



Arbitration CAS 2018/A/5522 Club Sportif Sfaxien (CSS) v. Paulo Jorge Rebelo Duarte, consent award of 7 September 2018

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football

Contractual dispute

Arbitral tribunals' authority under Swiss Law to issue consent awards

Under Swiss Law, an arbitral tribunal has authority to issue an award embodying the terms of the parties' settlement if the contesting parties agree to a termination of their dispute in this manner. A panel's ratification of such settlement and its incorporation into a consent arbitral award serves the purpose of enabling its enforcement. The content of a settlement agreement shall not violate public policy and shall not have been reached in an unfair manner.

I. PARTIES

1. Club Sportif Sfaxien (CSS) (the "Appellant") is a football club based in Sfax, Tunisia.
2. Paulo Jorge Rebelo Duarte (the "Coach" or the "Respondent") is a football coach from Portugal.

II. FACTUAL BACKGROUND

A. The Contract

3. On 13 April 2015, the Appellant and the Respondent concluded a contract valid until 30 June 2016 (the "Contract"). The Appellant employed the Respondent as first coach of its senior football team.
4. According to article 4 of the Contract, CSS was obliged to pay to the Coach the following amounts:
 - a net monthly salary of EUR 25,000 from 13 April 2015 to 30 June 2015;
 - a signing fee of EUR 50,000 to be paid 15 days after signature of the Contract;
 - a net monthly salary of EUR 30,000 from 1 July 2015 to 30 June 2016.

B. Proceedings before the Players' Status Committee of FIFA

5. On 14 September 2015, the Coach filed a claim to the Fédération Internationale de Football Association ("FIFA") to request the following:
- the payment of the signing fee of EUR 50,000 plus 5% annual interest as from 29 April 2015;
 - the payment of the salary of July 2015 of EUR 30,000 plus 5% annual interest as from 1 August 2015;
 - the payment of the salary of August 2015 of EUR 27,097 plus 5% annual interest as from 29 August 2015;
 - the payment of a compensation representing the residual value of the Contract from 29 August 2015 until 30 June 2016 of EUR 302,903 plus 5% annual interest as from 29 August 2015 and
 - to fix a sum to be paid by CSS to the Coach in order to cover the lawyer's fees and costs.
6. On 11 July 2017, the Single Judge of the Players' Status Committee of FIFA (hereinafter referred to as "the Single Judge") rendered a decision in the dispute above (hereinafter referred to as "the Appealed Decision"). In the operative part of the Appealed Decision the Single Judge ruled as follows:
- "1. The claim of the Claimant, Paulo Jorge Rebelo Duarte, is admissible.*
 - 2. The claim of the Claimant, Paulo Jorge Rebelo Duarte, is partially accepted.*
 - 3. The Respondent, Sportif Sfaxien, has to pay to the Claimant, Paulo Jorge Rebelo Duarte, **within 30 days** as from the date of notification of this decision, the total amount of EUR 110,000 as outstanding remuneration, plus interest as follows:*
 - 5% per year on the amount of EUR 50,000 as from 29 April 2015 until the date of effective payment;*
 - 5% per year on the amount of EUR 30,000 as from 1 August 2015 until the date of effective payment;*
 - 5% per year on the amount of EUR 30,000 as from 1 September 2015 until the date of effective payment.*
 - 4. The Respondent, Sportif Sfaxien, has to pay to the Claimant, Paulo Jorge Rebelo Duarte, **within 30 days** as from the date of notification of this decision, the amount of EUR 120,000 as compensation for breach of contract as well as 5% interest as well as 5% interest per year from 14 September 2015 until the date of effective payment.*

5. *Any further claims lodged by the Claimant, Paulo Jorge Rebelo Duarte, are rejected.*
6. *If the aforementioned sum, plus interest as provided above, are 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.*
7. *The final costs of the proceedings in the amount of CHF 17,000 are to be paid by both parties, **within 30 days** as from the date of notification of this decision, as follows:*
 - 7.1 *The amount of CHF 12,000 has to be paid by the Respondent, Sportif Sfaxien, to FIFA (...).*
 - 7.2 *The amount of CHF 5,000 has to be paid by the Claimant, Paulo Jorge Rebelo Duarte. Taking into account that the Claimant already paid to FIFA an amount of CHF 5,000 at the beginning of the present procedures as advance of costs, it is exempted to pay the said procedural costs” (emphasis added by the Single Judge).*

III. PROCEEDINGS BEFORE THE CAS

7. On 11 January 2018, the Appellant filed an appeal with the Court of Arbitration for Sport (the “CAS”) against the Respondent related to the Appealed Decision. In its Statement of Appeal, the Appellant requested that the language of the proceedings is French, that a hearing is held and that the dispute be decided by a Sole Arbitrator.
8. By letter dated 17 January 2018, the Respondent accepted that the dispute be decided by a Sole Arbitrator and stated his preference for the proceedings to be conducted in English.
9. By letter dated 18 January 2018, the Appellant requested an extension of 20 days of the time limit to file its Appeal Brief, following which the CAS suspended the Appellant’s time limit to file its Appeal Brief.
10. By letter dated 19 January 2018, the Respondent objected the Appellant’s request for an extension of the time limit to file the Appeal Brief.
11. On 31 January 2018, the CAS Court Office informed the parties that in view of the fact that the deadline to file the appeal brief had been suspended since 18 January 2018, the Appellant’s request for an extension was moot.
12. On the same day, the President of the CAS Appeals Arbitration Division issued an Order on Language, deciding in accordance with Article R29 of the Code of Sports-related Arbitration (the “CAS Code”) that the matter shall proceed in English.
13. On 8 February 2018, the Appellant filed its Appeal Brief.

14. By letter dated 14 February 2018, Mr Pascal Martens in his role as Legal Counsel and on behalf of the Players' Status Committee of FIFA informed the CAS Court Office that FIFA renounces its right to intervene as a party in the present arbitration proceedings.
15. By letter dated 3 March 2018, the Appellant requested a 15-day extension of its time limit to pay the advance of costs.
16. On 19 March 2018, the CAS Court Office acknowledged the receipt of the Appellant's payment and informed the parties that the Appellant's request for a 15-day extension had become moot.
17. On 19 March 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the dispute at hand was constituted as follows:

Sole Arbitrator: Prof. Ulrich Haas, Law Professor in Zurich, Switzerland
18. With letter dated 22 March 2018, the CAS Court Office advised the Parties that Mrs Sophie Bühler had been appointed to assist the Sole Arbitrator as an *ad hoc* clerk.
19. By letter dated 29 March 2018, the Appellant requested a 10-day extension of the time limit to substitute for the Respondent's advance of costs.
20. On the same day, the Respondent requested a 5-day extension of his time limit to file the answer.
21. In accordance with Article R32 of the CAS Code, the Respondent's request for extension was granted on 3 April 2018.
22. On 16 April 2018, the Respondent submitted its Answer.
23. In the letter of 17 April 2018, the CAS Court Office noted that the Appellant had requested the holding of a hearing and that the Respondent intended to hear two witnesses. It invited the parties to confirm by 24 April 2018 whether they prefer a hearing to be held or for the Sole Arbitrator to issue an award based solely on the written submissions.
24. On 25 April 2018, the CAS Court Office noted that Respondent did not express his preference with regards to a hearing and that it was, therefore, for the Sole Arbitrator to decide whether to hold hearing.
25. On 26 April 2018, the Respondent informed the CAS Court Office that the Sole Arbitrator may decide the matter based on written submissions only.
26. With letter dated 4 May 2018, the CAS Court Office informed the Parties that, in view of their availabilities, a hearing would be held on 20 June 2018.

27. On 11 May 2018, the Appellant informed the CAS Court Office that Mr Sami Boussarsar would attend the hearing on behalf of the Appellant. On 24 May 2018, the Appellant informed that also Mr Mehdi Ghribi would be present at the hearing on behalf of the Appellant.
28. With letter dated 14 May 2018, the CAS Court Office requested the Respondent to submit the missing Exhibit 4 to the Answer.
29. On 15 May 2018, the Sole Arbitrator invited the Respondent to file his employment contract with the Burkina Faso Football Federation.
30. The same day, the Respondent informed the CAS Court Office that Mr Paulo Jorge Rebelo Duarte, Mr Narcisse Yameogo, Mr Fabio Manuel Ramos Fernandes, Mr Deep Ray and Mr Josep F. Vandellos Alamilla would attend the hearing on behalf of the Respondent.
31. On 21 May 2018, the Respondent filed the requested employment contract.
32. On 30 May 2018, the CAS Court Office requested the Parties to sign and return a copy of the Order of Procedure (the “OP”) by 6 June 2018.
33. On 7 and 8 June 2018, the Parties in turn sent a signed copy of the OP.
34. On 18 June 2018, the parties were advised that the Deputy President of the CAS Appeals Arbitration Division had extended the time limit to communicate the Arbitral Award to the parties until 19 July 2018.
35. On 20 June 2018, a hearing was held in this appeal. The Sole Arbitrator was assisted by Mrs Delphine Deschenaux-Rochat, CAS Counsel, and Mrs Bühler, *ad hoc* clerk and joined by the following:

For the Appellant: Mr Sami Boussarsar (Legal Counsel); Mr Mehdi Ghribi (Legal Counsel).

For the Respondent: Mr Paulo Duarte (Respondent); Mr Narcisse Yameogo (witness); Mr Fabio Manuel Ramos Fernandes (witness), Mr Deep Ray (Legal Counsel) and Mr Josep F. Vandellos Alamilla (Legal Counsel).
36. The Parties confirmed at the hearing that they had no objection to the formation of the Panel and that their right to be heard had been fully respected.
37. On 5 July 2018, the CAS Court Office noted that the parties were discussing an amicable settlement of the dispute.
38. On 10 July 2018, in the absence of any objection from the Appellant, the CAS Court Office confirmed the suspension of the procedure until 5 August 2018.

39. With letter dated 18 July 2018, the Parties advised the CAS Court Office that they had reached a settlement agreement (the “Settlement Agreement”). The Parties requested the Sole Arbitrator to issue a consent award based on this Settlement Agreement.

IV. JURISDICTION

40. Pursuant to Article 58 para. 1 of the FIFA Statutes (edition April 2016), 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. Recourse may only be made to CAS after all other internal channels have been exhausted.
41. The jurisdiction of the CAS is further confirmed by the OP that has been duly signed by the Parties. Finally, the Sole Arbitrator notes that the jurisdiction of the CAS has not been contested by any of the Parties to this proceeding.
42. In light of the above, it must be concluded that the CAS has jurisdiction to decide on the present dispute.

V. THE SETTLEMENT AGREEMENT

43. As set forth above, the Parties have concluded the Settlement Agreement. The latter reads as follows (emphasis in original):

“SETTLEMENT AGREEMENT

THIS AGREEMENT is signed at distance, in Lisbon (Portugal) and Sfax (Tunisia) the 15th day of July 2018.

BETWEEN

The first Party: “CSS Sfaxien”, professional football club, with legal domicile in Sfax (Tunisia), e-mail: cssdirection@hotmail.fr duly represented by ***M. Abdennhader Lotfi***, in his capacities as President (hereinafter the ***“THE CLUB”***)

The second Party: Mr. Paulo Jorge Rebelo Duarte, of Portuguese Nationality, with Passport Number N511311 and e-mail paulo.duarte01@sapo.pt hereinafter referred to as ***“THE HEAD COACH”***.

WITNESSETH

- *Whereas the parties have currently a case pending before the Court of Arbitration for Sport IN Lausanne, Switzerland (hereafter, “the CAS”) (case ref. CAS 2018/A/5522).*

- *Whereas the CLUB acknowledges having terminated the Employment Contract of 13 April 2015 without just cause and hereby confirms the findings and grounds of the FIFA PSC decision of 11 July 2017 (ref. mdo/15-01600).*
- *Whereas the CLUB has requested the HEAD COACH to settle the case above referred in an amicable manner.*

Now, therefore, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

(1) **SUBJECT MATTER:** *Subject to the terms and conditions indicated below, the parties agree to settle in an amicable manner the dispute pending before the CAS case ref. no. CAS 2018/A/5522.*

(2) **TERMS OF THE AGREEMENT:**

a) *The CLUB admits owing the HEAD COACH the amount of **TWO HUNDRED AND SIXTY-EIGHT THOUSAND THREE HUNDRED AND TWENTY-NINE (268.329 EUR) EURO NET**. This amount represents the outstanding remuneration at the moment of termination, the financial compensation for the termination of contract, the costs of the procedure, and the interests for late payment up to 30 June 2018.*

b) *The HEAD COACH accepts to reduce the above said amount to **TWO HUNDRED AND TWENTY-ONE THOUSAND THREE HUNDRED AND THIRTY-SEVEN (221.337 EUR) EURO NET**, only if the CLUB respects the following payment schedule:*

- 55.334,25 Euro on or before 31 July 2018.
- 55.334,25 Euro on or before 31 August 2018.
- 55.334,25 Euro on or before 31 September 2018.
- 55.334,25 Euro on or before 31 October 2018.

c) *The amounts established before will be paid today to the Bank account of the HEAD COACH indicated here-in-below:*

[...]

All and any bank commissions and costs resulting from the transfer of the amounts to the account of the HEAD COACH will be borne exclusively by the CLUB. All amounts in this contract are considered net.

d) *All amounts are to be considered NET.*

e) *The CLUB will bear at its own charge the total costs of the CAS proceedings.*

(3) **ACCELERATION CLAUSE:** *In case the CLUB fails to pay any of the amounts on the agreed dates, the rest of pending amounts will become immediately due and payable and the reduction agreed in*

clause 2 a) above will remain with no effect, the CLUB being obliged in such case to pay the entire amount indicated in clause 2 a) plus the interests until the effective day of payment.

- (4) ***LEGAL EFFECT:*** *The present agreement enters into force as from the date of its signature. The parties will inform the CAS, jointly or individually, of its conclusion and request the Sole Arbitrator to render an award on agreed terms which shall be enforceable.*

IN WITNESS WHEREOF, *the Parties have executed this Agreement at distance and exchanged by e-mail through their respective legal representatives in two (2) pages by their duly authorized representatives in the place and as of the date above first written.*

THE CLUB [stamp and signature]

THE HEAD COACH [signature]”

44. The Parties have requested the Sole Arbitrator to incorporate the terms of the Settlement Agreement into a Consent Arbitral Award pursuant to Article R56 of the Code.
45. Under Swiss Law, an arbitral tribunal has authority to issue an award embodying the terms of the parties’ settlement if the contesting parties agree to a termination of their dispute in this manner. The Sole Arbitrator’s ratification of their settlement and its incorporation into this Consent Arbitral Award serves the purpose of enabling the enforcement of their agreement.
46. Moreover, in accordance with Article R56 of the CAS Code:
- “Any settlement agreement may be embodied in an arbitral award rendered by consent of the parties”.*
47. The Sole Arbitrator finds that the content of the Settlement Agreement does not violate public policy and that there is no indication on record that it was reached in an unfair manner.
48. In view of the above, and in particular of the joint request made by both Parties, the present Consent Award puts an end to the arbitration procedure *CAS 2018/A/5522 Club Sportif Sfaxien (CSS) v. Paulo Jorge Rebelo Duarte* on the terms indicated in the Settlement Agreement and those detailed below.
49. The above conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider any other requests submitted by the Parties to the Sole Arbitrator. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport renders the following:

CONSENT ARBITRAL AWARD

1. The Settlement Agreement between Club Sportif Sfaxien and Paulo Jorge Rebelo Duarte, submitted to CAS on 18 July 2018, is hereby acknowledged and its terms are incorporated in this consent arbitral award.
2. The Settlement Agreement is ratified as follows:
 - a) Club Sportif Sfaxien admits owing Paulo Jorge Rebelo Duarte the amount of EUR 268,329.
 - b) Paulo Jorge Rebelo Duarte accepts to reduce the above said amount to EUR 221,337, only if Club Sportif Sfaxien respects the following payment schedule:
 - 55.334,25 Euro on or before 31 July 2018.
 - 55.334,25 Euro on or before 31 August 2018.
 - 55.334,25 Euro on or before 31 September 2018.
 - 55.334,25 Euro on or before 31 October 2018.
 - c) All amounts are to be considered NET.
 - d) In case Club Sportif Sfaxien fails to pay any of the amounts on the agreed dates, the rest of pending amounts will become immediately due and payable and the reduction agreed in para. b) above will remain with no effect, Club Sportif Sfaxien being obliged in such case to pay the entire amount indicated in para. a) plus the interests until the effective day of payment.
3. The arbitral procedure *CAS 2018/A/5522 Club Sportif Sfaxien (CSS) v. Paulo Jorge Rebelo Duarte* is terminated and deleted from the CAS roll.
4. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
5. (...).
6. (...).
7. All other requests of prayers for relief are rejected.