



**Arbitration CAS 2013/A/3393 Genoa Cricket and Football Club v. Juan Aisa Blanco, award of 23 June 2014**

Panel: Mr Marco Balmelli (Switzerland), President; Mr Rui Botica Santos (Portugal); Mr Efraim Barak (Israel)

*Football*

*Contract between a players' agent and a club*

*Amicus curiae*

*Shift of the burden of proof*

*Conflict of interest*

1. In general, an *amicus curiae* brief is submitted, when justified, by a party that is not a party to the dispute in order to offer special perspectives, arguments or expertise in a dispute. In this regard, it is well known that in any legal system in the world which accepts the practice of *amicus curiae* the lower instance having issued the challenged award or decision is not considered to be a party from which an *amicus curiae* is accepted. In this respect, there is a specific situation where FIFA actually maintains two roles in arbitral proceedings, namely to be “legislator” but also to be the first instance before the appeal to the CAS. In such circumstances, any interpretation or any other reference of FIFA to its Statutes and Regulations in a given dispute that was decided by the judicial bodies of FIFA should be transmitted and explained by decision of a judicial body and not by means of an *amicus curiae* brief.
2. Under the application of Art. 8 of the Swiss Civil Code, as well as CAS jurisprudence the burden of proof is assigned to the agent when it comes to the question to demonstrate the agent’s activity which led to the transfer which was aimed by the contractual relationship between agent and club. Although the agent has not submitted any proof which would indicate the actual work done, *id est*, emails, phone records, time schedule etc., the facts that the transfer agreement refers to the activities of the agent to be causal to the transfer and that this agreement was written on the club’s paper and signed by the club itself strongly indicate that the agent was essentially involved in the transfer at hand. Thus, it is for the club to provide and substantiate special circumstances that might rebut the assumption of a causal link between the agent’s activity and the transfer at hand.
3. Art. 19.8 of the 2008 Players’ Agents Regulations provides that “*Players’ agents shall avoid all conflicts in the course of their activity*” and that “*A player’s agent may only represent the interest of one party per transaction*”. The rule was introduced with the main goal to avoid situations in which one agent acts on behalf of both sides to the contract as to say represents the interests of the club as well as of the player at the same time. The mere allegation of a possible conflict of interest without any evidence to

**support it does not suffice to prove that there was a conflict of interest which would render a representation contract between an agent and a club void.**

## **I. THE PARTIES**

1. The Appellant, Genoa Cricket and Football Club (the “Club” or “Appellant”), is a professional Italian football club that competes in the Italian Lega Nazionale Serie A.
2. The Respondent, Mr. Juan Aisa Blanco (the “Agent” or “Respondent”), is a professional player’s agent who is licensed by the Spanish Football Federation.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On an uncertain date in July 2010, the Agent signed a representation contract (“Mandato Tipo di Rappresentanza”, hereinafter the “Representation Contract”) with the Club instructing him to act in the interest of the Club in providing assistance in the completion of the transfer of the professional football player J. (hereinafter “the Player”) from the Club UD Almeria to the Appellant.
5. The contract in its English translation provides, in its relevant parts, the following:

#### *“(1) Object*

*The Company instructs the Agent to act in its interests, providing assistance with the completion of the transfer of contract and registration of membership of the Professional footballer J., known as [...].*

#### *(2) Fee*

*The Agent shall be entitled, for the services rendered, to a lump sum of € 400’000 (four hundred thousand), to be paid in the manner and by the dates indicated below, against presentation of duly issued invoices*

*€100’000.00 by 30/09/2010*

*€100’000.00 by 30/06/2011*

*€100’000.00 by 30/09/2011*

*€100’000.00 by 30/06/2012*

(...)

*(5) Other heads of agreement*

*The right to be paid the fees established is subject to the fundamental condition referred to in the foregoing clause 1 and to the condition that the activities in question are conducted as a result of the proven professional services of the agent by 31<sup>st</sup> August 2010.*

*By signing this mandate, the Agent declares that there is no mandate and/or agency agreement between himself and the Footballer J., and that he is free to enter into this mandate”.*

6. On 21 July 2010, the Player signed a five-year employment contract (hereinafter the “Employment Contract”) with the Appellant. On the same date, a transfer agreement was signed (hereinafter “the Transfer Agreement”) between the Club and UD Almeria. Clause 15 of the Transfer Agreement refers to the activity of the Respondent as providing assistance in the respective transfer from the player to the Appellant. The Employment Contract also mentions the agent of the Player, Mr. Alvaro Torres (hereinafter “the Player’s Agent”).

**B. Summary of the arbitral Proceedings before the FIFA Players’ Status Committee**

7. On 14 December 2011, the Respondent filed a claim with FIFA against the Appellant for breach of the Representation Contract and requesting payment in the amount of EUR 300’000.00 which had become due plus interests and costs and in case of a lack of payment of the fourth installment due on 30 June 2012 the additional amount of EUR 100’000.00. In this respect, the Respondent argued that although the Player had signed the Employment Contract with the Appellant in July 2010 and therefore the Respondent had rendered any service he was obliged to, the Appellant had failed to pay him the first three installments agreed upon between the parties under the Representation Contract.
8. On 17 February 2012, the Appellant submitted its Memorandum claiming that the Respondent’s claim should be rejected and to condemn the Respondent to bear all costs and expenses of the proceedings so far.
9. On 6 March 2013, the parties were informed that the investigation phase of the present matter was closed.
10. On 23 July 2013, the parties were informed that the present matter will be submitted to the Single Judge of the FIFA Players’ Status Committee.
11. In rejection of the Respondent’s claim, the Appellant referred to Art. 19.8 of the FIFA Players’ Agents Regulations edition 2008 (hereinafter “the Regulations”) and argued that the Respondent was not entitled to any commission due to a conflict of interest which rendered the contract void.
12. In this respect, the Appellant argued that there is a conflict of interest due to the circumstance that the Player’s Agent and the Respondent are both members of the same company specialized

in athletes' representation, "You First Sport", and that therefore both agents were operating on behalf of that company, hence acting "*for the same centre of economic interest*".

13. The Single Judge of the FIFA Players' Status Committee considered the fact that the Representation Contract was signed between the parties in relation to the transfer of the Player as a strong indication of the due fulfillment of the contractual obligations.
14. Furthermore, the Single Judge emphasized that Art. 19.8 of the Regulations was enacted first and foremost in order to ensure that a player's agent is not remunerated twice for the services he renders in the same transaction.
15. The Single Judge considered that in the case at hand there is no documentary evidence that either the Respondent or the Player's Agent tried to receive a double remuneration through the same transaction.
16. The Single Judge furthermore mentioned that the fact that the Appellant had made a payment in the amount of EUR 50'000.00 to the Respondent during the course of the proceedings supports the view that the Appellant had accepted the existence of the contractual relationship between the parties.
17. In accordance with the considerations above, on 29 July 2013, the Single Judge rendered his decision accepting the claim of the Agent. In doing so, the Club was ordered to pay the Agent's commission in the amount of EUR 350'000.00, as well as various interests on the award, excluding CHF 15'000.00 of final costs of the proceedings.
18. By fax dated 14 August 2013, the Appellant asked for a written reasoning of the decision which the parties received on 25 October 2013.

### **III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

19. On 15 November 2013, the Appellant filed a statement of appeal against the decision of the Single Judge of the FIFA Players' Status Committee with the Court of Arbitration for Sport ("CAS") in accordance with Article R48 of the Code of Sports-related Arbitration Rules (the "Code"). Furthermore, the Appellant requested that the appeal be decided by a Sole Arbitrator.
20. In its Statement of Appeal the Appellant requested the following:

*"1. We respectfully ask that this Honourable Court request an amicus curiae brief from the FIFA administration providing the genuine interpretation of article 19 par. 8 of the FIFA Player's Agent Regulations with particular respect to the issue as to whether or not two agents with shared interests participating in the same transaction can be regarded as being in violation of the relevant provision.*

2. *We request this Honourable Court to issue a new decision setting aside the decision passed by the Single Judge of the FIFA Player's Status Committee on 29<sup>th</sup> July 2013 and confirming that nothing is due to the Respondent under the Agreement.*
  3. *We request this Honourable Court to order the Respondent to bear all costs related to these proceedings.*
  4. *In any case, we request this Honourable Court to order the Respondent to cover all legal costs of the Appellant, which by the end of these proceedings will be approximate CHF 30'000.00.*
  5. *We would like to appoint Mr Rui Botica Santos, as Arbitrator for the Appellant.*
  6. *Finally, we request that a hearing be held in these proceedings”.*
21. On 22 November 2013, the Respondent objected to the Appellant's request that a sole arbitrator should be appointed.
  22. On 25 November 2013, the Appellant submitted its Appeal Brief asking *inter alia* for an *amicus curiae* brief from FIFA providing a genuine interpretation of Art.19.8 of the Regulations which are deemed to play an important role in the case at hand.
  23. On 26 November 2013, the parties finally agreed to have a Panel composed of three arbitrators and Mr. Rui Botica Santos and Mr. Efraim Barak have been nominated respectively by the Appellant and the Respondent.
  24. On 2 December 2013, FIFA renounced its right to request its possible intervention in the present arbitration proceeding in accordance with Art. R54 and R41.3 of the Code.
  25. On 20 December 2013, the Respondent filed his Answer requesting the following:
    - i. Accept this response against the appeal brief issued by the Club.*
    - ii. Adopt an award rejecting the Appeal presented and confirming the decision of the Single Judge of the Players' Status Committee appealed.*
    - iii. Reject the Appellant's request for an amicus curiae brief from FIFA.*
    - iv. Condemn the Respondent (sic) to the payment of the whole CAS administration costs and Panel fees.*
    - v. Condemn the Respondent (sic) to pay 5% annual interest on the amount from the date of the breach of contract in accordance with Swiss law.*
    - vi. Fix a sum to be paid by the Respondent (sic) to the Club (sic) in order to cover its defence fees and costs in the amount of CHF 20,000”.*

26. On 10 January 2014, the CAS Court Office informed the parties that pursuant to Art. R54 of the Code, the Panel appointed to hear the appeal was constituted as follows:

President: Dr. Marco Balmelli, Attorney-at-Law, Basel, Switzerland  
Arbitrators: Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal  
Mr. Efraim Barak, Attorney-at-Law, Tel Aviv, Israel

27. On 11 February 2014, the parties were informed that a hearing will be held on 8 May 2014 at the CAS Headquarters in Lausanne, Switzerland.

28. On 23 April 2014, the Appellant reiterated its request for an *amicus curiae* brief from FIFA.

29. On 24 April 2014, the Respondent brought to attention of the Panel that through his Answer, he had objected to the Appellant's request for an *amicus curiae* brief referring *inter alia* to the reasoning of the decision by the Single Judge in this matter.

30. On 29 April 2014, the parties were informed that Panel had decided to deny the Appellant's request for an *amicus curiae* brief.

#### **IV. HEARING**

31. On 8 May 2014, a hearing was duly held in Lausanne, Switzerland. All members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

32. The following persons attended the hearing:

- a. The Appellant was represented by Mr. Paolo Lombardi, attorney-at-law, Edinburgh, United Kingdom.
- b. The Respondent was represented by Mr. Juan De Dios Crespo Pérez, attorney-at-law, Valencia, Spain and Mr. Luiz Guerra, lawyer.

33. The parties were afforded the opportunity to present their case on the merits, to submit their arguments, and to answer the questions asked by the Panel. The parties explicitly agreed at the end of the arbitration that their right to be heard and their right to be treated equally in these arbitration proceedings have been fully observed.

#### **V. JURISDICTION**

34. Art. 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”.*

35. Jurisdiction before the CAS is established under Art. 66 (1) and 67 (1) of the FIFA Statutes. Therefore, CAS has jurisdiction over the present case. The jurisdiction of the CAS was not contested by the Respondent and was confirmed by the signature by both parties of the Order of Procedure.

## **VI. ADMISSIBILITY**

36. Art. 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”.*

37. The motivated FIFA decision was notified on 25 October 2013. The Appeal was filed on 15 November 2013. Therefore, the Appeal was submitted at due date.

## **VII. APPLICABLE LAW**

38. Art. R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

39. The parties agree in the present matter that the Panel shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

## **VIII. PROCEDURAL MATTERS**

40. In its Appeal Brief dated 25 November 2013, the Appellant asked the Panel to request an *amicus curiae* brief from FIFA providing a genuine interpretation of Art. 19. par. 8 of the Regulations.

41. The formal power of the Panel to allow the filing of *amicus curiae* in CAS proceeding was introduced for the first time in the 2013 edition of the Code (applicable to all the procedures initiated as from 1 March 2013). This Appeal was indeed initiated after the entering into force of the 2103 edition of the Code.

42. Art. R41.4 of the Code, in its last paragraph, states as follows: “*After consideration of submissions by all parties concerned, the Panel may allow the filing of amicus curiae briefs. On such terms and conditions as it may fix*”. Art. R41.1 is applicable, *mutatis mutandis*, to the appeals arbitration procedure by virtue of R54 of the Code.
43. It follows that the Panel, after consideration of the parties’ submissions on this issue was entitled to allow or deny the request.
44. In general terms, the Panel considered the general role of an *amicus curiae* brief as an instrument allowing someone who is not a party to a case to voluntarily offer special perspectives, arguments or expertise on a dispute.
45. Art. R41.4 of the Code in its part dealing with *amicus curiae* briefs is indeed quite new to the Code. In the past, CAS jurisprudence stated that in the absence of an express consent of the parties, and since the Code was then silent in this respect, requests for an *amicus curiae* brief should only be taken into account if there is a public dimension to the matter at stake. The Panel is of the opinion that the discretion granted to the Panel in the 2013 edition of the Code is indeed much wider and is reflected in the words “*On such terms and conditions as it may fix*”. Nevertheless, in the opinion of the Panel, a submission of an *amicus curiae* brief should be considered very carefully on a case by case basis. Furthermore, the public dimension should also be considered as one – but not the only – element in considering whether or not to accept such a request.
46. In the case at hand, the Panel decided to deny the request. First, the Panel acknowledged that the case at hand does not invoke a public interest different from any other interest embodied in the right interpretation and application of the FIFA statutes and Regulations.
47. Second, in general, an *amicus curiae* brief is submitted, when justified, by a party that is not a party to the dispute. In this regard, it is well known that in any legal system in the world which accepts the practice of *amicus curiae* the lower instance having issued the challenged award or decision is not considered to be a party from which an *amicus curiae* is accepted. Indeed, the Panel considered the specific situation based on the fact that FIFA actually maintains two roles in arbitral proceedings like the one at hand, namely to be “legislator” but also to be the first instance before the appeal to the CAS. It is therefore the Panel’s opinion that any interpretation or any other reference of FIFA to its Statutes and Regulations in a given dispute that was decided by the judicial bodies of FIFA should be transmitted and explained by decision of a judicial body and not by means of an *amicus curiae* brief.
48. Finally, due to the special status of FIFA which maintains the two capacities, under Art. R52 of the Code, FIFA is always informed about the appeals on its decisions and thus is entitled to request to intervene in the proceedings pursuant to Art. R41.3.
49. On 2 December 2013, FIFA informed CAS that it renounced its right to request its possible intervention in the present arbitration proceeding in accordance with Art. R54 and R41.3 of the Code. By this, FIFA also expressed its understanding that there is no need to intervene in these

proceedings. The Panel does not see the necessity to request FIFA (acting as the first instance) to provide assistance in interpreting a rule of law.

50. Therefore, the Panel decided to deny the Appellant's request to ask FIFA for an *amicus curiae* brief.

## **IX. MERITS**

51. The Appellant requests the Panel to set aside the decision rendered by the Single Judge of the FIFA Players' Status Committee passed on 29 July 2013 and to hold that nothing is due to the Respondent under the Representation Contract.

52. The Appellant bases its appeal on mainly three allegations which were all respectively denied by the Respondent.

***a. Firstly, the Appellant argues that there is no causal link between the agent's activity of Mr. Juan Aisa Blanco and the transfer of the Player and therefore nothing was due to the Respondent.***

53. In this regard, the Panel considers that under the application of Art. 8 Swiss Civil Code, as well as CAS jurisprudence and literature the burden of proof is assigned to the Agent when it comes to the question to demonstrate the Agent's activity which led to the transfer which was aimed by the contractual relationship between Agent and Club.

54. The Panel considers that in the case at hand, the Respondent has not submitted any proof which would indicate the actual work done, *id est*, emails, phone records, time schedule etc. Nevertheless, the facts that the transfer agreement refers to the activities of the Respondent to be causal to the transfer and that this agreement was written on the Club's paper and signed by the Club itself strongly indicate that the Respondent was essentially involved in the transfer at hand. Thus, the Club would need to provide and substantiate special circumstances that might rebut the assumption of a causal link between the Respondent's activity and the transfer at hand.

55. Summarizing in this regard, the Panel considers that the Respondent succeeded in demonstrating that there was a causal link between his own activity and the transfer of the Player.

***b. Secondly, the Appellant alleges that there was a conflict of interest and therefore the Representation Contract is void.***

56. In this regard, the Appellant referred to Art. 19.8 of the Regulations which reads:

*"Players' agents shall avoid all conflicts in the course of their activity. A player's agent may only represent the interest of one party per transaction. In particular, a player's agent is forbidden from having a representation*

*contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' player agents involved in the player's transfer or in the completion of the employment contract".*

57. The Appellant argues that there was a conflict of interest in the meaning of art. 19.8 due to the fact that the Respondent and the Player's Agent are both associated with the sports managing company You First Sport. Apart from that circumstance, the Appellant failed to indicate to what extent or in which manner such conflict of interest occurred in the case at hand.
  58. In this respect, the Respondent did not deny the membership of the two agents in the parent organization You First Sport. However, the Respondent was eager to emphasize that both agents, the Respondent and the Player's Agent, respectively were contracting partners of two different persons, the Club and the Player, had two different contractual relationships and therefore two different interests to represent and fulfill.
  59. In interpretation of Art. 19.8 of the Regulations, the Panel considers that the rule was introduced with the main goal to avoid situations in which one agent acts on behalf of both sides to the contract as to say represents the interests of the club as well as of the player at the same time.
  60. The Panel analyses the case at hand by finding that the Respondent was contractually obliged to represent the interest of the Club during the negotiations with the club UD Almeria, and not during the negotiations between the Club and the Player or the Player's Agent.
  61. Furthermore, the Panel sees no indication that the Agent did not act in the best interests of the Club.
  62. Summarizing in this regard, the Panel finds that the Appellant did not prove that there was a conflict of interest which would render the Representation Contract void. The mere allegation of a possible conflict of interest without any evidence to support it does not suffice in this regard.
- c. Thirdly, the Appellant argues that Respondent tried to receive a double remuneration through the transfer of the Player.***
63. In this regard, the Appellant produced two checks in the amount of EUR 25'000.000 each in favor of You First Sport. Based on this fact, the Appellant argues that the Respondent tried to receive a double remuneration through the transfer of the Player.
  64. The Panel considers that the Appellant failed to indicate why this fact should lead to an illegal attempt of a double remuneration. The two checks in the total amount of 50'000.00 correspond to the fact that during the FIFA proceedings the Appellant made a payment in that amount for the services rendered by the Respondent pursuant to the Representation Contract.
  65. Summarizing in this regard, the Appellant did not establish nor convinced the Panel that any form of attempted double remuneration took place in the case at hand.

## **X. CONCLUSION**

66. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- (i) the Appellant failed to prove the absence of any causal link between the Respondent's activity and the completion of the transfer of the Player;
  - (ii) the Appellant failed to prove that a conflict of interest existed;
  - (iii) the Appellant failed to prove that the Respondent aimed to receive a double remuneration upon the transfer of the Player;
  - (iv) Therefore, upon completion of the transfer, the Respondent is entitled to a lump sum of the outstanding amount of EUR 350'000.00 plus interests in the amount of 5 % per annum.
    - a. of EUR 50'000.00 by 30 September 2010
    - b. of EUR 100'000.00 by 30 June 2011
    - c. of EUR 100'000.00 by 30 September 2011
    - d. of EUR 100'000 by 30 June 2012

## **ON THESE GROUNDS**

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

1. The appeal filed by Genoa Cricket and Football Club against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 29 July 2013 is dismissed.
  2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 29 July 2013 is confirmed.
- (...)
5. All further and other claims for relief are dismissed.