



Arbitration CAS 2014/A/3669 Al Ahli Football Club v. Frank Trimboli, award of 16 July 2015

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Football

Representation agreement between a club and a players' agent

Condition for a CAS panel to decide not to hold a hearing

Conditions regarding invoices for payments due to an agent

1. Under Article R57 of the Code, pursuant to amendments made in 1999, a CAS panel needs to be satisfied that it was sufficiently well informed to dispense with a hearing. The test is expressly one of sufficiency, not completeness, of information available for the purposes of adjudication.
2. Given that (a) under FIFA Players' Agent Regulations only a natural person may act as an agent, (b) a players' agent may be incorporated as a business, (c) nothing in the Regulations prevents a players' agent himself being employed by a large agency, the sending of invoices for payments due to an agent employed by an agency in the name of the corporate entity he represents is a standard practice that is compatible with those Regulations. Nothing in the Regulations requires the players' agent to be named on the invoice; it suffices that the invoices are his, sent on his behalf.

I. PARTIES

1. Al Ahli Football Club (the "Club" or "Appellant") is a professional football club based in Dubai, United Arab Emirates. It is a member of the United Arab Emirates Football Association, which in turn is a member of the Federation Internationale de Football Association ("FIFA").
2. Mr. Frank Trimboli (the "Respondent") is an English Football Association Authorised Agent. He is employed by Base Soccer Agency ("Base"), a United Kingdom based football agency.

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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 29 June 2011, the parties entered into a representation agreement (the “Representation Agreement”) concerning the employment of L. (the “Player”). The parties to the Representation Agreement were described as follows:
 1. FRANK TRIMBOLI, Licence No. T142 of Base Soccer Agency Limited (the Authorised Agents”).
 2. BASE SOCCER AGENCY LIMITED ..., and
 3. AL AHLI FOOTBALL CLUB
5. The Representation Agreement also contained the following material provisions:

2 SERVICES

- 2.1 The Club hereby appoints the authorised agent to provide the following services contained in this Agreement:

To advise the Club in discussions and, when requested by the Club, to represent the Club in negotiations in respect of the professional football, L. (the “**Player**”)

(the “**Services**”).

5 REMUNERATION

- 5.1 In consideration of the provision of the services the Club shall pay to the Authorised agent:
 - (a) The sum of €200,000 ... payable on 1 September 2011.
 - (b) The sum of €200,000 ... payable on 1 October 2011.
 - (c) The sum of €200,000 ... payable on 1 August 2012.
 - (d) An additional bonus payment of €100,000 in the event that the transfer fee paid by the Club to the Player’s current club is less than €3,000,000 such bonus payment to be made within 30 days of the transfer value being determined and a copy of the Transfer Document being provided to the Authorised Agent.
 - (e) The sum equivalent to 5% ... of the gross value of the Player’s contract for the term on any new contract that the Player may negotiate with the club payable within 30 days of the contract being negotiated.

(...)

exclusive of any Value Added Tax that may be payable (the “Fee”)

(...)

5.4 If any amount payable by the Club to the Authorised Agent under this Agreement is due but unpaid (...)

(a) such amount shall incur interest at an annual rate of 5% above the prevailing base rate of Base’s principal bankers such interest accruing on a daily basis from the date payment becomes due until the date that the Authorised Agent receives payment in full of that amount together with all interest that has accrued (...).

5.6 Payment of the fee shall be made within five days of receipt by the Club of the Authorised Agent’s written invoices for which purpose the Club shall make available all transfer and sell on documentation (or shall procure that all transfer and sell on documentation is made available) to the Authorised Agent.

21 DISPUTES

Any dispute between the parties arising from this Agreement which constitutes a breach of the FIFA Regulations shall, upon one Party giving written notice to the others, be referred to FIFA to be dealt with in accordance with the FIFA Regulations and the laws of England and Wales (...).

22 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and Wales and subject to Clause 21 the Parties hereby submit to the exclusive jurisdiction of CAS (...).

5. The Agreement was signed by the Respondent’s Authorised Agent on his own behalf and on behalf of Base and by the Chief Executive Officer of the Appellant.
6. On 25 August 2011, the Operations Manager of Base submitted a written invoice (no. 23415) for €200,000 due under Clause 5.1(a) of the Representation Agreement.
7. On 13 October 2011, the Operations Manager of Base submitted a written invoice (no. 2453) for the sum of €200,000 under Clause 5.1(b) of the Representation Agreement.
8. On 29 August 2012, the Operations Manager of Base submitted a third invoice (no. 3655) for the €200,000 due under Clause 5.1(c) of the Representation Agreement.
9. The Appellant has not paid the Respondent any remuneration pursuant to the Representation Agreement. As appears hereafter, the Appellant denies the Respondent has any entitlement thereto.

B. Proceedings before the FIFA Bureau

10. On 12 December 2012, the Respondent lodged a claim with FIFA's Bureau of the Players' Status Committee (the "FIFA Bureau") for the unpaid sum.
11. On 19 March 2014, the FIFA Bureau upheld the Respondent's claim noting that the Appellant had not submitted any comment on it despite a request to do so and ordering the Appellant to pay Mr. Trimboli the sum of €600,000 as well as 5% interest per year thereon as from 12 December 2012 until the date of effective payment (the "Appealed Decision").
12. The Appellant now appeals the Appealed Decision to the Court of Arbitration for Sport (the "CAS").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 23 July 2014, the Appellant filed its Statement of Appeal in accordance with Articles R47 et seq. of the Code of Sports-related Arbitration (the "Code"). Within such Statement of Appeal, the Appellant requested that this appeal be resolved by a Sole Arbitrator.
13. On 4 August 2014, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
14. On 12 August 2014, the Respondent confirmed its agreement that this appeal be resolved by a Sole Arbitrator.
15. On 12 September 2014, following an agreed-upon extension of time, the Respondent filed his Answer in accordance with Article R55 of the Code.
16. On 16 September 2014, the Respondent informed the CAS Court Office that it preferred that the Sole Arbitrator render a decision on this appeal based solely on the parties' written submissions, without a hearing.
17. On 22 September 2014, the Appellant also informed the CAS Court Office that it preferred that the Sole Arbitrator issue an award based on the parties' written submissions without a hearing. The Appellant also requested that it be permitted to file a reply to the Respondent's Answer.
18. On 6 October 2014, the Respondent objected to the Appellant's request to file a reply, but noted that in the event such a reply was granted, he also wished to file such a submission.
19. On 15 October 2014, the CAS Court Office informed the parties that the Hon. Michael J. Beloff Q.C., barrister in London, United Kingdom ("Mr. Beloff QC"), had been appointed Sole Arbitrator by the President of the Appeals Arbitration Division in accordance with Article R54 of the Code.
20. On 22 October 2014, the Appellant challenged the appointment of Mr. Beloff QC.

21. On 3 November 2014, such challenge was reiterated.
22. On 11 December 2014, the Board of the International Council of Arbitration for Sport dismissed the Appellant's challenge to Mr. Beloff QC as Sole Arbitrator
23. On 12 March 2015, upon the invitation of the Sole Arbitrator, the Appellant filed a supplemental submission pursuant to Article R44.3 of the Code.
24. On 25 March 2015, the Respondent filed his reply to the Appellant's supplemental submission pursuant to Article R44.3 of the Code.
25. On 1 May 2015, the Sole Arbitrator issued a series of questions to the Appellant following receipt of the Respondent's 25 March 2015 submission.
26. On 4 June 2015, the Appellant filed its response to the Sole Arbitrator's inquiry.
27. On 4 June 2015 and 10 July 2015, the Appellant and Respondent, respectively, signed and returned the Order of Procedure to the CAS Court Office. Neither party raised any objection to the procedure proposed and confirmed that the Sole Arbitrator could render a decision based on the parties' written submissions.
28. Under Article R57 of the Code, pursuant to amendments made in 1999, the Sole Arbitrator needed nonetheless to be satisfied that he was sufficiently well informed to dispense with a hearing. The test is expressly one of sufficiency, not completeness, of information available for the purposes of adjudication. That test was, in the view of the Sole Arbitrator, met.

IV. SUBMISSIONS OF THE PARTIES

29. The Appellant's submissions, in essence, may be summarized as follows:
 - **The "Invoice Argument"** - Contrary to the Provisions of the Representation Agreement the Appellant never received any formal request signed by the Respondent or invoice personally issued by him although he alone was entitled to payment under the Representation Agreement. The request or invoices were sent on behalf of Base although Article 3 of the FIFA Player Agents' Regulations states:
"Player's agents activity may only be conducted by natural persons".
 - **The "Involvement Argument"** - The Respondent never produced for the FIFA Bureau any proof of his alleged representative activity in the transfer of a Player to the Appellant. Notably, the Player's employment contract with the Appellant dated 29 June 2011 made no reference to the Respondent at all although Article 28 of the FIFA Players' Agents' Regulations states:
"Any contract concluded as a result of negotiations conducted by a licensed player's agent who is engaged by the Club shall specify the Player's Agent's name".

In its additional submissions, the Appellant elaborated that the actual activity carried out by Base never consisted of negotiation with the club Ternana (being the Player's previous club) and that negotiation concerning the "employment condition" was conducted by the Appellant together with the Player's Agent. It also raised questions about whether any activity pursuant to the Representation Agreement on Base's part was carried out by the Respondent as distinct from Mr Luca Pagani, a consultant with Base.

- **The "Quantum Argument"** - The sum claimed by the Respondent was disproportionate to the work performed and greater than the market norm.

30. The Appellant's request for relief provided as follows:

On the basis of the above the Al Ahli Club requests the Court of Arbitration for Sport to rule as follows:

- (i) *Uphold the present appeal;*
- (ii) *Set aside the challenged Decision in its entirety; on a subsidiary basis.*
- (iii) *In the unlikely event of prayers 1 and 2 above being denied to highly reduce the disproportionate amount granted to Mr Frank Trimboli by FIFA in the challenged decision.*
- (iv) *Allow Al Ahli Club to pay any amount imposed by CAS in six equal instalments to be paid every three months following the issuance of the CAS award.*

In any and all of the above-mentioned cases.

- (v) *Mr Frank Trimboli shall bear all the costs of this arbitration.*
- (vi) *Mr Frank Trimboli shall compensate Al Ahli Club for the legal and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel.*

31. The Respondent's submissions, in essence, may be summarised as follows:

- As to the Invoice Argument, there is no obligation under the Representation Agreement for the Respondent to issue invoices in his own name. The Appellant was aware at all times the Respondent carried out agency activity as an employee of Base in accordance with Article 3.1 of the FIFA Players' Agents' Regulations:

"A Player's agent may organise his occupation as a business as long as his employee's work is restricted to administrative duties connected with the business activity of a Player's Agent, only the Player's agent himself is entitled to represent and promote the interests of Players and/or clubs in connection with other Players and/or clubs".

The sending of invoices for payments due to an agent employed by an agency in the name of the corporate entity he represents is standard practice.

The Representation Agreement did not require the Respondent's name to appear on invoices.

The Appellant at all times knew the identity of the putative payee and on several occasions promised payment.

- As to the Involvement Agreement, the signed statement of the Respondent dated 10 September 2014 provides ample evidence of his role in the negotiations which resulted in the employment agreement and is operated by and consistent with an email chain exhibited thereto. There was no requirement under the Representation Agreement for the Respondent to negotiate with Ternana.
- As to the Quantum Argument, the sum claimed was contractually agreed. Indeed further sums (the "further sums") are due.

32. The Respondent's request for relief provided as follows:

39.2 Dismiss the Appeal.

39.3 Order the Appellant to pay the arbitration costs.

39.4 Award the Respondent his costs on an indemnity basis pursuant to Article 64 of the Code having regard to the 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 assurances and agreements for the same.*
- (ii) Its failure to supply a substantive answer to FIFA despite being given an opportunity to do so.*
- (iii) The Appeal Brief which is both vague in substance and also devoid of any supporting witness evidence in breach of applicable procedural rules, and*
- (iv) Its deliberately misleading and unsupported contentions in relation to the activity of the Respondent.*

39.5 Such further or other relief as the CAS Panel sees fit.

V. JURISDICTION

33. 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.

34. Article 67(1) of the FIFA statutes cited below at para. 38 recognizes CAS jurisdiction which is also provided for in Clauses 21 and 22 of the Representation Agreement.
35. CAS jurisdiction is not challenged by the Respondent and is confirmed by the signature of the parties to the Order of Procedure.
36. The Sole Arbitrator therefore determines that the CAS has jurisdiction to render a decision in this case.

VI. ADMISSIBILITY

37. 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.

38. Article 67(1) of the FIFA statutes provides:

Appeals against final decisions passed by FIFA's legal body ... shall be lodged with CAS within twenty-one days of notification of the decision in question.

39. On 4 July 2014, the FIFA Bureau notified the Appellant of the Appealed Decision.
40. The Statement of Appeal was filed on 23 July 2014 and therefore within the twenty-one day time limited provided by FIFA statutes. Accordingly, such appeal is admissible. Moreover, it is noted that the admissibility of such appeal is not challenged by the Respondent.

VII. APPLICABLE LAW

41. 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.

42. The Representation Agreement provides expressly at Clause 21 the laws of England and Wales should be the governing law. Such law was the law chosen by the parties at the time they entered the Representation Agreement.
43. The relevant FIFA Regulations, materially the FIFA Players Agent Regulations, are also applicable.

44. Having considered both parties submissions, the Sole Arbitrator is unpersuaded that any law, other than the above, should inform his resolution of the dispute.

VIII. MERITS

45. As set forth above, the Appellant raises three principle arguments to justify its lack of payment to the Respondent in accordance with the Representation Agreement, namely the “Invoice Argument”, the “Involvement Argument”, and the “Quantum Argument”. The Sole Arbitrator finds each argument unavailing, and the basis for the dismissal of such argument is set forth below.

A. The Invoice Argument

46. The trigger for payment under the Representation Agreement is receipt by the Appellant “*of the Authorised Agent’s written invoices*”. The Respondent, an employee of Base, was the Authorised Agent. There was nothing in the Representation Agreement nor in the FIFA Regulations which required the Authorised Agent to be named on the invoice; it suffices that the invoices are his, sent on his behalf. It is obvious that this pre-condition is satisfied.
47. Given that (a) under FIFA Regulations only a natural person may act as an agent; (b) a player’s agent may be incorporated as a business; and, more importantly, (c) there is nothing in the FIFA Regulations to prevent a Player’s Agent himself being employed by a large agency, the standard practice referred to by the Respondent is compatible with those Regulations.
48. In any event, according to the Respondent, he visited the Appellant between 23 and 26 October 2011, and met the President, Mr Abdullah Al Naboodah, who told him that the Appellant was waiting for funding from the owners and would pay him as soon as the money came through. There is an email from the President, to Mr Pagani, dated 29 November 2011 confirming that payment would be made within 48 hours and asking him to confirm the relevant bank account details (the invoices being those of Base). Subsequent emails of April and June 2012 made promises to like effect.
49. There is a suggestion by the Appellant in its additional submissions that these were not proven to be the President’s emails, but could have been “artificially created”. This is mere speculation whose apparent lack of substance was exposed in the Respondent’s reply submission’s which gave the telephone number of the President displayed on a Short Message Service and the Respondent’s own mobile phone showing contact details for him.
50. In its final comments, the Appellant challenged the authenticity of these items saying that they could themselves have been manufactured. The Sole Arbitrator is prepared to accept that they could in theory have been manufactured; but sees no reason to conclude that in fact they were. Such a serious allegation requires cogent evidence if it is to be made good. But there is none.
51. Accordingly, even if, which is not accepted, the invoices were not in the form required by the Representation Agreement, the Sole Arbitrator concludes that the Appellant by the

communications summarised above had waived or is estopped from relying upon any such deficiency.

52. Consequently the Appellants first argument fails.

B. The Involvement Argument

53. As to the Involvement Argument, the Sole Arbitrator rejects such arguments for the following reasons.
54. The services required of the Respondent was defined by Representation Agreement in Clause 2.1. The obligation was to represent the Club in negotiations in respect of the Player. It did not require specifically any negotiation with the Player's previous club, i.e. Ternana. It appears the Player was in dispute with Ternana and that a private agreement (i.e. one separate from the employment contract) was envisaged whereby the Appellant would indemnify the Player in proceedings under Article 17 of the FIFA Regulations for Status and Transfer of Players, i.e. termination of a contract without just cause (see the email from the Respondent to the Appellant dated 28 June 2011).
55. It is instructive that the FIFA Regulations at 7.1 provide that clubs *"are entitled to engage the services of a licensed player's agent in connection with a transfer or with a view to negotiating an employment contract. A Player's Agent is entitled to be remunerated for the services he provides"*. This suggests that there is nothing anomalous in a Player's Agent gaining remuneration simply for negotiating a player's contract with the club.
56. The Respondent's detailed statement as to his role in negotiations with the Player, especially which took place on 27 and 28 June at the Inter-Continental Hotel on Park Lane, in London, at which the Player, his Agent and representatives of the Club were all present provide sufficient evidence of that involvement and performance of the obligations under the Representation Agreement. The candid references in that statement to Mr Pagani's role cannot be interpreted to nullify the effective role of the Respondent.
57. The Appellant in its additional submissions suggested that negotiations were conducted by it and the Player's Agent; but no witness statement is provided by the Appellant, any of his officers, or the Agent to support the submission or to rebut the Respondent's detailed witness statement as to his own involvement. The Appellant's mere suggestion is therefore manifestly insufficient to displace the Respondent's evidence. Submissions are not, it bears repeating, themselves considered evidence.
58. Moreover, on 28 June 2011, the Respondent sent an email to the Appellant's President as to the terms that had been agreed. They correlate to the terms in the Employment Contract.
59. The Representation Agreement and the Employment Agreement were signed on the same day. This is not unusual in the experience of the Sole Arbitrator. It is significant, nonetheless, that the Appellant did sign the Representation Agreement at a time when necessarily anything done to procure the Player's signature to the Employment Contract had *ex hypothesi* already taken

place. The Appellant has not provided any cogent or indeed any explanation as to why it signed the Representation Agreement if the Respondent had done nothing to justify payment.

60. Consequently, the Appellant's second argument also fails.

C. The Quantum Argument

61. As to the Quantum Argument, the sums claimed were contractually agreed upon. Whether they were greater than the market norm – as the Appellant asserts – or not is *nihil ad rem*. Whatever Swiss law may say (see the Appellant's further comment at para. 7), nothing in the relevant English law or in FIFA Regulations would justify the Sole Arbitrator in interfering with that sum. Put simply, the Sole Arbitrator deems it appropriate to apply *prima facie pacta sunt servanda* and to dismiss this request.
62. Consequently the Appellant's third argument also fails.

D. Overview

63. In conclusion, the Sole Arbitrator determines that in the light of (i) the Respondent's evidence, (ii) the Appellant's lack of evidence, (iii) the emails emanating from the Appellant (whose authenticity cannot be doubted), (iv) the manner in which the Appellant has conducted its case both before the FIFA Bureau and before the Sole Arbitrator, the Appellant cannot avoid paying the sums that are clearly due.

E. Postscript

64. As to the further sums concerning the transfer of the Player with Ternana as requested by the Respondent in its additional submission, whether due or not, they are not within the scope of the present proceedings before the Sole Arbitrator who is concerned only with the Appellant's appeal. The Sole Arbitrator accepts the Appellant's argument to this effect in its further submission.
65. The Respondent must therefore take other steps to procure from the Appellant any such sums, if due.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Ahli Football Club against Mr. Frank Trimboli concerning the decision of the Bureau of the Players' Status Committee of FIFA dated 19 March 2014 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.