



**Arbitration CAS 2006/A/1019 G. v. O., award of 5 December 2006**

Panel: Mr Chris Georghiades (Cyprus), Sole Arbitrator

*Football*

*Players' agent*

*Moment from which the agent is entitled to his/her commission*

*Effective involvement of the agent in the transaction*

*Exclusivity*

- 1. Players' agents frequently consider that they are entitled to commission when they introduce to the player a party i.e. a club which shows interest in contracting for the player's services. However, this is not sufficient because in law even where such an introduction may lead to a contract, the introduction itself does not create a contract between the player and the club. The contract is not made until the parties go through the negotiation part and eventually sign the contract. Therefore, a commission is not payable on the introduction of the player but only when the contract is actually concluded. An agency contract where the principal is bound to pay a commission for an introduction must be expressed in writing.**
- 2. It is an accepted legal principle that subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he/she is not entitled to such a remuneration unless he/she is the effective cause of the transaction being brought about.**
- 3. In the absence of an agreement to the contrary, the fact that a player placed his "placement rights" exclusively with an agent does not prevent the player from contracting himself and having done so before the agent concluded any contract, he is under no liability to pay any commission. If a player appoints an agent as a "sole agent", the player cannot employ any other agent, but if he contracts himself he cannot be liable to the agent to pay commission or damages.**

On 10 February 2003, Mr G. of United Kingdom ("the Agent" or "the Appellant"), a FIFA approved players agent, and the football player O. ("the Player" or "the Respondent") signed a representation contract for a fixed term of 24 months running until 18 February 2005 (the "Contract").

The Contract contained the following relevant clauses:

*“(1) Duration*

*This contract runs for a period of (24 months) from 18 February 2003 to 18 February 2005.*

*In the event the contract terminates early then the parties to the Agreement would be entitled to conclude their obligations against each other by payment of any monies due up to the date of termination of the Contract with the Player’s Agent entitled to remuneration for the remainder of the terminated contract.*

*(2) Remuneration*

*The player’s agent shall receive a commission amounting to 10% of the annual gross salary due to the player as a result of the employment contracts negotiated by the player’s agent.*

*(3) Exclusivity*

*The parties agree that the placement rights be transferred exclusively to the Player’s Agent unless otherwise agreed between the parties”.*

On 27 January 2004, the Player signed a two-year employment agreement with the Korean Club, Incheon United.

On 21 May 2004, the Agent complained to the FIFA Players’ Status Committee (“the PSC”) that he had acted for the Player as an agent and as a personal assistant having negotiated the terms of settlement between the Player and Aston Villa (signed on 23 October 2003) and that on 18 January 2004 the Agent sent to the coach of the Korean Club Incheon United a fax to commence negotiations on behalf of the Player informing that he represents the Player “solely and exclusively”.

In June 2004, the Player was transferred from Incheon United to Urawa Red Diamonds in Japan.

As mentioned above the Agent filed a complaint with the PSC claiming that he had not been paid the commission entitled to under the Contract in respect of the Player’s transfer to Incheon United.

On 21 November 2005, the PSC passed its decision (“the Decision”) according to which the claim of the Agent was rejected.

The decision was notified to the Parties on 29 December 2005.

On 6 January 2006, the Appellant filed his statement of appeal with the CAS, appealing against the decision passed by the PSC on 21 November 2005 and notified to the Appellant on 29 December 2005.

## **LAW**

### **CAS Jurisdiction**

1. The jurisdiction of the CAS, which is not disputed, derives from articles 59ff of the FIFA Statutes and Art. R47 of the Code of Sports-related Arbitration (“the Code”). It is further confirmed by the Order of Procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law.

### **Applicable Law**

4. Art. R58 of the Code specifies that the *“Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties, or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
5. In the present case, there was no agreement among the parties regarding the application of any particular law.
6. The Respondent in his Reply dated 8 February 2006 para 16.5.1 refers to the provisions of Art. R58 of the Code and concludes that since the Parties have not chosen the rules of law by agreement, it is submitted that Swiss law applies since it is the law of the country where FIFA is domiciled. Furthermore, by letter of 31 August 2006 sent by his Counsel in response to a query made by CAS as to the applicable law the Respondent’s aforementioned position is repeated. The Appellant did not position himself on the issue.
7. In the absence of an agreement as regards the applicable law, it follows that the FIFA rules and regulations and subsidiary Swiss law are applicable to the present case.

### **Admissibility**

8. The appeal was filed within the applicable deadline provided by Art. 60 of the FIFA Statutes.
9. It follows that the appeal is admissible.

## Merits

10. The principal issues to be resolved by the Sole Arbitrator are:
- (i) Whether the Agent is entitled to be paid the commission stipulated in the Contract i.e. 10% of all sums received by the Player from Incheon United by way of annual salary. A similar issue is raised relating to the sums received by the Player in respect of the contract entered into with Urawa Diamonds, up to 18 February 2005.
  - (ii) Whether the Decision of the PSC is correct as a result of which the appeal should be dismissed.
11. With respect to the first issue, from the documentation filed with the PSC and the CAS, it is evident that the Contract was for a fixed term of 24 months running until 18 February 2005. The Agent was entitled to remuneration as per para. 2 of the Contract. Para 3 of the Contract transferred the placement rights exclusively to the Agent.

As a result of the above-mentioned it can be said that the Contract can be termed an “exclusive” agency agreement.

It is an accepted principle of law that a principal is under a duty to pay his agent the commission or other remuneration agreed upon.

The remuneration of an agent frequently takes the form of a commission i.e. a percentage of the value of the transaction the agent is to bring about for the principal. The agent does not become entitled to his commission until the event has occurred upon which his entitlement arises.

What this event is, must be ascertained from the terms of the agency contract. In the particular Contract, the event would occur when the Player and a third party, i.e. a club, would enter into a contract which the agent was engaged to bring about. It is at this point in time that the Agent’s task would be successfully completed.

We know from the facts of the case that the Agent exhausted his actions by sending on 18 January 2004 a communication to the coach of the Korean club Incheon United advising of the availability of the Player. However he did not involve himself in any negotiations nor in the conclusion of the Contract. In other words he did not bring about the Contract which he was engaged for.

Difficulties arise and the particular case evidences the situation because players’ agents frequently consider that their task is completed and that they are entitled to commission when they introduce to the Player a party *i.e.* a club which shows interest in contracting for the Player’s services.

In his Appeal brief, and before the PSC, the Agent argues that from the moment he made known to the coach of Incheon United the availability of the Player he has acquired entitlement to his commission.

The Sole Arbitrator is of the opinion that this is not sufficient because in law even where such an introduction may lead to a contract, the introduction itself does not create a contract between the Player and the Club. The contract is not made until the parties go through the negotiation part and eventually sign the contract.

The payment of an agent's fee is normally made out of the amount specified in the particular contract as a result of which entitlement seems to arise only after conclusion of the contract and payment of the amount(s) specified by the particular contract.

It is the Sole Arbitrator's understanding that commission is not payable on the introduction of the Player but when the contract is actually concluded. An agency contract where the principal is bound to pay a commission for an introduction must be expressed in writing.

In addition to the above it is an accepted legal principle that subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he is not entitled to such a remuneration unless he is the effective cause of the transaction being brought about.

In the particular case, the Contract does not contain express provisions that the Agent will be remunerated in any event even in the case he does not bring about the particular transaction i.e. the signing of the Incheon United agreement. Without an express provision for the Agent to be remunerated notwithstanding his involvement and the bringing about of a certain event i.e. the conclusion of an agreement for the provision of the Player's services, he will not be entitled to claim a reasonable remuneration on a contractual quantum merit basis.

In the absence of an agreement to the contrary, the fact that the Player placed his "placement rights" exclusively with the Agent does not prevent the Player from contracting himself and having done so before the Agent concluded any contract (which he did not), he is under no liability to pay any commission. If the Player had appointed the Agent as a "sole agent" the Player could not employ any other agent but if he contracted himself he could not be liable to the Agent to pay commission or damages.

The facts of the case do not evidence the involvement in bringing about the conclusion of the transaction, *i.e.* the signing of the agreement with Incheon United, the agent himself having failed to produce evidence of any significant involvement save for the act of introduction mentioned above.

As a result of the above, the Sole Arbitrator is of the opinion that notwithstanding the terms of the Contract (particularly clauses 2 and 3) the Player never lost the ability to conclude contracts by himself and the Agent could only claim payment of commission if he could evidence that he brought about the conclusion of the transaction, the mere introduction is not sufficient.

12. The PSC in its Decision referred to the function of a players' agent which briefly stated brings players and clubs together, so as to explore the possibility of establishing working relations, stressing that the players agent's actions should culminate in the signing of a mutually acceptable Contract between the player and the club. In this respect the PSC referred to a letter/direction dated June 1999 whereby the Bureau of the Players Status Committee informed and/or advised the licensed players' agents of the circumstances under which they could demand their remuneration where contracts were concluded between players and clubs without the agents' involvement.

The gist of the Bureau's standpoint was that the players' agent's activities must be causal to the conclusion of the employment contract.

The said position is similar to the expressed hereinabove and is in line with the general principles of law relating to agents and their ability to earn their remuneration.

Considering the issue of "exclusivity" the PSC correctly found that these operated with respect the Players effort to appoint other agents, if this would be the case.

The PSC's reference to the jurisprudence of the Bureau is in line with the generally accepted legal principles and as such could be used for the purpose of the matter at hand.

Accordingly the Sole Arbitrator is of the opinion that the Decision was and is correct and should be upheld.

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

1. The appeal filed by G. against the Decision of the Single Judge of the Players Status Committee of FIFA issued on 21 November 2005 is dismissed.
2. The Decision of the Single Judge of the Players Status Committee of FIFA issued on 21 November 2005 is upheld.
3. (...).
4. (...).
5. All other claims are dismissed.