Arbitration CAS 2018/A/5643 Sporting du Pays de Charleroi v. David Dudu Dahan, award of 16 November 2018

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Football
Contractual dispute between a players' agents and a club
Inadmissibility of counterclaims submitted by respondents in appeal arbitration proceedings before CAS
Extent of players' agents' freedom to organise their work
Criteria for the (non-)application of national laws regulating "job placement agencies" to players' agents' activities
Club's payment of a players' agent on a player's behalf

1. **A respondent in an appeal proceedings before CAS requesting a change in the allocation of first instance costs is filing a counterclaim, which is not admissible under the CAS Code.**

2. **Pursuant to the FIFA Players' Agents Regulations, a players' agent's activity may only be carried out by a natural person who is licensed by the relevant association to carry out such activity. A players' agent may organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with his players' agent's business activity. Only a players' agent himself is entitled to represent/promote the interests of players/clubs in connection with other players/clubs.**

3. **Belgian law's registration requirement related to "job placement agencies" intend to subject agencies to a control by the authorities in order to "police" its labour market. To achieve this purpose, without going beyond it, said rules need to apply only to activities performed on the Belgian labour market. They do not need (or intend) to apply to activities performed by football players' agents everywhere in the world, even though a player is occasionally "placed" to a Belgian club. For a players' agent to be subject to these provisions, it appears necessary that he is "present" directly and regularly active in the Belgian market. The same conclusion can be reached with respect to Swiss law as its relevant rule only subjects to prior authorization whoever wants to exercise (i) in Switzerland and (ii) "regularly" a job placement activity.**

4 **Pursuant to the FIFA Players' Agents Regulations, a representation contract shall explicitly state who is responsible for paying the players' agent and in what manner. Any laws applicable in the territory of the association shall be taken into account. Payment shall be made exclusively by the client of the players' agent directly to the players' 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. Such payment must reflect the general terms of payment agreed between the player and the player's agent.**

I. THE PARTIES

1. Sporting du Pays de Charleroi (the "Club" or the "Appellant") is a professional football club with seat in Charleroi, Belgium. The Appellant is affiliated to the Belgian Football Federation (*Union Royale Belge des Sociétés de Football-Association* - "URBSFA"), which is a member of Fédération Internationale de Football Association ("FIFA"), the world governing body of international football.

2. Mr David Dudu Dahan ("Mr Dahan", the "Agent" or the "Respondent") is a players' agent licensed by the Israeli Football Association. Mr Dahan is the managing director of Scoutpush Ltd, a limited liability company with seat in Jerusalem, Israel (the "Company").

3. The Club and the Agent are hereinafter referred to as the "Parties".

II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and evidence adduced during these 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, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 12 February 2010, Mr Dahan, *"agissant pour la société qu'il represent* [sic]*: Scoutpush Ltd"*, and the football player Mr [E] (the "Player") entered into a *"Contrat de Médiation"*, drafted in French, under which Mr Dahan was granted exclusive mediation rights for the Player *("Les parties conviennent que les droits de médiation sont transférés exclusivement à l'agent du joueur: Monsieur Dudu Dahan"*) (the "Representation Agreement"). Such contract provided for a fee for the services under it corresponding to 10% of the annual gross salary (*"salaire de base brut annuel"*) of the Player. In addition, the Player agreed that *"l'agent est autorisé (…) pour recevoir paiement de la commission directement de la part du club"* ["the agent is authorized (…) to receive the payment of the commission directly from the club"].

6. On 20 December 2010, a contract (*"Convention"* – the "Contract") was signed in French, under which Mr Abbas Bayat, *"en sa fonction de président"*, and Mr PY Hendrickx, *"en sa fonction de secrétaire général auprès de la S.A. Sporting du Pays de Charelerοi"*, declared that Mr Dahan, *"représentant la Scout Push"*, was entitled (*"a droit"*) to the following lump sum payments (*"indemnités forfaitaires"*) in the framework of the negotiation and signature of the contract of the Player, as compensation for the legal and tax assistance rendered to the Club and the Player (*"dans le cadre de la négociation et signature du contrat du joueur* [E] *à titre d'honoraires, d'assistance juridique et fiscale fournie au club et au joueur"*):

    i. EUR 25,000 net of VAT on 31 January 2011 (the "First Instalment");

    ii. EUR 25,000 net of VAT on 30 December 2011 (the "Second Instalment"), provided that

the Player was still under contract with the Club.

7. The Contract was signed by Mr Dahan *"pour Scoutpush"*.

8. On 10 January 2011, the Club and the Player entered into an employment contract for the period between 1 January 2011 and 30 June 2013 (the "Employment Contract").

9. On 23 September 2012, the Agent's counsel noted that the Club had failed to pay the Second Instalment, and invited it to comply with its payment obligations within 7 days.

10. On 13 November 2012, the Agent, in the absence of payment, filed a petition with the Players' Status Committee of FIFA (the "PSC"), noting that the Club had breached the Contract *"without any just cause and under no good faith"*, requesting it to order the Club to pay the amount of EUR 50,000 plus 5% interest from the due date to the date of actual payment, and to impose on the Club *inter alia* a fine of at least CHF 10,000.

11. On 24 January 2013, the Club lodged a claim against the Company in front of a Belgian court, requesting it to order the Company to reimburse the amount received as First Instalment, because the Contract was null and void under Belgian law.

12. On 13 September 2013, the Club filed with FIFA a counterclaim against the Agent challenging the competence of FIFA to decide on the matter and in any case seeking the reimbursement of the amount already paid.

13. On 2 April 2016, the Agent amended his claim before FIFA, requesting the payment only of EUR 25,000, corresponding to the Second Instalment.

14. On 16 May 2016, the Player signed a declaration indicating that (emphasis in original):

> *"the undersigned had given* **consent to the club to pay the entitled commission directly to the Players agent** *for the transfer to that club, on his behalf in accordance with art. 19, par. 4 of the FIFA Players' Agents Regulations"*.

15. On 29 August 2017, the Single Judge of the PSC (the "Single Judge") issued the operative part of a decision (the "Decision"), holding as follows:

> *"1. The claim of the Claimant/Counter-Respondent, David Dahan, is admissible.*
>
> *2. The claim of the Claimant/Counter-Respondent, David Dahan, is partially accepted.*
>
> *3. The counterclaim of the Respondent/Counter-Claimant, Club Sporting du Pays de Charleroi, is inadmissible.*
>
> *4. The Respondent/Counter-Claimant, Club Sporting du Pays de Charleroi, has to pay to the Claimant/Counter-Respondent, David Dahan, within 30 days as from the date of notification of this*

decision, the amount of EUR 25,000, plus an interest at a rate of 5% per year on the aforementioned amount as from 31 December 2011 until the date of effective payment.

5. *If the aforementioned sum, plus interest as established above, 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.*

6. *Any further claims lodged by the Claimant/Counter-Respondent, David Dahan, are rejected.*

7. *The final costs of the proceedings in the amount of CHF 10,000 are to be paid by both parties, within 30 days as from the date of notification of the present decision, as follows:*

   7.1 *The amount of CHF 5,000 has to be paid by the Claimant/Counter-Respondent, David Dahan. Considering that the latter already paid an advance of costs in the amount of CHF 1,000 at the start of the present proceedings, the Claimant/Counter-Respondent, David Dahan, has to pay the remaining amount of CHF 4,000.*

   7.2 *The amount of CHF 5,000 has to be paid by Respondent/Counter-Claimant, Club Sporting du Pays de Charleroi. Considering that the latter already paid an advance of costs in the amount of CHF 1,000 with regard to its counterclaim, the Respondent/Counter-Claimant, Club Sporting du Pays de Charleroi, has to pay the remaining amount of CHF 4,000.*

   7.3 *Both amounts have to be paid directly to FIFA to the following bank account: (…).*

8. *The Claimant/Counter-Respondent, David Dahan, is directed to inform the Respondent/Counter-Claimant, Club Sporting du Pays de Charleroi, immediately and directly of the account number to which the remittance under point 4. Above is to be made and to notify the Players' Status Committee of every payment received".*

16. On 19 March 2018, the grounds of the Decision were issued. They read, in the pertinent portions, as follows:

   i. with regard to the Club's objections regarding the competence of FIFA, namely: (a) that the Contract had been concluded between the Club and a company, and (b) that a similar claim against the Company had been lodged on 24 January 2013 by the Club before a local court in Belgium, implying *lis pendens*:

   "5. *While analysing the first objection (…), the Single Judge noted that the agreement at the basis of the present dispute was signed by the* [Agent] *on behalf of the company "Scout Push", and by the President and General Secretary of the club. Furthermore, the Single Judge noted that the agreement provided for the payment of remuneration to the* [Agent] *in exchange of his agent services. (…) the Single Judge referred to art. 3 par. 2 of the* [Players' Agents] *Regulations and concluded that, from the documentation on file, he could conclude that the agreement had been concluded by the* [Agent], *as representative of his own company, and the* [Club]. *Thus, the Single Judge concluded that this objection (…) to his competence could not*

be upheld.

6. *Subsequently, the Single Judge took note of the (…) second objection to his competence (…). In this respect, the Single Judge pointed out that not only the* [Agent]*'s claim with FIFA was lodged prior to 24 January 2013, precisely on 20 November 2012, but also the* [Club]*'s claim in Belgium was still pending. Based on the foregoing, he concluded that the claim of the* [Agent] *at FIFA was not affected by litispendens let alone by res iudicata. Thus, this second objection (…) could also not be upheld.*

7. *In view of the foregoing, the Single Judge concluded that he was competent to decide on the present matter and concluded that the claim of the* [Agent] *is admissible";*

ii. with regard to the merits of the dispute:

"9. *In this respect and first of all, the Single Judge noted that on 22 December 2010, the* [Agent] *and the* [Club] *had concluded an agreement in relation to the player* [E] *and according to which the* [Club] *had agreed to pay to the* [Agent] *a commission of EUR 50,000, i.e. EUR 25,000 payable on 31 January 2011 and EUR 25,000, payable on 30 December 2011, for his services rendered in the context of the transfer of the aforementioned player to the* [Club].

10. *In continuation, the Single Judge observed that, in his claim to FIFA, the* [Agent] *had requested the payment of the entire commission due in accordance with the agreement, i.e. EUR 50,000, plus 5% interest per year from the day the club was in breach of the agreement, arguing that although the player had signed an employment contract with the* [Club] *and was still part of its squad, the latter had failed to pay him the relevant amounts.*

11. *Furthermore and in the same context, the Single Judge acknowledged that, for its part, the* [Club]*, although admitting that it had concluded the agreement, had rejected the claim of the* [Agent] *alleging that the agreement was null and void in accordance with Belgian law, because at the time of its conclusion and execution, neither the* [Agent] *nor the company were in possession of the necessary licence in order to work on the Walloon territory. Thus, on 10 September 2013, the* [Club] *lodged a counterclaim against the* [Agent]*, requesting the reimbursement of the instalment that it allegedly already paid under the agreement, i.e. EUR 25,000.*

12. *In this respect and first considering the* [Club]*'s allegation that the agreement would be null and void, due to its alleged non-compliance with Belgian and Walloon law, the Single Judge pointed out that such agreement was concluded between a players' agent, in the sense of the 2008 edition of the Players' Agents Regulations, licensed by the Israel Football Association, and the* [Club]*, and dealt with the provision of remunerated agent services in the context of a specific transfer. Thus, the agreement was to be considered as valid and binding upon the parties, as it is in line with the Players' Agents Regulations, in particular its art. 19 and 20, as well as with the jurisprudence of the Players' Status Committee.*

13. *Subsequently, the Single Judge was also keen to underline that it appears that more than two*

years have elapsed between the alleged payment of the first instalment (…) and the [Club]*'s counterclaim as, according to the documentation on file, such payment was allegedly made on 29 August 2011 and the counterclaim lodged on 10 September 2013. Consequently and in line with art. 25 par. 5 of the Regulations on the Status and Transfer of Players (edition 2010), the Single Judge concluded that the counterclaim of the* [Club] *is time-barred and thus inadmissible.*

14. *In continuation, the Single Judge observed that, before the aforementioned agreement was signed, the* [Agent] *and the player had also concluded a mandate, which provided that the* [Agent] *was entitled to receive 10% of the player's gross salary that the* [Agent] *negotiated for the player.*

15. *Furthermore, the Single Judge took note that the player had given his written consent for the* [Club] *to pay the* [Agent] *on his behalf.*

16. *At this stage, the Single Judge referred to art. 19 par. 4 of the Regulations which provides, inter alia, that "Payment shall be made exclusively by the client of the players' agent directly to the players' 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". In this respect, the Single Judge concluded that although the* [Agent] *had apparently represented the player in the relevant transaction, the contractual relationship between the* [Agent] *and the* [Club] *was fully valid and lawful as it was based on the exception provided under art. 19 par. 4 of the Regulations, i.e. the player had duly authorized the* [Club] *to pay on his behalf the relevant commission to the* [Agent].

17. *(…)*

18. *In addition, the Single Judge noted that, as per the agreement (…), the second instalment was only due if the player was still under contract with the club, (…)* [and] *the player as registered with* [the Club] *until 30 June 2013, and therefore his contractual link to the* [Club] *remained intact during this period. (…) the Single Judge concluded that the condition for the payment of the second instalment had been fulfilled and that this amount was in principle payable to the* [Agent].

19. *Furthermore and referring to the legal principle of burden of proof, (…) the Single Judge noted that the* [Club] *did not provide any evidence that the second instalment of EUR 25,000 had been paid to the* [Agent]. *The Single Judge further observed that the* [Club] *only requested in its counterclaim the reimbursement of EUR 25,000 and not the reimbursement of the entire commission of EUR 50,000 due under the agreement.*

20. *Bearing in mind the foregoing and in accordance with the basic legal principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith, the Single Judge decided that the claim of the* [Agent] *is partially accepted and that the* [Club] *has to pay to the* [Agent] *the outstanding commission fee amounting to EUR 25,000. In addition, the Single Judge also determined that an interest of 5% per year on said amount has*

also to be paid by the [Club] *to the* [Agent] *as from 31 December 2011 until the date of effective payment";*

iii. as to the other claims:

"21. Finally, the Single Judge referred to art. 25 par. 2 of the 2010 Regulations on the Status and Transfer of Players in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the Player's Status Committee including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings.

22. On account of the above and considering that the claim of the [Agent] *has been partially accepted, the Single Judge concluded that both parties have to bear the costs of the current proceedings before FIFA. Furthermore and according to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings in EUR 50,000. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 10,000.*

23. In conclusion, and in view of the circumstances of the present matter and of the volume of correspondence exchanged between the parties, the Single Judge determined the costs of the current proceedings to the amount of CHF 10,000. Consequently, the Single Judge of the Players' Status Committee decided that the amount of CHF 5,000 has to be paid by the [Agent] *and that the amount of CHF 5,000 has to be paid by the* [Club]*, in order to cover the costs of the present proceedings".*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 23 March 2018, the Club filed with the Court of Arbitration for Sport ("CAS") a statement of appeal pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") to challenge the Decision. The Club appointed Mr Bernard Hanotiau, Brussels, Belgium, as an arbitrator.

18. On 30 March 2018, the Club filed its appeal brief pursuant to Article R51 of the Code, together with 75 exhibits.

19. On 4 April 2018, the CAS Court Office acknowledged the receipt of the statement of appeal, and forwarded it to the Respondent. At the same time, the CAS Court Office noted that the Club had also filed an appeal against a decision rendered by the Single Judge in a parallel case between the same parties, but concerning a different player (Mr [D]), which had been registered under reference CAS 2018/A/5642 (the "[D] Arbitration"). It therefore requested the Parties to advise whether they agreed to submit the two procedures to the same Panel.

20. On the same 4 April 2018, by separate letter, the CAS Court Office informed FIFA of the appeal against the Decision.

21. On 4 April 2018, the Appellant agreed that the present procedure and the [D] Arbitration be submitted to the same Panel.

22. On 5 April 2018, the CAS Court Office acknowledged the receipt of the appeal brief, and forwarded it to the Respondent, inviting it to file its answer to the appeal. By separate letter, the appeal brief was also transmitted to FIFA.

23. On 7 April 2018, the Respondent appointed Mr Efraim Barak, Tel Aviv, Israel, as an arbitrator and agreed that the present procedure and the [D] Arbitration be submitted to the same Panel.

24. In a letter of 9 April 2018, FIFA informed the CAS Court Office that it renounced its right to intervene in the arbitration.

25. On 13 April 2018, the Appellant requested the CAS to appoint a Sole Arbitrator (and the same Sole Arbitrator) in the present procedure and in the [D] Arbitration, in light of the limited value of the dispute. The Appellant insisted in such request also in a letter of 18 April 2018.

26. On 24 April 2018, the Respondent filed his answer pursuant to Article R55 of the Code, together with 6 exhibits.

27. On 26 April 2018, the Respondent agreed that that the present dispute and the [D] Arbitration be submitted to a Sole Arbitrator.

28. On 16 May 2018, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.

29. On 17 May 2018, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that Professor Luigi Fumagalli, Milan, Italy, had been appointed as the Sole Arbitrator to hear the dispute between the Parties. At the same time, the same Sole Arbitrator was appointed to hear the dispute object of the [D] Arbitration.

30. On 26 April 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present dispute, and in the [D] Arbitration, on 3 July 2018.

31. On 3 July 2018, a hearing was held in Lausanne, at the CAS offices. The Sole Arbitrator was assisted at the hearing by Mrs Delphine Deschenaux-Rochat, CAS counsel. The following persons attended the hearing:

    i. for the Appellant: Mr Laurent Denis, counsel;

    ii. for the Respondent: Mr George Dobbelaere, counsel.

32. At the opening of the hearing, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator, and that they agreed that the hearing in the present case as

well as in the [D] Arbitration be conducted simultaneously, with the indication that they would underline whether they were submitting pleadings regarding only one of the cases.

33. The Parties, then, made submissions in support of their respective cases. At the conclusion of the hearing, they expressly stated that their right to be heard and to be treated equally in the CAS arbitration proceedings had been fully respected.

IV. THE POSITION OF THE PARTIES

34. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

35. In its statement of appeal, the Club requested the CAS:

> *"To uphold the Appeal and to set aside the decision pronounced on 29 August 2017 (…) by the Single Judge of the FIFA Players' Status Committee;*
>
> *AS PRINCIPAL:*
>
> *To declare that the Respondent didn't have a right to file a claim before the FIFA Players' Status Committee on basis of the Agreement concluded with the Appellant on 22 December 2010;*
>
> *AS SUBSIDIARY:*
>
> *To declare the Agreement concluded on 20 December 2010 is null and void;*
>
> *And*
>
> *To condemn (as consequence) the Respondent (if he is a party of the Agreement dated 20 December 2010) to reimburse the first instalment of the commission fee amounting to € 25,000.00 increased by an interest at 5% per annum from the date of erroneous payment until the date of effective payment;*
>
> *IN ALL ASSUMPTIONS:*
>
> *To consider that the Appellant has not to pay the second instalment of the commission fee, i.e. a sum amounting to € 25,000 increased by "an interest at a rate of 5% per year on the aforementioned amount as from 31 December 2011 until the date of effective payment".*
>
> *To reject all argumentation from the Respondent;*
>
> *To order the Respondent to be born all the costs of the arbitration to be determined and served to the Parties*

by the CAS Court Office (i.e. the Court Office Fee and the expenses for the administration proceedings).

To order the Respondent to pay to the Appellant a total amount of CHF 5,000 as a contribution towards the expense incurred in connection with these arbitration proceedings".

36. Such requests were confirmed by the Club in the appeal brief.

37. In its submissions, the Appellant preliminarily dealt with the identification of the rules to be applied in this case pursuant to Article R58 of the Code and Article 57.2 of the FIFA Statutes, and indicated the following:

    i. the date of the claim before FIFA determines the applicable edition of the FIFA. As a result, the Players' Agents Regulation in force since 1 January 2008 (the "Agents Regulations") apply in the case at hand;

    ii. according to their Articles 2.1, 12.1, 21.2 and 23.2, a players' agent licensed with an association has to respect the legislation governing the job placement applicable in the territory of his association. In addition, the agent has to respect the laws governing job placement in force in the territory of the association where this activity is performed;

    iii. with respect to *"job placement provided in Belgium"*, the following instruments have to be considered:

        - the Civil Code;

        - the Royal Decree of 28 November 1975 *"relatif à l'exploitation des bureaux de placement payants"* (the "Royal Decree");

        - the Decree of 3 April 2009 *"relatif à l'enregistrement ou à l'agréement des agences de placement"* in the Walloon region (the "Walloon Decree");

    iv. the provisions of the Walloon Decree are mandatory and cannot be derogated from by contract, as they intend to protect the employee, avoiding that unfair conditions are applied on him: any contrary provision is null and void. As confirmed by the Belgian jurisprudence, they apply to any private placement activity performed by any agency in the territory of the Walloon region, and provide that a players' agent, irrespective of his nationality, can exercise his intermediation activity in the Walloon region only if he is registered according to the procedures and at the conditions therein established;

    v. the Belgian law provisions have to be taken into account by a CAS arbitrator also pursuant to Article 19 of the Swiss Private International Law Act (the "PILA");

    vi. in any case, the Swiss legislation, and more specifically the Swiss Federal Act on services of labour and lease of services (*Loi fédérale sur le service de l'emploi et la location de services* - "LSE") provides for an authorization to exercise in Switzerland any activity as

intermediary in the job market;

vii. compliance with the applicable mandatory legislation is a condition for a CAS award to be enforceable abroad;

viii. in summary, the Sole Arbitrator has to apply the Agents Regulations and the Walloon Decree, and subsidiarily Swiss law.

38. In support of its request that the Decision be set aside, the Appellant submits that:

i. the Club and the Company are the only parties to the Contract: the Agent was not a party thereto, in the same way as the representatives of the Club did not conclude it in their personal capacity. Therefore, the Agent, consistently with the FIFA jurisprudence, did not have the right to file a claim under the Contract against the Club. The Decision that held otherwise has to be set aside;

ii. in any case, the Contract is null and void, since it is contrary to mandatory rules. In fact, the Agent and the Company never registered to be allowed to perform their activities in the Walloon region, where the Appellant has its seat, under the Walloon Decree. As a consequence, the Second Instalment is not due, and the Agent has to return the amount received as a First Instalment;

iii. in addition, the Agent has not respected Articles 19 and 20 of the Agents Regulations. In fact, the Contract under which the Club undertook to pay the Agent directly (on behalf of the Player) pre-dated the Employment Contract, and the written consent of the Player expressed on 16 May 2016 was addressed to the Agent and not to the Club. As a result, the Club is not obliged to pay to the Agent the Second Instalment. In any case, the payment under the Contract does not reflect the amounts agreed between the Player and the Agent in the Representation Agreement.

B. The Position of the Respondent

39. In his answer, the Respondent requested the CAS:

"To declare the Appeal of the Appellant (SA SPORTING DU PAYS DE CHARLEROI) not receivable, non-valid and not founded, in its entirety and in all parts.

To condemn the SA SPORTING DU PAYS DE CHARLEROI to pay to mr. DAHAN/ Scoutpush ltd as agent 25.000,00 EUR at 5% interest per annum from the day the club was in breach of the agreed payments.

To order the Appellant SA SPORTING DU PAYS DE CHARLEROI to take at his charge all the costs of the arbitration to be determined and served to the parties by the CAS Court Office (i.e. the Court Office Fees and all the expenses for the arbitration and the FIFA proceedings for example the original advance on costs at 1.000 CHF (…) and the additional 4.000 CHF (…) costs already paid by the

Respondent to the FIFA).

To order the Appellant to pay to the Respondent a total amount of CHF 5.000 (…), as contribution towards the expenses incurred in connection with legal representation, administration costs etc. related to these arbitration proceedings".

40. According to the Respondent, the Appellant's contentions have to be dismissed for the following reasons:

    i. the claim of the Agent, as brought before FIFA and granted by the Single Judge, is admissible, because:

        - the Company was only the administrative tool for the Appellant to *"do his business"* as a football agent. In fact, only the Appellant in his personal name was the FIFA licensed agent: the real agent of the Player is Mr Dahan, and the Company would not be able to exercise any activity as football agent without Mr Dahan. Therefore, in accordance with Article 3 of the Agents Regulations, the claim *"is absolutely admissible"*;

        - the Belgian national courts are not competent to hear the case brought by the Club, since the FIFA regulations provide that only the FIFA bodies are competent with regard to international competitions, its participants and involved parties. In addition, the claim before the Belgian court (in breach of the FIFA rules) was lodged by the Club on 24 January 2013, after the proceedings at FIFA had been started (on 20 November 2012), is still pending and a final decision on it has not been rendered yet, because the case was suspended waiting for a decision of the PSC and the CAS. As a result, no *lis pendens* can be invoked;

        - the Belgian rules invoked by the Appellant apply only to entities active on the Belgian market, and the Respondent, *"in the period of the contested transactions"*, never developed any activities in Belgium that could be considered as operating an employment agency in Belgium. In fact, the Agent, licensed by the Israeli football federation, exercises his activities at the international level, through a website: the Club chose the Player from such website, prepared and sent the Contract to the Agent for signature; the Agent signed the Contract in Israel and returned it to the Club. As a result, the Respondent at no moment was active as a Belgian employment agency;

        - the Appellant is *"trying to play a dirty trick"*, hoping to gain money back from the annulment of the Contract, which fully satisfied it and was entered into with full knowledge that the Belgian regulations now invoked were not applicable to the Agent;

        - the current matter concerns a dispute opposing a football agent licensed by the Israeli football federation and a Belgian club. Therefore, it is an international

dispute concerning the activities of players' agents, and FIFA was competent in accordance with Article 30.2 of the Agents Regulations;

ii. the Contract is valid: it was not even signed in Belgium, and has an international character. The Belgian rules invoked by the Club are therefore not applicable, since the Agent performed his activities outside Belgium;

iii. the Contract, signed by an agent licensed by the Israeli football federation and a Belgian club, dealt with the provision of remunerated agent services in the context of a specific transfer and is in conformity with the Agents Regulations, namely with its Articles 19 and 20, as it provides for the payment of a "lump sum". In addition, there was no violation of Article 19.8 of the Agents Regulations, as the Contract was not affected by any conflict of interest. The Agent, in fact, always represented the Player, who, in any case, authorized the Club to directly pay the Agent on his behalf; and an exception of conflict of interest between the Player and his Agent can only be invoked by the Player;

iv. the Appellant breached the Contract. In fact, it failed to pay the Second Instalment;

v. the First Instalment is not to be reimbursed, as it was paid on the basis of a valid contract and in addition the claim for reimbursement is time-barred by Article 25.5 of the Agents Regulations.

V. JURISDICTION

41. The jurisdiction of CAS is not disputed and is based on Article R47 and Article 57 *et seq*. of the Statutes of FIFA.

42. 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 if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

43. The jurisdiction of CAS is contemplated by Article 57 *et seq*. of the Statutes of FIFA in the following terms:

Article 57 *"Court of Arbitration for Sport (CAS)"*

"1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.

2. 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".

Article 58 *"Jurisdiction of CAS"*

> *"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
>
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted".*

44. Therefore, CAS has jurisdiction to decide the appeal brought against the Decision.

VI. ADMISSIBILITY

45. Article 58 para. 1 of the Statutes of FIFA in that connection confirms that:

> *"Appeals against final decisions passed by FIFA's legal bodies (…) shall be lodged with CAS within 21 days of notification of the decision in question".*

46. The statement of appeal against the Decision was filed by the Club within the 21 days' deadline of the date of notification of its grounds, and complies with the formal requirements set by Article R48 of the Code. Accordingly, the appeal is admissible.

47. In his answer, the Respondent requested the Sole Arbitrator, *inter alia*, *"To order the Appellant (…) to take at his charge all the costs of (…) the FIFA proceedings for example the original advance on costs at 1.000 CHF (…) and the additional 4.000 CHF (…) costs already paid by the Respondent to the FIFA".* By such request, indeed, the Respondent is seeking a partial modification of the Decision, which (at its point 7.1) imposed on him the payment of CHF 5,000 as his portion of the costs of the proceedings before the Single Judge. Counterclaims, however, are not allowed under the Code: the Respondent, if he intended to challenge the allocation of first instance costs, should have file a separate appeal. The claim for the reimbursement of the costs sustained by the Respondent before FIFA is therefore not admissible in these proceedings.

VII. APPLICABLE LAW

48. Article 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".*

49. The Sole Arbitrator notes that Article 57 para. 2 of the FIFA Statutes provides the following:

> *"The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law".*

50. As a result, the relevant FIFA rules and regulations (and chiefly the Agents Regulations) shall be applied primarily; Swiss law applies subsidiarily.

51. The Appellant, however, invoked in the course of the arbitration also the application of Belgian law provisions, as set specifically by the Civil Code, the Royal Decree and the Walloon Decree. The relevance of those provisions in the present arbitration will be examined in the discussion which follows.

VIII. MERITS

52. The object of the present dispute is the Decision, whereby the Single Judge ordered, *inter alia*, the Appellant to pay to the Respondent the amount of EUR 25,000 (the Second Instalment), plus interest at 5% *p.a.* from 31 December 2011 until the date of actual payment, and dismissed the Appellant's claim for reimbursement of the amount of EUR 25,000 (the First Instalment) already paid.

53. A number of issues were raised by the Appellant in the course of the arbitration. In essence, the Appellant wants the Decision to be set aside, and in support of such request submits that the Agent did not have standing to claim the payment of the Second Instalment, and in any case that the Contract under which the payment of the Second Instalment was claimed, and the First Instalment was paid, is null and void as a result of the operation of mandatory provisions of Belgian law. According to the Appellant, then, the Agent's claim, granted by the Single Judge, is devoid of merit, as also some provisions of the Agents Regulations were not complied with.

54. In that regard, the Sole Arbitrator notes that before FIFA the Club invoked also the fact that the same dispute submitted to FIFA was pending before a Belgian court between the same parties, and therefore that a *lis pendens* situation existed, preventing the Single Judge from adjudicating on the Agent's claims. Such issue, however, was apparently not advanced in support of the appeal to CAS. In any case, the Sole Arbitrator finds that no *lis pendens* existed that at the time FIFA was seized with the Agent's petition, and that (according to the unchallenged submissions of the Respondent at the hearing), the Belgian proceedings (started after the FIFA proceedings) have been stayed pending a final determination on the disputed matter by FIFA and CAS.

55. In light of the Parties' submissions, therefore, the first point concerns the Agent's standing to claim a payment under the Contract. The Agent, in fact, started the proceedings before FIFA in his personal capacity, and obtained an order that the Club pays him the amount he claimed. The Appellant submits that the Agent was not a party to the Contract, since he signed it as a representative of the Company, which therefore was the real party and the creditor of any payment due under the Contract. According to the Appellant, a number of other elements, emerging from the file (invoices issued, letters sent, etc.) would confirm this conclusion. The Single Judge in that regard however found that the Agent was entitled to claim the payment of the Second Instalment, because, *"from the documentation on file,* [the Single Judge] *could conclude that the agreement had been concluded by the* [Agent]*, as representative of his own company, and the* [Club]*"* (para. 5 of the considerations).

56. The Sole Arbitrator preliminarily notes that, while dealing with the *"admissibility of licensed players' agents"*, Article 3 of the Agents Regulations sets the principle that *"Players' agents' activity may only be carried out by natural persons who are licensed by the relevant association to carry out such activity"*, but allows a players' agent to *"organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with the business activity of a players' agent. Only the players' agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs"*. As a result, a licensed agent is entitled to organize his activity in a corporate form, but the company can only perform *"administrative duties"* (which include accounting and invoicing), while the agent personally represents and promotes the interests of his clients.

57. Given these circumstances, the Sole Arbitrator finds that it is not, *per se*, decisive to the issue of the Agent's standing to claim the payment under the Contract the fact that the Agent organized his activity through the Company, and therefore the fact, for instance, that invoices were issued, or letters sent, in the name of the Company, if only it is the Respondent personally who is the responsible players' agent in the present matter.

58. In that regard, notwithstanding the use of expressions such as *"for"*, *"representing"* or *"on behalf of"* the Company, used in the documents exchanged between the Parties, it is clear (and factually undisputed) that the Agent (and the Agent only) acted for the Player. Indeed, no evidence was submitted by the Appellant to indicate that the services were rendered by a legal entity and not by the Agent personally. On the contrary, the Company appears to operate only a website through which the Agent offers his services: as the Representation Agreement expressly indicated in the *"Exclusivity"* provision, the mandate to represent the Player was granted to the Agent. The reference to the Company contained in some expressions of the Contract, as interpreted in good faith, cannot therefore lead to a different conclusion.

59. In other words, the Sole Arbitrator agrees with the conclusion reached by the Single Judge: the Agent represented and assisted the Player in the transfer to the Club, while the Company was involved in the transaction only for "administrative" purposes. The Agent is therefore the creditor of the payments due under the Contract, as interpreted in good faith. As a result, the Appellant's first contention has to be dismissed.

60. The Appellant denies the Agent's claims also by submitting that the Contract is null and void under the applicable rules, and chiefly under Belgian law.

61. The Sole Arbitrator has examined the provisions set by the Royal Decree and the Walloon Decree invoked by the Appellant. Irrespective of the existence of any basis allowing the application of those rules in the present arbitration (be that Article 19 of the PILA or Article R58 of the Code), the Sole Arbitrator concludes that those Belgian rules do not apply in the case at hand according to their own object and purpose.

62. In fact, by subjecting "job placement agencies" to a Belgian registration requirement, they intend to subject them to a control by the Belgian authorities, with the purpose of "policing" the Belgian labour market and avoiding abusive practices, to the detriment of the employees. In other words, to achieve this purpose, without going beyond it, they need to apply only to

activities performed on the Belgian labour market: they do not need (or intend) to apply to activities performed by football players' agents everywhere in the world, even though in the end a player is occasionally "placed" to a Belgian club. As a result, for an agent to be subject to those provisions, it appears necessary that he is "present" (directly and regularly active) in the Belgian market.

63. In the case at hand, there is no evidence that, at least at the time the Contract was concluded, the Agent was directly and regularly active ("present") in the Belgian market. No evidence, for instance, has been submitted beyond the Contract (and the contract regarding another player: Mr [D]) to prove that his activities, conducted through a website, as an agent licensed by a foreign federation, domiciled abroad, were specifically directed to the placement of players to Belgian clubs or that the agent was engaged more than occasionally in the provision of services to Belgian clubs or players for such purpose. As a result, the Belgian provisions, set by the Royal Decree and/or in the Walloon Decree, found no application to the Agent with respect to the transfer of the Player to the Club, because the Agent did not operate in Belgium a "job placement agency". The fact, therefore, that Agent was not registered in Belgium for the operation of a "job placement agency" according to Belgian law does not affect the validity of the Contract.

64. The same conclusion can the reached with respect to Swiss law, somehow invoked by the Club, and made relevant subsidiarily in the present case by Article R58 of the Code and Article 57 para. 2 of the FIFA Statutes. The provisions of the LSE, in fact, subject to the prior authorization whoever wants to exercise (i) in Switzerland and (ii) "regularly" ("régulièrement") a job placement activity (Article 2 para. 1). And in the case at hand there is no indication that the Agent conducted his activity regularly in Switzerland.

65. As a result, the Sole Arbitrator finds, contrary to the Appellant's contentions, that the Contract is not affected by any nullity set by domestic (Belgian or Swiss) law.

66. Such conclusion leads the Sole Arbitrator to draw an obvious consequence, which has two inevitable implications. The consequence is that the Contract validly provided for payments in favour of the Agent; the first implication is that the First Instalment was correctly paid by the Club and has not to be returned; the second implication is that the Second Instalment is due and has to be paid to the Agent. As a result, the Decision, which so held, has to be confirmed.

67. In order to avoid such conclusion, however, the Agent invokes also some provisions of the Agents Regulations: chiefly, its Article 19 para. 4, under which:

> *"The representation contract shall explicitly state who is responsible for paying the players' agent and in what manner. Any laws applicable in the territory of the association shall be taken into account. Payment shall be made exclusively by the client of the players' agent directly to the players' 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 the general terms of payment agreed between the player and the player's agent".*

68. Contrary to the Appellant's submissions, the Player's consent to the direct payment by the Club to the Agent is not in doubt, and was expressed also on 16 May 2016, after the conclusion of the "relevant transaction", *i.e.* of the transfer of the Player to the Club and of the signature of the Employment Contract. The fact that the declaration of 16 May 2016 was addressed to the Agent and not to the Club (which had already paid directly to the Agent the First Instalment) is in that context irrelevant. In the same way, it appears to the Sole Arbitrator irrelevant also the fact that the *"payment made on behalf of the player"* would not *"reflect the general terms of payment agreed between the player and the player's agent"*. In fact, the Player, on whose behalf the payments were to be made, raised no issue in their respect; and such payments have to be read in the context of the transfer also of another player to the Club (object of the [D] Arbitration). As a result, it appears that under the Contract the Agent was to receive a portion of a global remuneration (legitimately set in a lump sum) for the services relating to the transfer of players to the Club. Therefore, the indication that the remuneration under the Contract does not *"reflect the general terms of payment agreed between the player and the player's agent"* (which provided for a 10% commission of the yearly salary) does not lead to the conclusion that the Agent is not entitled to claim its payment.

IX. CONCLUSIONS

69. In light of the foregoing, the Sole Arbitrator finds that the appeal filed by the Club has to be dismissed, while the counterclaim brought by the Agent relating to the costs sustained before the Single Judge, as allocated by the Decision, is not admissible. The Decision is to be confirmed.

70. Such conclusion renders moot all other issues raised in this arbitration.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sporting du Pays de Charleroi on 23 March 2018 against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association on 29 August 2017 in a case relating to the player [E] is dismissed.

2. The decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association on 29 August 2017 in the case relating to the player [E] is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.