loan") pursuant to a written agreement (the "Third Loan Agreement").
16. On 24 April 2012, the FIFA PSC considered the matter and on 22 November 2012 the full written decision (the "Appealed Decision") was notified to the parties. The Appealed Decision stated, as follows:
  1. *The claim of the Claimant Hugo Issa, is partially accepted.*
  2. *The Respondent, Galatasaray, has to pay to the Claimant, Hugo Issa, the amount of USD 75,000, as well as 5% interest per year on the said amount as from 23 May 2011 until the date of effective payment, within 30 days as from the date of notification of this decision.*
  3. *Any further claims lodged by the Claimant, Hugo Issa, are rejected.*
  4. *If the aforementioned sum, plus interest, is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  5. *The Claimant, Hugo Issa, is directed to inform the Respondent, Galatasaray, immediately and directly of the account number to which the remittance under point 2 above is to be made and to notify the Player's Status Committee of every payment received.*
  6. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid by both parties, within 30 days as from the date of notification of the present decision as follows:*
    - 6.1 *the amount of CHF 5,000 has to be paid by the Respondent, Galatasaray.*

6.2 *the amount of CHF 10,000 has to be paid by the Claimant, Hugo Issa. Considering that the Claimant, Hugo Issa, already paid the amount CHF 5,000 as advance of costs, the latter have to pay the remaining amount of CHF 5,000”.*

17. On 30 November 2012, the Appellant wrote to the Respondent in relation to the Appealed Decision explaining that the FIFA PSC had failed to acknowledge the Third Loan and explaining that, in accordance with the reasons contained in the Appealed Decision, the Respondent should not be entitled to the monies awarded in the Appealed Decision. Therefore, the Appellant requested that the Respondent waived its entitlement under the Appealed Decision.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 12 December 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sports (the “CAS”). It challenged the above mentioned Appealed Decision, submitting the following requests for relief:

- “1. *To accept the present appeal against the challenged decision;*
2. *To set aside the challenged decision;*
3. *To establish that the Appellant does not have to pay to the Respondent any amount;*
4. *To condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
5. *To establish that the costs of the arbitration procedure should be borne by the Respondent”.*

19. On 19 December 2012, the Appellant filed his Appeal Brief. In its Appeal Brief, the Appellant repeated its requests for relief.

20. On 1 March 2013, the Respondent filed his Answer, with the following request for relief:

- “1. *To reject the Appeal raised by the Appellant.*
2. *To condemn the Appellant to the payment, in favour of the Respondent, of all the legal expenses incurred; and*
3. *To condemn the Appellant to the payment of all the costs derived from the proceeding before CAS”.*

21. On 14 May 2013 the CAS Court Office wrote to the parties, on behalf of the Sole Arbitrator, inviting the same to provide the following information:

“The Appellant is invited to provide the CAS Court Office with:-

- *Any information whether the Appellant has paid a fee for the Player when it signed him;*

- *A copy of the Player's letter that it refers to at paragraph 6 in its Appeal Brief;*
- *Any evidence to show that the payment of US\$ 110,000 was made from the Player's salaries - any wages slips showing the deduction.*

*The Respondent is invited to provide the CAS Court Office with:*

- *The agency agreement of 1 October 2005;*
  - *Any details of any direct payments or payments made by other clubs relating to the Player from 1 October 2005 and up to date and what they relate to;*
  - *Full extracts translated into English of Article 11 of Real Decrets and similar Argentinean and Brazilian statutes (if the Respondent is seeking to rely on these)".*
22. On 28 May 2013, the Appellant, in summary, submitted the following in response to the CAS request for further information:
23. The Appellant confirmed that it had transferred the Player from Club Estudiantes de la Plata and paid a transfer fee to the Argentinean club. However, due to the fact that the transfer had taken place in the 2006/2007 football season in Turkey, and since the Club's administration has changed, the Appellant was unable to produce a copy of the transfer agreement or to provide the exact transfer amount it had paid to the Argentinean club for the Player.
24. As regards the Player's Letter it had been signed by the Player and had transferred the "right to pay the commission of the Respondent" arising from the Contract. Further, the Player's Letter was provided to the Appellant as a result of clause "b" of the Payment Contract. The Appellant and the Respondent agreed an amount of USD 110,000 as commission for the first two seasons which corresponded to 10% of the remuneration of the Player during those seasons. Moreover, for the remaining seasons, no exact amount was mentioned but instead 10% of the salary of the Player would be paid to the Respondent as his commission. The Appellant submitted that, as the Player was transferred to three clubs on loan, the Appellant stopped paying the salary to the Player and hence there was no obligation to pay the Respondent any commission for those years.
25. The Appellant was unable to produce any documents to show how the sum of USD 110,000 had been paid due to the Respondent, due to the fact that the Club's administration has changed. The Appellant pointed out that in accordance with the FIFA Players' Agents Regulations (the "Regulations"), in particular Art. 19.4 of the Regulations, the payment would have been made from the Player's salary and not as a separate payment. Further, the Appellant noted that the Respondent had acknowledged the fact that he was mandated by the Player and the Appellant had signed and executed the Payment Contract to remunerate the Respondent on behalf of the Player. The Appellant submitted that it was not possible for the Respondent to represent the interest of both the Appellant and the Player. Moreover, Art. 20 of the Regulations states that the amount of remuneration due to a player's agent who has engaged to act on a player's behalf is calculated on the basis of the player's annual basic gross

income. Therefore, as a result of the clear wording of the Regulations, the payment of 10% of the salary of the Player to the Respondent as commission would have been deducted from the salary of the Player by the Appellant and transferred to the Respondent.

26. Additionally, the written consent given by the Player to the Appellant in the Player's Letter also confirms the fact that he had no objection to the deduction of 10% of his salary as a commission for the Respondent. Asserting the contrary would be against the Regulations.
27. On 29 May 2013, the Respondent provided a copy of the Representation Agreement and full translated extracts of the Argentinean and Brazilian statutes, as requested.
28. The Respondent reiterated that he received no payment in relation to the Player except for the sum of USD 110,000 paid by the Appellant in accordance with the Payment Contract. The Respondent provided two statements issued by the Argentinean clubs Banfield and Estudiantes confirming that no payment was made by either of them to the Respondent. The Respondent had attempted to procure a similar statement from the third loan club, but had been unable to.

#### **IV. THE CONSTITUTION OF THE PANEL AND THE HEARING**

29. By letter dated 7 March 2013 the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Mr. Mark Hovell, Sole Arbitrator. The parties did not raise any objection as to the constitution and composition of the Panel.
30. Art. R57 of the Code for Sports-related Arbitration (the "CAS Code") provides that the Sole Arbitrator may, after consulting the parties, decide not to hold a hearing if he deems himself sufficiently well informed. The Sole Arbitrator noted that neither of the parties requested a hearing. The Sole Arbitrator determined that, having given the parties the opportunity to supplement their written submissions by way of further submissions, he was sufficiently well informed to decide the case without holding a hearing.
31. Additionally, the parties signed the Order of Procedure in the case in hand confirming the decision to dispense with a hearing.

#### **V. THE PARTIES' SUBMISSIONS**

##### **A. Appellant's Submissions**

32. The Appellant's submissions, in essence, may be summarised as follows:
33. After the 2007/2008 Season, due to cultural differences and personal reasons the Player had problems with adapting to the Club and Turkey. Therefore, the Appellant agreed to transfer the Player on a loan basis to other clubs.

34. In the proceedings before the FIFA PSC, the Appellant disclosed the First Loan and the Second Loan and mentioned the possibility of a further loan for the 2010/2011 Season. FIFA failed to investigate whether the Player had been transferred on a loan basis to a third club by the Appellant. The Appealed Decision failed to take into consideration the Third Loan.
35. Besides this minor fault, the Appealed Decision correctly states *“considering the wording of art. 20 par. 3 of the Regulations as well as bearing in mind that during his loan to the clubs Deportivo Cruz Azul FC and Estudiantes de la Plata, i.e. during the Season 2008/2009 and 2009/2010, the player had not been remunerated by the Respondent [Club Galatasaray] as per the employment contract, the Single Judge came to the conclusion that, during the relevant timeframe, the Claimant was not entitled to receive his commission. Consequently, the Single Judge decided that the claim of the Claimant [Respondent] related to the payment of his commission for the Seasons 2008/2009 and 2009/2010 had to be rejected”*.
36. In accordance with Art. 19 par. 4 of the Regulations *“the representation contract shall explicitly state who is responsible for paying the player’s agent and in what manner. Any laws applicable under territory of the association shall be taken into account. The payment shall be made exclusively by the client of the player’s agent directly to the player’s agent. However, after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the player’s agent on his behalf. The payment made on behalf of the player must reflect general terms of payment agreed between the player and the player’s agent”*. The Appellant submitted that it is common in football for players to instruct clubs to pay the player’s agent direct as a deduction from the salary, rather than to pay the higher or full amount to the player and for him to pay the agent direct.
37. Moreover, Art. 20 of the Regulations states that the amount of remuneration due to a player’s agent who has been engaged to act on a player’s behalf is calculated on the basis of the player’s annual basic gross income. It is clear that upon the signing of the relevant loan agreements, the Player was no longer remunerated by the Appellant and that the Respondent had no right to claim to be remunerated by the Appellant for the duration the Player had been remunerated by a third club.
38. The Appellant was not in a position to pay a commission fee to the Respondent during the time the Player was no longer registered at the Club. Since the Player was transferred to other clubs on a loan basis, the Appellant would not be obliged to remunerate the Player, nor therefore was it able to pay any commission to the Respondent pursuant to the Payment Contract, due to the fact that the entire purpose of the Representation Agreement had become *“moot, null and void”*.
39. Par. 4(2) of Art. 10 of the Commentary on the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) clearly states that *“during the period that the player is on loan, the effects of the employment contract with the club of origin is suspended, i.e. the club of origin is not obliged to pay the player’s salary and to provide him with adequate training and/or other privileges or entitlements as foreseen in the contract. It is the responsibility of the new club to pay the player’s salary in accordance with the new contract with the player”*. In line with these regulations, there was never any principal-agent relationship between the Appellant and the Respondent. The latter was hired by the Player and the Appellant had agreed to remunerate the Respondent on behalf of the Player during

the term of the employment relationship. The Player was not employed by the Appellant during the period the Player was transferred to the three clubs on a loan basis.

40. The Appellant further submitted that the Player was also aware that he would not be entitled to any remuneration from the Appellant during the term of the loan agreements. This was made explicitly clear in the loan agreements. Therefore, the Player also knew that his agent, the Respondent, would not be paid on his behalf by the Appellant. The Respondent's entitlement to any commission under the Representation Agreement was dependant on the validity of the Contract, otherwise it would be unjust enrichment of the Respondent, since his commission fee was calculated on the basis of the effective period of the Contract.
41. Further, the Appealed Decision states that during the Player's loan to other clubs the Player's contractual relationship with the Appellant and the payment of his remuneration under the Contract had been suspended and hence during the relevant period of time, the Player had not received the salary the Respondent had negotiated for him which was at the basis of the Respondent's entitlement to receive his commission in the first place.
42. However, the FIFA PSC failed to investigate the Player's whereabouts and career for the 2010/2011 Season. Had the FIFA PSC done so, it would have found that the Player was loaned to another third club. As the Player was not remunerated by the Appellant during the 2010/2011 Season and as it was a duty for Club Atlético Banfield to pay his salary; in line with the evidence provided it is clear that during the 2010/11 season the Player's contractual relationship with the Appellant and the payment of his remuneration under the Contract was suspended.

## **B. Respondent's Submissions**

43. In summary, the Respondent submitted the following in response:
44. Although the Appellant had argued that the Player had been transferred on loan during the 2010/2011 Season, that situation was not proven to FIFA and therefore the Third Loan was not taken into account in the Appealed Decision.
45. The Contract was signed with the acknowledged participation of the Respondent. Consequently, the Player, as authorised by Art. 19 par. 4 of the Regulations, indicated to the Appellant to take over the payment of the commission due to the Respondent. Effectively, the Appellant assumed the obligation to make the payments of the commission by executing the Payment Contract.
46. The Respondent submitted that the wording of the obligations in the Payment Contract indicates that the monetary benefit assumed by the Appellant was not subject to any forthcoming circumstance. It is assumed an unconditional payment of a lump sum in the first two years and the percentage of a certain amount during the last three years. These monetary payments did not depend on the earning of any sum by the Player and were compulsory while the Contract was in force. Therefore the Appellant should pay to the Respondent the

determined sums on the sole condition that the Contract between the Player and the Respondent was in force.

47. The temporary loan of the Player to a third party does not mean in any way that the Contract expires or ends for any other reasons. The Respondent argued to the contrary, the transfer on loan of a player is only possible as long as the original contract is in place.
48. Clearly the Player entered into new contracts with the three clubs that he was transferred on loan to, but these new contracts did not mean in any way the expiration of the Contract signed with the Agent's participation.
49. Further, according to almost "*all legislation around the world*" in terms of sports employment, the transferor club is jointly liable with the transferee for labour obligations with the player. This confirms and enhances the importance of the contract, in order to entitle the transferor club to continue having the player under contract at its full disposal to decide on his evolution and career. The Contract did not expire for any reason prior to the stipulated deadline and the contracts signed by the Player with the other clubs, instead of provoking the extension of the Contract, confirmed its full force. The Respondent disputed the Appellant's claims that the transfer of the Player on loan could have made the Payment Contract "invalid" or "null".
50. Further, if the Appellant would have wanted to be released of the obligations assumed in the Payment Contract, it could have communicated the same to the transferee clubs and could have imposed a condition for the loan that these clubs assume the obligations in favour of the Respondent.
51. The Respondent concluded that there is no reason to release the Appellant from its clearly assumed obligations to the Respondent and therefore the payment obligations must be satisfied.

## VI. JURISDICTION OF THE CAS

52. Art. R47 of the CAS Code provides as follows:

*"An appeal against a 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 had exhausted the legal remedies available to him prior to the Appeal, in accordance with the statutes of regulations of the said sports related body".*

53. Art. 67 par. 1 of the FIFA Statutes provides:

*"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 notification of the decision in question".*

54. The CAS recognises its jurisdiction based on Art. R47 of the CAS Code and Art. 67 of the FIFA Statutes.

55. Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. Therefore, the Sole Arbitrator is satisfied that the requirements set forth in Art. R47 of the CAS Code are met, and that the Sole Arbitrator has jurisdiction to decide the present dispute.

## VII. APPLICABLE LAW

56. Art. R58 of the CAS Code provides 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”.*

57. The Appellant submitted that as the Contract does not contain a choice of applicable law, the applicable regulations are the FIFA regulations, more specifically the FIFA Statutes and the Regulations and that Swiss law shall apply complementary. The Respondent made no submissions in relation to the applicable law but did refer to Turkish, Spanish, Brazilian and Argentinian sports legislation.

58. The Sole Arbitrator noted that Art. 66 par. 2 of the FIFA Statutes provides:

*“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”.*

59. The “Federation” in the sense of Art. R58 of the CAS Code, i.e. FIFA, is domiciled in Switzerland, a fact that also requires that Swiss Law be applicable.

60. The Sole Arbitrator determines that the FIFA Regulations are applicable primarily and Swiss Law shall be applied in the alternative in the matter at hand. The references to Turkish, Spanish, Brazilian and Argentinian sports legislation were made by the Respondent in an analogous basis and will be dealt with later in this award by the Sole Arbitrator.

## VIII. ADMISSIBILITY

61. The Appeal was filed within the deadline provided by Art. 67 par. 1 of the FIFA Statutes and Art. R49 of the CAS Code. The Appellant complied with all other requests of Art. R48 of the CAS Code, including the payment of the CAS Court Office fee.
62. The decision appealed against was issued by the FIFA Single Judge of the Players’ Status Committee on 24 April 2012 and was notified to the parties on 22 November 2012.
63. The statement of appeal was filed on 12 December 2012, within the 21-day time limit prescribed by Article R49 of the CAS Code, that is to say in a timely manner.

64. In view of the foregoing, the Appeal was filed within the prescribed guidelines, complied with the prerequisites of article R48 of the CAS Code and is therefore admissible.

## **IX. MERITS OF THE APPEAL**

65. In these present proceedings, the Sole Arbitrator had to determine the following:
- a. Was FIFA under a duty to investigate the Third Loan?
  - b. What was the legal effect of the Payment Contract and the Player's Letter upon the Representation Agreement?
  - c. Was the Respondent entitled to his commission in relation to the period in which the Player was loaned to Club Atletico Banfield for the Season 2010/2011?

### **a. Was FIFA under a duty to investigate the Third Loan?**

66. The Appellant notified the FIFA PSC on 12 July 2010 that it was negotiating a third loan agreement. In response, FIFA wrote to the Appellant on 27 July 2010 and requested copies of the agreements relating to the First Loan and the Second Loan. The actual Third Loan Agreement provided to the CAS is undated, but expired on 31 May 2011. It appears to be for the entire 2010/2011 season, so the Sole Arbitrator assumes it would have been concluded in July or August 2010. The Sole Arbitrator notes that the Single Judge of the FIFA PSC considered the matter in hand on 24 April 2012. It is not disputed that the Appellant failed to send a copy of the Third Loan Agreement to FIFA. The Appellant states it wasn't asked for it; the Respondent states the burden of proof is upon the Appellant, so it should have submitted the same to FIFA.
67. The Sole Arbitrator notes that pursuant to Art. R57 of the CAS Code, he has the ability to hear the matter at hand on a *de novo* basis, but equally does not believe this extends to bringing new claims or prayers for relief that could have been made before FIFA. In this instance, the Sole Arbitrator notes that the Appellant's basic claims (*i.e.* that the Player was on loan and not receiving any remuneration under the Contract) had not changed at CAS from those before the FIFA PSC, however, the Appellant had advanced further evidence to CAS, which it could and should have provided the Single Judge with. Whilst the Appellant has complied with the requests of FIFA and produced the first two loan agreements, it would have been common sense to provide the Third Loan Agreement too, as it would have nullified the need for this appeal from the Appellant. The Sole Arbitrator has taken note of the Third Loan Agreement below, but also has taken note of the Appellant's conduct before FIFA when addressing the question of costs in this procedure.

### **b. What was the legal effect of the Payment Contract and the Player's Letter upon the Representation Agreement?**

68. The Sole Arbitrator notes that the primary contract is the Representation Agreement dated 1 October 2005. This is between the Player and the Respondent. The Player agreed to pay 10% of his basic salary to the Respondent from employment contracts the Agent had negotiated for him. There is no dispute that the Respondent negotiated the Contract with the Appellant for the Player and, as such, he should be entitled to receive a sum equivalent to 10% of the basic salary the Player received from the Appellant under the Contract.
69. The Sole Arbitrator further notes that the Player signs the Player's Letter and all three parties sign the Payment Contract. The Appellant claims this is nothing more than a mechanism for the commission the Player has to pay to his agent, the Respondent, to be deducted at source from the Player's salary by the Appellant and remitted to the Respondent. The Respondent, on the other hand, claims that the Payment Contract commits the Appellant to take over the payment obligations of the Player.
70. The Appellant also submits, that as no further salary was paid to the Player over the final three seasons of the Contract, there was no salary to deduct the commission from on behalf of the Player, in accordance with the Player's Letter and the Payment Contract. The Respondent, on the other hand, submits that the Payment Contract is unconditional and the payments have to be made by the Appellant, no matter what. The Sole Arbitrator notes that the Respondent has not appealed the Appealed Decision and that it acknowledges that counterclaims are not entertained in CAS procedures, so the dispute is limited to the Third Loan period only.

**c. Was the Respondent entitled to his commission in relation to the period in which the Player was loaned to Club Atletico Banfield for the Season 2010/2011?**

71. Looking at the Player's Letter first, the Sole Arbitrator notes it is quite brief and simply authorises the Appellant to make payments on his behalf. The Payment Contract states that the Appellant will make certain payments. The first is for USD 110,000, which is 10% of the Player's salary for the first two years of the Contract. The Sole Arbitrator notes that the Appellant was unable to demonstrate that this sum was deducted from the Player's salary ie was a payment he made, through the Appellant paying part of his salary to him and the balance to the Respondent. The second payment obligation is to pay at the end of the next three seasons a commission of 10% of the Player's salary in each of those seasons.
72. Whilst the Sole Arbitrator notes the unconditional wording of the Payment Contract, the Sole Arbitrator also notes the context in which the Payment Contract was entered into. The Appellant has provided the Sole Arbitrator with copies of the Regulations and referred to the FIFA RSTP, both of which demonstrate the common place practice of players being loaned from club to club. The Sole Arbitrator notes that the original contract remains in force, but key obligations such as paying the player and the player providing his services are suspended, whilst the player provides his services elsewhere and is remunerated elsewhere; further, that clubs often deduct sums from a player's contract and make payments on his behalf direct to third parties, such as agents. The Sole Arbitrator also notes the extracts of various legal systems from Turkey, Spain, Argentina and Brazil, that the Respondent has put forward. These demonstrate that if the loan club fails to pay the salary of the player, then his original

club remain liable under the original contract. However, the Sole Arbitrator also noted that there was no reference to the Player not having been paid in full by the three loan clubs.

73. Looking at the context behind the Payment Contract, the Sole Arbitrator determines that the Payment Contract was never intended and does not oblige the Appellant to make payments to the Respondent of the commission the Player owes the Respondent, as his agent. The obligation is solely the Player's. There is no consideration for the Appellant to take over such an obligation, rather, as is common in football, the Appellant was requested by the Player (pursuant to the Player's Letter) to deduct the commission at source and pay it on behalf of the Player to the Respondent. Once the Player was on loan, there was no salary from which to make such deductions, if indeed any needed to be made (a matter between the Player and the Respondent, not a consideration in the matter at hand).
74. The Sole Arbitrator notes that the Single Judge in the Appealed Decision determined that no payments needed to be made during the First Loan and the Second Loan, however awarded USD 75,000 for the final year of the Contract. The Sole Arbitrator is sure that had the Single Judge been in possession of the Third Loan Agreement, he would not have awarded that sum and would have concluded that no payments needed to be made by the Appellant during the three years the Player was on loan.

### **Conclusion**

75. The Sole Arbitrator upholds the Appellant's appeal and confirms that it has no liability towards the Respondent pursuant to the Payment Contract.
76. All further prayers for relief are dismissed.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 18 December 2012 by Club Galatasaray A.S. against Mr Hugo Issa regarding the decision issued on 24 April 2012 by the Single Judge of the FIFA Players' Status Committee is upheld
2. The decision issued on 24 April 2012 by the Single Judge of the FIFA Players' Status Committee is set aside.
3. No sum is payable by Club Galatasaray A.S. to Mr Hugo Issa.
4. (...).
5. (...).
6. All further prayers for relief are hereby dismissed.