

# **Decision of the Single Judge of the Players' Status Committee**

passed in Zurich, Switzerland, on 19 September 2012,

by

**Geoff Thompson** (England)

Single Judge of the Players' Status Committee,

on the claim presented by the Players' Agent

**Agent G**, from country B

*as Claimant / Counter-Respondent*

against the player

**Player H**, from country C

*as Respondent / Counter-Claimant*

regarding a claim for commission

## I. Facts of the case

1. On 31 May 2010, the players' agent G (hereinafter: *the Claimant / Counter-Respondent* or simply *the Claimant*), licensed by the country B Football Union, and the player H, from country C (hereinafter: *the Respondent / Counter-Claimant* or simply *the Respondent*) concluded an exclusive representation contract (hereinafter: *the representation contract*), valid from 1 June 2010 until 15 September 2010, according to which the Respondent appointed the Claimant "to act on his behalf and his name in any and all transactions involving him before any and all football clubs worldwide".
2. Article 5 of the representation contract stated that the Respondent was "required to promptly refer to the players' agent [i.e. the Claimant] all inquiries concerning offers, direct or indirect, from football clubs" that he had knowledge of.
3. Article 6 of the representation contract stipulated that the Claimant would receive a commission amounting to "ten percent of the annual basic gross income, including any and all signing-on fees and down payments" that the Respondent would receive and that the Claimant "shall be remunerated in any event, notwithstanding his involvement and the bringing about of the certain transaction". Furthermore, article 7 of the representation contract provided that "The remuneration due to the players' agent [i.e. the Claimant] is payable by the client [i.e. the Respondent] in a lump sum payment due at the start of each contract entered into by him, even if the players' agent has not brought about the particular transaction".
4. Article 9 of the representation contract provided that "In case of breach of any clause of this Contract by either of the parties, the party at breach shall fully indemnify the other one for the damages suffered, pursuant to the legal principle of restitutio in integrum, but in any event the compensation shall not be less than EUR 20,000". Finally, article 10 of the representation contract provided that "Default interest of 10% per annum shall apply on each belated payment stipulated in Article 6 and/or 9 above, as from the due date of payment until the effective date of payment".
5. On 13 September 2010, the Claimant lodged a claim with FIFA against the Respondent, arguing that although the latter had signed an employment contract with Club T from country T (hereinafter: Club T) in August 2010, he had failed to "refer Club T's contract offer to the Claimant and did not inform the latter about his contract signing with Club T".
6. The Claimant further alleged that the Respondent was represented by another players' agent at the time the employment contract with Club T was signed and that, therefore, he had breached article 5 of the representation contract and should consequently be "liable to pay compensation to the Claimant for the

*damages suffered by the latter*" and that such compensation should amount to "EUR 20,000, at the least".

7. In addition, the Claimant deemed that, in light of articles 6 and 7 of the representation contract, he was entitled to 10% of the Respondent's basic gross income earned with Club T, *"along with the agreed upon default interest"* stipulated in the representation contract.
8. On 12 November 2010, the Respondent responded to the claim and explained that although he had indeed concluded the representation contract with the Claimant on 31 May 2010, it was in fact the Claimant's associate, Mr J (hereinafter: *J*), who had acted as his agent and as his *"real interlocutor"* thereafter.
9. Having allegedly not received any job offer from Mr J during June and July 2010, the Respondent explained that he had concluded a three-year employment contract on 1 August 2010 with Club T *"without the assistance of any other agents"*. The Respondent therefore submitted to FIFA a copy of the employment contract concluded with Club T, valid from 1 August 2010 to 1 August 2013, and which stipulates that *"The player's monthly salary without compensation, pay-for-performance, incentive and social payment is 18,000 (Eighteen thousand) currency of country D"*.
10. The Respondent therefore alleged that in view of the fact that Mr J, and not the Claimant himself, had been in contact with him after the signature of the representation contract, as well as taking into account that the Claimant had not provided any evidence that he had tried to find a club for him, the Claimant had *"undoubtedly fallen short of his main obligation to represent [his] interests"* and should therefore compensate him in accordance with article 9 of the representation contract. As a consequence, the Respondent lodged a counter-claim against the Claimant and requested from the latter the amount of EUR 20,000.
11. Moreover, the Respondent refuted the claim that he had used the services of another players' agent and further deemed that he was perfectly entitled to sign an employment contract on his own without the assistance of the Claimant, this on the basis of article 19 paragraph 7 of the Players' Agents Regulations (hereinafter: *the Regulations*). In addition, the Respondent argued that the contractual clause contained in article 6 *in fine* of the representation contract, according to which the Claimant would *"be remunerated in any event, notwithstanding his involvement and the bringing about of the certain transaction"*, was clearly abusive and disproportionate.
12. On 19 May 2011, the Claimant provided his response to the reaction of the Respondent and reiterated that the latter had breached the representation contract and should thus compensate him accordingly. In this respect, the Claimant argued that the compensation clause contained in article 6 *in fine* of the

representation contract was applicable and that such clauses had been accepted in a number of decisions passed by FIFA's Players' Status Committee.

13. Furthermore, the Claimant argued that the amount as monthly salary stipulated in the employment contract concluded between the Respondent and Club T (*i.e.* currency of country D 18,000) was only a fraction of what he would receive from the latter club as the Respondent was allegedly paid four times as much with his previous club. The Claimant therefore asked FIFA to request the Respondent, Club T and the Football Union of country D to produce a copy of the "*financial appendix to the Club T Contract*" in order to establish the real income of the Respondent with Club T.
14. Subsequently, on 20 July 2011, the Respondent reiterated his request that the Claimant should compensate him in the amount of EUR 20,000 for having allegedly failed to comply with his obligations under the representation contract and rejected the additional allegations raised by the Claimant.
15. On 22 August 2011, the Claimant provided his response to the counter-claim of the Respondent. In this respect, he stated that neither the representation contract, nor the Regulations or the Swiss Code of Obligations "*contains a clause precluding the Claimant from assigning his obligations to the Respondent under the representation contract to an 'exempt individual', such as Mr J, if need be*" and further added that the Respondent had not provided any reasons as to why he should be entitled to any compensation at all, "*nor did he particularize any loss he may have suffered, which should be compensated by damages*".
16. Furthermore, the Claimant reiterated that he should be entitled to at least "*EUR 20,000, plus interest of 10% as of 2 August 2010 until the date of effective payment*". In addition, the Claimant deemed that the Respondent should pay him 10% of the real basic gross income he would have earned with Club T.
17. On 24 April 2012, Club T provided FIFA with a copy of the employment contract, together with its appendix, it had concluded with the Respondent on 1 August 2010, according to which the latter was entitled to a monthly salary of currency of country D 18,000 as well as an additional monthly salary of USD 23,000, "*From August [...] 2010 [...] till August 2013*". Furthermore, Club T informed FIFA that the Claimant had not participated in the conclusion of the employment contract the latter club had signed with the Respondent on 1 August 2010.
18. Finally, on 2 May 2012, the Claimant informed FIFA that, based on the information contained in the appendix of the employment contract concluded between the Respondent and Club T, he should be entitled to an amount representing 10% of the Respondent's salary stipulated in the aforementioned appendix, *i.e.* 10% of USD 828,000. Therefore the Claimant requested from the Respondent the amount of USD 82,800 on the basis of the provisions of the representation contract, together with an interest of 10% per year as of 1 August 2010.

19. Finally, the Claimant reiterated that the counter-claim of the Respondent should be either declared not admissible or be rejected entirely.

## **II. Considerations of the Single Judge of the Players' Status Committee**

1. First of all, the Single Judge of the Players' Status Committee (hereinafter also simply referred to as: *the Single Judge*) analysed which procedural rules are applicable to the matter in hand. In this respect and since the claim against the Respondent was lodged in front of FIFA on 13 September 2010, the Single Judge concluded that the current edition of the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the Procedural Rules).
2. Subsequently, the Single Judge analysed which edition of the FIFA Players' Agent Regulations should be applicable. In this respect, he confirmed that in accordance with art. 39 par. 4 of the Players' Agents Regulations, and considering again that the present claim was lodged in front of FIFA on 13 September 2010, the current edition of the Players' Agents Regulations (edition 2008; hereinafter: *the Regulations*) is applicable to the present matter.
3. Furthermore, and with regard to his competence, the Single Judge of the Players' Status Committee pointed out that according to art. 30 par. 2 of the Regulations, FIFA is competent to deal with international disputes in connection with the activities of players' agents. In this respect, the Single Judge underlined that the present matter concerned a dispute between a players' agent licensed by the country B Football Union and a country C football player, regarding an alleged outstanding commission. Consequently, the Single Judge held that he was competent to decide on the present matter which had a clear international dimension.
4. His competence and the applicable regulations having been established and entering into the substance of the matter, the Single Judge acknowledged the above-mentioned facts as well as the documentation submitted by the parties and contained in the file.
5. In this respect and first of all, the Single Judge started his analysis of the case by noting that, according to article 6 of the representation contract concluded between the Claimant and the Respondent on 31 May 2010, the former was entitled to receive from the latter a commission of 10% of the Respondent's "*annual basic gross income, including any and all signing-on fees and down payments*" of any employment contract that the Claimant would negotiate on behalf of the Respondent.

6. Furthermore, the Single Judge underlined that, on the one hand, the Claimant, in his claim to FIFA, had argued, in essence, that he should be entitled to be compensated by the Respondent although the latter had signed his employment contract with Club T without his assistance. On the other hand, the Respondent had argued that no commission was due because, not only did he have contact with Mr J, i.e. the Claimant's associate, and not with the Claimant himself, but he had signed in fact the employment contract with Club T on his own without the intervention of the Claimant or any other players' agent.
7. At this stage, the Single Judge also noted that the Respondent had lodged a counter-claim against the Claimant on the basis that the latter had allegedly "*fallen short of his main obligation*" to represent his interests and had therefore breached article 9 of the representation contract. The Respondent had consequently requested the amount of EUR 20,000 from the Claimant on the basis of the aforementioned article.
8. In view of the aforementioned allegations and starting with the claim of the Claimant, the Single Judge turned his attention to the provisions contained in the representation contract. First of all, the Single Judge underlined that article 6 of the said contract, which referred to the amount of commission agreed upon between the parties, also provided that the Claimant "*shall be remunerated in any event, notwithstanding his involvement and the bringing about of the certain transaction*".
9. In addition, the Single Judge pointed out that article 7 of the representation contract further provided that "*The remuneration due to the players' agent [i.e. the Claimant] is payable by the client [i.e. the Respondent] in a lump sum payment due at the start of each contract entered into by him, even if the players' agent has not brought about the particular transaction*".
10. In other words, the parties appear to have agreed in articles 6 and 7 of the representation contract that in case the Respondent would negotiate and sign any employment contract with a club on his own or with the assistance of another players' agent, he would still be liable to pay to the Claimant the agreed commission as provided in the representation contract.
11. In view of the above, and as a general remark, the Single Judge recalled that the activity of players' agents is a function intended to bring players and clubs together so as to establish working relations, i.e. the negotiations led by a players' agent should culminate in the signing of an employment contract between a player and a club.
12. In this context, the Single Judge referred to a letter addressed to all licensed players' agents in June 1999, whereby the Bureau of the Players' Status Committee stated that it had discussed at its meeting in Zurich on 27 August 1998 cases in which players' agents had requested a commission from players, even though the

relevant employment contracts had been concluded between the players and the clubs without the agents' involvements. In this respect, the Bureau of the Players' Status Committee had held that players' agents' activities must be causal to the conclusion of employment contracts and that, as a general rule, if an employment contract is signed without the involvement of a particular players' agent, the player concerned does not owe any commission to the agent. This said, the Single Judge recalled that the aforementioned legal interpretation is still applicable and has since been confirmed by the Players' Status Committee in its jurisprudence.

13. Notwithstanding the above, and referring again to the afore-mentioned letter, the Single Judge went on to observe that the Bureau of the Players' Status Committee had also agreed that players' agents may, nevertheless, claim commission if they have not been actively involved in a particular transaction, if a clause to this effect is explicitly and unequivocally stipulated in the relevant representation contract.
14. With the aforementioned considerations in mind, and reverting to articles 6 and 7 of the representation contract, the Single Judge concluded that the said contract concluded between the parties at dispute contained such an explicit and unequivocal clause entitling the Claimant to claim his commission following the conclusion of the employment contract between the Respondent and Club T.
15. In view of the abovementioned considerations and taking into account, in particular, the specific wording of the representation contract, the Single Judge concluded that the latter should be entitled to claim from the Respondent an amount equivalent to 10% of the salary paid by Club T to the Respondent on the basis of the appendix to their employment contract. Consequently, the Single Judge went on to calculate how much that commission should amount to.
16. In this regard, first and foremost, the Single Judge was eager to recall that, although the Claimant had requested on 22 August 2011, in his response to the counter-claim of the Respondent, the amount equivalent to 10% of the Respondent's total income with Club T as well as the additional amount of EUR 20,000 under article 9 of the representation contract, he had, after the closure of the investigation of the present matter, amended his initial request and had claimed from the Respondent only an amount equivalent to 10% of the salary agreed upon between the latter and Club T in the appendix to the employment contract concluded on 1 August 2010 between the aforementioned parties.
17. In this connection, and while emphasising that he had the discretion to take into account submission and/or documents submitted by any of the parties after the closure of the investigation as well as underlining that the amount actually claimed by the Claimant in his last submission was in fact lower than what he had previously requested, the Single Judge decided to take into account the position of the Claimant dated 2 May 2012.

18. In continuation, the Single Judge acknowledged the fact that the employment contract concluded between the Respondent and Club T on 1 August 2010 was valid for three years (i.e. 36 months) and that its appendix provided that the Respondent would receive a monthly salary of USD 23,000. Consequently, the Single Judge concluded that the Respondent was, under the appendix to the employment contract, entitled to USD 828,000 as salary, which corresponds to 36 times USD 23,000. As a result, the Single Judge held that the amount of commission due under article 6 of the representation contract and calculated on the basis of the value of the appendix to the aforementioned employment contract represented 10% of USD 828,000, i.e. USD 82,800.
19. Therefore, the Single Judge concluded that the Respondent must pay to the Claimant the amount of USD 82,800 in accordance with articles 6 and 7 of the representation contract concluded between the parties.
20. In continuation and with regard to the request for interest of the Claimant, the Single Judge underlined that article 10 of the representation contract specifically provided that an interest at a rate of 10% per year "*shall apply on each belated payment stipulated in Article 6 and/or 9*". In view of this and taking into account that article 7 of the representation contract provided that the remuneration in question had to be paid by the Respondent to the Claimant "*in a lump sum payment*" at the start of each employment contract entered into by the Respondent, the Single Judge came to the conclusion that an interest of 10% over the amount of USD 82,800 should apply as from 2 August 2010, i.e. the day after the conclusion of the employment contract between the Respondent and Club T.
21. Finally, for the sake of good order and considering that the Respondent has to pay the commission agreed upon in the representation contract, the Single Judge concluded that the counter-claim of the Respondent should therefore be rejected.
22. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations on the Status and Transfer of Players in combination with art. 18 par. 1 of the Procedural Rules, according to which, in the proceedings before the Players' Status Committee, including the Single Judge, costs in the maximum amount of currency of country E 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.
23. On account of the above and considering that the claim of the Claimant has almost been fully accepted, the Single Judge concluded that the Respondent has to bear the entire 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 is USD 82,800. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to currency of country E 10,000.



24. In conclusion, and in view of the circumstances of the present matter and considering that the case at hand did not pose any particular factual difficulty or legal complexity, the Single Judge determined the costs of the current proceedings to the amount of currency of country E 5,000. Consequently, the Single Judge of the Players' Status Committee decided that the amount of currency of country E 5,000 has to be paid by the Respondent in order to cover the costs of the present proceedings.

### **III. Decision of the Single Judge of the Players' Status Committee**

1. The claim of the Claimant / Counter-Respondent, Agent G, is partially accepted.
2. The Respondent / Counter-Claimant, Player H, has to pay to the Claimant / Counter-Respondent, Agent G, the amount of USD 82,800, as well as 10% interest per year on the said amount as from 2 August 2010 until the date of effective payment, **within 30 days** as from the date of notification of this decision.
3. Any further claims lodged by the Claimant / Counter-Respondent, Agent G, are rejected.
4. If the aforementioned sum plus interest 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.
5. The counterclaim of the Respondent / Counter-Claimant, Player H, is rejected.
6. The final costs of the proceedings in the amount of currency of country E 5,000 are to be paid by the Respondent / Counter-Claimant, Player H, **within 30 days** as from the date of notification of the present decision as follows:
  - 6.1 The amount of currency of country E 3,000 to FIFA. Considering that the Respondent / Counter-Claimant already paid the amount of currency of country E 1,000 as advance of costs, the latter has to pay to FIFA the amount of currency of country E 2,000 to the following bank account, with reference to case nr. XX-XXXXX:
  - 6.2 The amount of currency of country E 2,000 has to be paid directly to the Claimant / Counter-Respondent, Agent G.
7. The Claimant / Counter-Respondent, Agent G, is directed to inform the Respondent / Counter-Claimant, Player H, immediately and directly of the account number to which the remittance under points 2. and 6.2 above is to be made and to notify the Players' Status Committee of every payment received.

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**Note relating to the motivated decision** (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne / Switzerland  
Tel: +41 21 613 50 00  
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e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
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For the Single Judge of the  
Players' Status Committee

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Markus Kattner  
Deputy Secretary General

Encl. CAS directives