



Arbitration CAS 2013/A/3251 Genoa Cricket and Football Club S.p.A v. Gary Porter, award of 3 February 2014

Panel: Mr Ercus Stewart (Ireland), President; Mr Michael Gerlinger (Germany); The Hon. Michael Beloff QC (United Kingdom)

Football

Agency contract

Entitlement of an agent to remuneration based on the agency contract

It is an accepted legal principle that subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he is not entitled to such a remuneration unless he is the effective cause of the transaction being brought about.

I. PARTIES AND NATURE OF APPEAL

1. Genoa Cricket and Football Club S.p.A (“GCFC” or the “Appellant”) is a sports club based in Genoa, Italy, and is a member of the Italian Football Federation, which in turn is a member of the Fédération Internationale de Football Association (“FIFA”).
2. Mr Gary Porter (the “Agent” or the “Respondent”) is a football player’s agent employed by Base Soccer Agency. The Respondent is duly licensed by FIFA.
3. GCFC appeals against a decision of the FIFA Players and Status Committee (“the Committee”) dated 25 September 2012 (“the Decision”) that the Agent was entitled to a commission in connection with a transfer of Mr Juraj Kucka (“the Player”) from Sparta Prague FC to GCFC.

II. FACTUAL BACKGROUND

A. Background Facts

4. 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 also 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.

5. The main issue between the parties is the extent, if any, of the Agent's involvement in the transfer of the Player to the GCFC in the period leading up to 5 January 2011 when the transfer took place. The GCFC said that it was not the Agent in person who conducted the services required for receiving a commission. The Agent says he was fully involved in the Player's transfer to the GCFC and conducted the services required.
6. Accordingly, the Panel sets out first the GCFC's version, and then the Agent's version of the relevant events. The Panel will then state its factual findings.

a) *Events leading up to 5 January 2011 – GCFC's version of events*

7. The GCFC's version of events is not set out in any witness statement but only in its Appeal Brief.
8. The GCFC states that "*the Agent never introduced Genoa and Sparta Prague so that the two clubs could negotiate the relevant transfer*". Instead, it says that a Mr Andrea Berta, who acted as a consultant to the GCFC, effected the introduction between the two clubs.
9. The GCFC also states that "*[t]he Appellant and the Respondent never worked together in the scope of the Player's transfer*".
10. In its Appeal Brief, the GCFC requested that Mr Berta be called as a witness at the hearing. In the end, however, the GCFC did not call him.
11. In its oral submissions the GCFC appeared to concede that the Agent was to a limited extent involved in the transfer of the Player to the GCFC via Base Soccer Agency Ltd ("Base"), but denied that such involvement had been sufficient to entitle him to a fee.

b) *Events leading up to 5 January 2011 – the Agent's version of events*

12. The Agent's version of events was supported by a witness statement dated 16 August 2013. In that statement, the Agent says he knew the Player's agent, Mr Emil Kovarovic, for a number of years. Mr Kovarovic contacted the Agent in Spring 2010 about a potential move for the Player to the English Premier League. The Agent watched the Player play in a match in the Czech Republic in May 2010. The Agent was impressed by the performance of the Player, to whom he was introduced after the match. He was also impressed by the Player's performance for the Slovakian team during the 2010 World Cup. After that tournament, he had several discussions with Mr Kovarovic about the Player's performance and a potential move to a top league in Europe, including a move to Italy.
13. Meeting with Andrea Berta. In October 2010, the Agent travelled to Milan where he met with Mr Luca Pagani, a consultant to Base. Mr Pagani's role was to assist Base with transfer business in Italy, primarily acting as an interpreter and liaison for Base agents who did not speak Italian.

The Agent and Mr Pagani met with Mr Berta in Milan. At the meeting, Mr Berta said that the GCFC might be looking for a central midfield player. The Agent suggested the Player as someone who could be of interest to GCFC. Mr Berta said he was not familiar with the Player but would undertake some research about him. Later in 2010, Mr Berta confirmed that the GCFC was interested in signing the Player.

14. Discussion of transfer. The Agent says he arranged for Mr Berta to meet with Mr Kovarovic in Milan. On 8 December 2010, the meeting took place (with the Agent and Mr Pagani also in attendance). Mr Berta asked to meet the Player in Prague, along with Mr Kovarovic and Jakub Otava, who was the Sporting Director of Sparta Prague. The Agent (with Mr Pagani) arranged the meeting, as requested, for 14 December 2010.
15. Meeting in Prague. The Agent says that on 14 December 2010, in a hotel room in Prague, he discussed the Player's possible move to the GCFC with Mr Pagani, Mr Berta, Mr Kovarovic, the Player, and the Player's fiancée. On 15 December 2010, the Agent met with Mr Berta to discuss strategy for the meeting with Mr Otava. They resolved that the Agent would not attend the meeting, but that Mr Pagani would attend as a translator. That evening, the meeting took place at a restaurant in Prague. There the Agent was party to discussions with Mr Berta and Mr Kovarovic about the potential transfer. The Agent says that later in December 2010, Mr Berta contacted him and Mr Pagani in an attempt to encourage the Player to sign for the GCFC. The Agent continued to discuss the same matter with Mr Kovarovic.
16. Formal offer from the GCFC. On 22 December 2010, Mr Berta made an offer on behalf of the GCFC for the Player in the sum of 2 million Euros. He asked Mr Pagani to request that Mr Kovarovic and the Agent speak with Mr Otava to take the transfer forward. The Agent asked Mr Pagani to enquire whether a deal could be reached in the sum of 2.6 million Euros. He says that his role was to ensure the Player and Mr Kovarovic were satisfied with the deal and to persuade Sparta Prague to sell the Player.
17. Completing the deal. The Agent says he continued to speak with Mr Kovarovic in order to convince him that the move to the GCFC was in the Player's interests. On 4 January 2011 he went to Prague to meet with the Player and Mr Kovarovic where he reassured the Player that the move to the GCFC would be an opportunity to develop as a footballer and eventually to secure a better deal or move to a bigger club. He says he succeeded in persuading the Player that the move to the GCFC would be a beneficial one.
18. The Agent's Commission. The Agent says that he and Mr Kovarovic were concerned that they had not received formal confirmation of the GCFC's contractual offer (which would include the agents' commission details). Mr Pagani contacted Mr Fabrizio Preziosi (the son of the GCFC's President) on the Agent's behalf. On the evening of 5 January 2011, a representative of the GCFC emailed Virginia Dunne of Base a representation mandate detailing the Agent's commission (the "Mandate"). On the same day, says the Agent, the transfer contract and Mandate were signed.

c) The Mandate

19. The material parts of the Mandate read as follows:

The Parties

Mr. Gary Porter born on 11 June 1963 (hereinafter indicated as the Agent);

and

the Genoa CFC S.p.A... (hereinafter indicated as Genoa)

agree to stipulate this representation mandate based on the following terms and conditions.

1) Duration

This mandate shall be valid from 01 January 2011 till 31 January 2011.

2) Subject

Transfer from Club AC Sparta Praha...to Genoa CFC...of the professional player Juraj Kucka...

3) Honorarium / Fee

For his activity relating to item 2) of this agreement, the Agent shall be entitled to receive a lump sum fee of € 300.000,00 (Euro Trecentomila/00) [sic] plus VAT, if due, to be paid within 15 days of the issuance of the ITC in favour of Genoa. Genoa shall pay for such provided the essential condition stated in item 2) of this agreement actually takes place within and no later than January 31st, 2011 and such an activity is actually carried out by the Agent himself.

Genoa, moreover, will be obliged to pay to Agent a 8% (eight percent) fee to be calculated upon the amount of a future definitive transfer exceeding the amount of € 3.500.000,00==

4) Exclusivity [sic]

The parties agree that this representation mandate is conferred on a NON-exclusive basis with reference to the activities included in the subject of this agreement as specified under item 2).

...”

B. Proceedings before the FIFA Players' Status Committee

20. On 15 September 2011, the Agent submitted his claim to FIFA. On 31 October 2011, the GCFC informed FIFA that it had scheduled a meeting with the Agent “in order to solve the above case” and on 21 November 2011, the GCFC informed FIFA that its intervention was

no longer required because it was evaluating a “*friendly solution of the case*” with the agent “*on the ground of a proposal effected by Mr Porter*”.

21. On 13 December 2011, on the absence of any agreement, the Agent asked FIFA to submit the matter to the FIFA Committee for consideration and a decision.
22. On 17 June 2013, the FIFA Committee issued the Decision (actually reached on 25 September 2012). It decided that “*the Claimant is entitled to receive from the Respondent EUR 300,000, corresponding to his commission as per the agreement*” (para 8). It also found that the GCFC should pay the Agent 5% interest per year on the awarded amount as from 15 September 2011.
23. Further, the FIFA Committee decided that the GCFC should pay CHF 8,000 by way of costs, of which CHF 3,000 was to be paid to FIFA and CHF 5,000 to the Agent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 8 July 2013, the GCFC submitted its Statement of Appeal. In the Statement of Appeal, the GCFC nominated Dr Michael Gerlinger as arbitrator.
25. On 15 July 2013, the Court of Arbitration for Sport (“CAS”) wrote to FIFA to ask whether FIFA wished to participate as a party to this arbitration, noting that the appeal was not directed at FIFA.
26. On 18 July 2013, the GCFC submitted its Appeal Brief.
27. On 25 July 2013, FIFA wrote to the CAS saying that it did not wish to take part in these proceedings.
28. On 1 August 2013, the Agent nominated the Hon. Michael J. Beloff QC as an arbitrator.
29. On 16 August 2013, the Agent filed his Answer brief and his witness statement.
30. On that same day, the parties were informed the Panel was constituted and Mr. Ercus Stewart SC was appointed President of the Panel in accordance with Article R54 of the CAS Code of Sports-related Arbitration (the “Code”).
31. On 19 August 2013, the CAS Court Office wrote to the parties asking them to inform the CAS Court Office by 26 August 2013 whether they preferred for there to be a hearing in this matter or whether the Panel should issue an award solely on the basis of the parties’ written submissions.
32. On 22 August 2013, the Agent informed the CAS Court Office that it preferred the Panel to render a decision based solely on the parties’ written submissions.
33. On 26 August 2013, the GCFC confirmed its preference that the Panel hold a hearing.

34. On 22 October 2013, the CAS wrote to the parties' representatives notifying them that they preferred to hold a hearing in this appeal, in accordance with Article R57 of the Code.
35. On 29 October 2013, Mr. Tom Asquith was appointed *Ad Hoc* Clerk.
36. On 1 November 2013 and 6 November 2013, the GCFC and the Agent signed the Order of Procedure and returned it to the CAS Court Office.
37. On 11 November 2013, a hearing was held at the chambers of Four New Square in London, UK. The Panel was assisted by Mr. Brent J. Nowicki, Legal Counsel at the CAS, during the hearing.
38. In addition to the Panel, Mr. Asquith, and Mr Nowicki, the following were in attendance at the hearing:
 - a. Paulo Lombardi (Appellant's Counsel)
 - b. Daniel Lowen (Appellant's Counsel)
 - c. Richard Berry (Respondent's Counsel)
 - d. Andrew Osborne (Respondent's Counsel)
 - e. John Mehrzad (Respondent's Counsel)
 - f. Frank Trimboli (observer)
 - g. The Respondent
39. The parties confirmed a lack of objection to the composition of the Panel and expressly confirmed at the end of the hearing that their right to be heard and to be treated equally had been respected, and that they had been given ample opportunity to present their cases and submit their arguments and answers.
40. Following the hearing, the parties issued a joint submission to the CAS Court Office confirming an Italian to English translation of a sentence which appears at page 43 of Mr Porter's witness statement. Such translation was admitted to the file.

IV. SUBMISSIONS OF THE PARTIES

A. The GCFC

41. The GCFC's written submissions may be summarized as follows:
 - Pursuant to Article 1 para 1, the FIFA Players' Agents Regulations (the "FIFA Regulations") govern the activities of players' agents who introduce players to clubs with

a view to negotiating or renegotiating an employment contract or introduce two clubs to one another with a view to concluding a transfer agreement within one association or from one association to another.

- Since there were no details about the activities required of the Agent in the Mandate, they should be assumed to be the typical activities specified in the FIFA Regulations.
- The Agent failed to perform such typical activities. He never introduced the GCFC to Sparta Prague so that the two clubs could negotiate the relevant transfer.
- Instead, that introduction was effected by Mr. Berta on the GCFC's behalf.
- The Agent and the GCFC never worked together in the scope of the Player's transfer.
- Further, contrary to Article 22 of the FIFA Regulations, the Agent's name cannot be found in the transfer documentation. Also, whilst the Player's agent's name can be found in the Player's employment contract, the Agent's name is not.
- Separately, there is provision in the Mandate at clause 5 for the Agent to receive 8% of any compensation exceeding 3.5 million euros that the GCFC should receive in the event of a future transfer of the Player. This provision is in breach of Article 29 of the FIFA Regulations.
- The GCFC had previously (and mistakenly) been under the impression that it did have a liability to the Agent. However, it has since realized its mistake, once aware that Mr. Berta performed the Agent's role. It regrets not having put forward that case to the FIFA Committee.

42. The GCFC's oral submissions modified its written case. Its oral submissions may be summarised as follow.

- The Agent had failed to demonstrate he was instrumentally involved in the transfer of the Player to the GCFC.
- The Agent's own statement and the documents tendered with it confirmed there was no instrumental involvement.
- It was agreed that the relationship between the Agent and the GCFC was not exclusive. It was therefore open to the GCFC to say that it had handled the transfer itself.
- The persons who had been instrumental in the transfer of the Player were a) Mr. Berta (who had at the time, but no longer, worked for the GCFC – the Appellant's representative was unsure whether this was an employment or consultancy relationship) and b) Mr. Pagani (who worked for Base).

- The Agent's case was undermined by the fact that he had disclosed a text message sent in early January 2011 (sent by Mr. Pagani to Mr. Fabrizio Preziosi who was the son of the owner and a director of the GCFC) in which he had seemingly introduced the Agent to Mr. Preziosi. This was inconsistent with the Agent being instrumentally involved, suggested the GCFC.
 - The Agent's case was further undermined by documents he had disclosed which showed Mr. Pagani liaising with Sparta Prague representatives in English. It was understandable that Mr. Pagani might liaise with Italians on the Agent's behalf given his ability to speak Italian, but there was no reason for the Agent not to deal directly with Sparta Prague representatives when he could have done so in English.
43. The GCFC maintained its reliance on Article 22 of the FIFA Regulations, saying the Agent had not signed the transfer documentation. The Panel asked the GCFC if its case was either (1) that the absence of a signature was evidence of the Agent not being sufficiently involved in the transfer of the Player or (2) that the absence of a signature was a legal bar to the Agent being able to recover his fees, whether or not in fact he had been sufficiently involved in the transfer of the Player.
44. The Appellant's representative submitted that there was mixed jurisprudence on this point and that it depended on which system of law was being applied. Upon being reminded that the applicable law in this case was Swiss law, the Appellant's Representative did not continue to press the point that the absence of a signature presented a technical bar to recovery by the Agent. The Panel was not referred to any provision of Swiss law which might support such a point.
45. The Panel therefore took the GCFC's reliance on the alleged breach of Article 22 of the FIFA Regulations to be, at its highest, a submission that it constituted evidence that the Agent had not been sufficiently involved in the transfer of the Player to be entitled to his claimed fee.
46. It was a factor to take into account when considering whether the Agent had been sufficiently involved in the transfer of the Player.
47. In oral submissions, the Appellant's representative further conceded that the point relating to Article 29 of the FIFA Regulations (and whether or not Clause 5 of the Mandate breached it) was not relevant to the issues before the Panel.
48. The Appellant's representative accepted that Mr Pagani had been involved in the Player's transfer but maintained that the Agent himself had to carry out the relevant work.
49. The GCFC made the following requests of the CAS Panel:
1. *We request this Honourable Court to review the present case as to the facts and to the law, in compliance with Article R57 of the Code of Sports - related Arbitration.*

2. *We request this Honourable Court to issue a new decision setting aside the decision passed by the FIFA Players' Status Committee on 25th September 2012, ascertaining that nothing is due to the Respondent under the "FIFA Representation Mandate" concluded on 1st January 2011.*
3. *We request this Honourable Court to declare that also the part of the decision condemning the Appellant to pay procedural costs in the amount of CHF8'000, CHF3'000 of which to FIFA and CHF5'000 to the Respondent, be annulled.*
4. *In any case, we request this Honourable Court to order the Respondent to bear all costs related to these proceedings.*
5. *In any case, we request this Honourable Court to order the Respondent to cover all legal costs incurred by the Appellant, which we estimate will approximate CHF35'000 by the end of the proceedings.*
6. *Finally, we request that a hearing be held in these proceedings and that Mr. Andrew Berta be called as a witness.*

B. The Agent

50. The Agent's written submissions may be summarised as follows.
51. It was noted that GCFC had made two main points: first, that the Agent did not carry out any "activity" on the GCFC's behalf; secondly, that clause 5 of the Mandate (entitling the Agent to 8% of any future compensation relating to a transfer of the Player over 3.5m euros) is in breach of FIFA Regulations.
52. As to the "activity" point, the Agent submitted that:
 - The GCFC failed to provide any arguments or material to FIFA despite two requests to do so.
 - The first time that the GCFC has suggested that the Agent did not carry out the "activity" referred to in clause 2 of the Mandate was in the Appeal Brief dated 18 July 2013.
 - The GCFC's prior conduct (such as entering into open correspondence about the payment of sums due to the Agent) was consistent with the Agent's position that he had performed the "activity".
 - The Agent's witness statement supports his case that he was involved in the transfer of the player.
 - The GCFC has failed to provide a witness statement from Mr. Berta, contrary to R51 of the Code. The CAS Panel should decline to admit any evidence from him pursuant to R56 of the Code.

- The GCFC's case that it only later found out about Mr. Berta's involvement in the transfer of the Player is at best misconceived and at worst deliberately misleading, since he was at the relevant time engaged by the GCFC as its Technical Director.
- The GCFC has failed to submit a brief summary of Mr. Berta's expected testimony pursuant to R51 of the Code.
- There is no proper basis on which the GCFC can seek a *de novo* hearing pursuant to R57 of the Code. It has only itself to blame for not putting its case earlier.
- The GCFC has adduced no evidence which could rebut the Agent's evidence on the issue of "activity". There is therefore no reasonable need for oral evidence in this case and the CAS Panel should consider only the written submissions.
- The appearance of another agent's signature on transfer or employment documentation is irrelevant.

53. As to the clause 5 of the Mandate point the Agent said that:

- It is irrelevant to the dispute at hand and formed no part of the FIFA Committee's decision.
- Paras 10, 11 and 36 of the Appeal Brief refer to communications which form part of "without prejudice" correspondence. As such those paragraphs should be struck out, or deemed irrelevant.

54. The Agent's oral submissions may be summarised as follows said that:

- The GCFC's written case implied that the Agent's position that he had been involved in the transfer was a figment of his imagination. However, no evidence from Mr. Berta or Mr. Pagani was being relied on. The Agent's evidence was unchallenged.
- The GCFC had for the first time in its oral submissions relied on Mr. Pagani's involvement.
- The Agent's statement and the documents exhibited to it made the extent of his involvement in the Player's transfer clear.
- The Player's transfer documentation and the Mandate had been signed on the same day. It would have been very strange for the Mandate to be signed by the GCFC if the Agent's involvement only occurred at the last minute.
- There was clear evidence of 1) the Agent's involvement in the introduction of the Player to the GCFC; 2) the Agent's involvement in the negotiation of the transfer; 3) the GCFC's request for the Agent to be involved; and 4) the GCFC's acknowledgment that commission was due to the Agent.

- As to the absence of the Agent's signature, there was no box on the Mandate for the Agent to sign. Such absence was not indicative of the Agents lack of involvement in the transfer. The FIFA Players' Status Committee had not taken issue with the transfer documentation.
- The test the Agent had to satisfy based on CAS 2006/A/1019 (G v O) was "significant involvement". On the evidence he satisfied that test.

55. The Agent invited the CAS Panel to:

32.1 Consider the appeal based on the written submission [sic] only given, in particular, that the Appellant has produced no witness statement or new documentary evidence to rebut the witness statement and documentary evidence of the Respondent;

32.2 Dismiss the Appeal;

32.3 Order that the Appellant pay the arbitration costs;

32.4 Award the Respondent its costs on the indemnity basis pursuant to art R64.5 of the Code, having regard to complexity and outcome of the proceedings and the financial resources and, in particular, the conduct of the Appellant especially:

- (i) Its repeated failure to make any payment to the Respondent despite repeated assurance and agreements for the same;*
- (ii) Its failure to supply a substantive answer to FIFA despite being given more than one opportunity to do so;*
- (iii) Its admission now that it misled FIFA;*
- (iv) The Appeal Brief, which is both vague in substance and also devoid of any supporting witness evidence in breach of applicable procedural rules; and,*
- (v) Its deliberately misleading and unsupported contentions in relation to the "activity" of the Respondent and the role (and its knowledge of the role) of Mr Berta.*

32.5 Such further and other relief as the CAS Panel sees fit.

V. ADMISSIBILITY

56. 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.

57. The FIFA Committee's decision is dated 17 June 2013. The Statement of Appeal is dated 8 July 2013. The appeal is timely, and is therefore, admissible.

VI. JURISDICTION

58. 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.

59. Article 67 of the FIFA Statutes (July 2012 Edition) allows for appeals of the FIFA Committee's decision to be appealed to CAS (with various exceptions which do not apply in this case).
60. Accordingly, the CAS Panel has jurisdiction (which neither party has contested and is confirmed by their signature of the order of procedure).

VII. APPLICABLE LAW

61. Article R58 of the Code provides as follows:

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.

62. Pursuant to Article 66 of the FIFA Statutes (July 2012 Edition), the Panel shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

VIII. MERITS

A. The issue to be decided

63. By the end of the hearing, it was agreed between the parties and the Panel that whether or not there was a provision in the Mandate which was in breach of Article 29 of the FIFA Regulations was irrelevant to the present issues.
64. Further, as noted above, because the absence of the Agent's signature on the transfer documentation was relied on by the GCFC only evidentially (as opposed to as making the claim on the Mandate unlawful), the alleged breach of Article 22 did not constitute a separate issue.

65. Therefore the only issue between the parties was whether or not the Agent had been sufficiently involved in the transfer of the Player to be entitled to his fee as set out in the Mandate.
66. The Panel has deliberately used of the phrase “sufficiently involved”. The parties’ representatives used different language when referring to the level of involvement which the Agent had to show. The GCFC had used the phrase “instrumentally involved” whereas the Agent used the phrase “significantly involved”.
67. The Respondent’s representative directed the Panel to the case of CAS 2006/A/1019. Although the phrase “significant involvement” is found in that judgment, it is found in the context of the Panel’s factual finding about what the agent had failed to show. It is not expressly stated to be the relevant legal test. Rather the relevant test is set out earlier in the judgment where it is said:
- “... it is an accepted legal principle that subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he is not entitled to such a remuneration unless he is the effective cause of the transaction being brought about” (Para 11).*
68. The question the Panel must ask itself, therefore, is whether the Agent was the “effective cause” of the Player’s transfer to the GCFC?
69. On the facts of this case, the Panel nonetheless notes that its answer remains the same even if the test was whether the Agent was “instrumentally involved” or “significantly involved”. The Panel’s determination does not hinge on which precise form of words is used. It has not accordingly been necessary to consider the extent to which, if at all, the phrases “effective cause”, “instrumentally involved” and “significantly involved” provide different hurdles for an agent to surmount.

B. Events leading up to 5 January 2011 – the Panel’s findings

70. In its oral submissions, the Appellant did not contest the facts laid out in the Agent’s witness statement of 16 August 2013, but argued that such facts were not sufficient for the Agent to receive a commission. The Appellant had the opportunity to challenge the facts laid out in the witness statement during the oral hearing. The Appellant, however, did not question any fact vis-a-vis the Respondent in the oral hearing. There is also no reason to challenge the Agent’s credibility in this respect. For this reason, the Panel accepts the accounts of events set out in the Agent’s witness statement of 16 August 2013.
71. In particular, it is therefore established that the Agent conducted the meetings in October 2010 in Milan and on 14 December 2010 in Prague and communicated with the player side and the club side via telephone, email and text messages. The question now is, whether such performances conducted are sufficient to receive a commission, i.e. whether the Agent was effective cause for the transfer.

C. Decision

72. The Panel is persuaded by his uncontested statement that the Agent was the effective cause of the transfer of the Player from Sparta Prague to the GCFC. The Panel would refer to the following parts of the statement (already summarised above) by way of example:
- a. Para 18: *“Andrea [Berta] mentioned that the Appellant may be in the market for a central midfield player. I suggested that the Player may be of interest to them”.*
 - b. Para 21: *“I subsequently arranged for Andrea to meet Emil in Milan to discuss the potential transfer of the player to the Appellant. This meeting took place with Luca and me at the Hotel Melia on Via Masaccio on 8 December 2010. Andrea asked that I arrange a meeting in Prague for him to meet Emil and the player, along with the Sporting Director of Sparta Prague, Jakub Otava”.*
 - c. Para 27: *“Throughout this period, I was in constant contact with Luca by telephone, discussing strategy and arrangements in order to, hopefully, make the transfer happen”.*
 - d. Para 32: *“The Player and his fiancée then arrived at the hotel. Luca, Emil, Andrea and I discussed a possible move to the Appellant with them”.*
 - e. Para 33: *“On 15 December, I met with Andrea to discuss strategy for the meeting with Jakub. We agreed that Andrew would attend the initial meeting with Jakub without me, accompanied by Luca as interpreter”.*
 - f. Para 38: *“Following the meeting in Prague, Andrea contacted Luca and me a number of times in an attempt to push the Player to sign for the Appellant. He was very keen that the deal be completed on the first day of the January transfer window. I asked Luca to make contact with Jakub by text message on 18 December in order to enquire about the prospect of a deal... I continued speaking to Emil about the Player and the potential move to the Appellant. Emil told me that he had other clubs who were interested in signing the Player”.*
 - g. Para 41: *“Andrea subsequently sent a further message to Luca requesting that Emil and I work on Jakub in order to get the deal done”.*
 - h. Para 57: *“The transfer contract and mandate were signed on 5 January... We then went out for dinner to celebrate the Player signing for the Appellant”.*
73. The Panel was also referred to primary documentation (such as emails and text messages) which supported the Agent’s account of events.
74. The Panel has considered the GCFC’s submission that Mr Berta and/or Mr Pagani were the real causes of the Player’s transfer to the GCFC, and notes the Appellant’s representative’s submission that the Agent was required *himself* to be the cause of the transfer to justify receipt of commission.
75. As to Mr Berta, the Panel rejects the contention that he was the effective cause of the transfer. It is quite clear that it was the Agent, not Mr Berta, who introduced the Player to the GCFC

and the Agent, not Mr Berta, who negotiated between the parties over a period of time. Naturally, Mr Berta was involved in many of the discussions relating to the Player. But he relied on the Agent not only for the introduction to the Player but also to persuade the Player to commit to the transfer.

76. As to Mr Pagani, the Panel rejects also the contention that he was the only effective cause of the Player's transfer. First, as a matter of fact, it appears to the Panel that the key steps during the introduction and the negotiations were undertaken by the Agent, not Mr Pagani. This is consistent with the fact that the Agent was acting as the agent, whereas Mr Pagani was acting as an assistant, in particular using his Italian language skills. Secondly (and separately), whilst the Panel was not addressed on the point by the parties as a matter of law, it would be very reluctant to divorce Mr Pagani's actions from those of the Agent. Mr Pagani was effectively the Agent's agent with the consequence that his actions should be attributed to the Agent, in particular since both are working for the same agency, i.e. Base. It would be bizarre if a sports agent was found not to be responsible for sending an email because it had been sent through a secretary or not to be responsible for organising a meeting because it had been arranged through a travel agent.
77. The Panel therefore concludes that the Decision of the FIFA Committee is upheld. Interest will continue to accrue in favour of the Agent.

D. Postscript – R57 (3)

78. At the outset of the hearing there was some discussion as to whether the Panel should permit the GCFC to admit new evidence pursuant to R57 (3). In the event, the GCFC did not seek to admit any such evidence. Accordingly, the Panel has not found it necessary to resolve this issue either.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the Appellant Genoa Cricket and Football Club S.p.A. on 8 July 2013 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.