



The Emiliano Sala transfer dispute

A review of FIFA's decision in the dispute between FC Nantes and Cardiff City FC regarding the transfer of Emiliano Sala. In particular, this case highlights:

- *the importance of ensuring that conditions precedent in transfer agreements properly reflect the intentions of the parties and the correct regulatory procedure;*
- *the importance of ensuring that those conditions are properly fulfilled by the parties following signature of the transfer agreement; and*
- *the distinction between employment and registration in football.*

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Executive summary

FIFA has now published the decision of its Players' Status Committee ("PSC") dated 25 September 2019 in the proceedings brought by FC Nantes ("Nantes") against Cardiff City FC ("Cardiff") regarding the transfer of Emiliano Sala, who tragically died in a plane crash in January this year shortly after being unveiled as a Cardiff player. A copy of the decision can be found [here](#).

Nantes alleged that Cardiff was in breach of contract for failing to pay the transfer fee owing to it pursuant to the transfer agreement between the two clubs for the transfer of Mr Sala (the "Transfer Agreement").

However, Cardiff asserted that the PSC did not have jurisdiction to hear the claim and advanced the following substantive defence:

1. Certain conditions set out in the Transfer Agreement had not been met, meaning that the Transfer Agreement was null and void; and
2. In the event that the PSC did find that the transfer had been completed and the transfer fee was owing, Nantes was liable to Cardiff in damages equal to the value of Mr Sala's transfer fee as a result of Nantes' involvement in the events that led to Mr Sala's death, meaning that Cardiff had no outstanding liability to Nantes.

The PSC found in favour of Nantes and ordered Cardiff to pay the first instalment of the transfer fee, plus interest, within 45 days.

Key terms of the Transfer Agreement

Clause 2.1 of the Transfer Agreement provided that the Transfer Agreement's validity was "conditional upon" the fulfilment of the following requirements:

- "2.1.1. the player completing successfully medical examination with Cardiff City FC;
- 2.1.2. FC Nantes and the Player agreeing all the terms of a mutual termination of FC Nantes contract of employment with the Player;
- 2.1.3. the mutual termination of FC Nantes contract of employment with the Player is registered by the LFP [i.e. the French Ligue de Football Professionnel];
- 2.1.4. the LFP and the FAW [i.e. the Football Association of Wales] have confirmed to Cardiff City FC and FC Nantes that the Player has been registered as a Cardiff City FC player and that the Player's International Transfer Certificate has been released."

In addition, Clause 2.2 provided that "both parties shall use all reasonable endeavours to ensure that the conditions are satisfied no later than 22 January 2019. If the conditions are not fulfilled within this period then this Transfer Agreement shall be null and void. In such event: 2.2.1. this Transfer Agreement shall cease to have legal effect; 2.2.2. no payment shall be due from Cardiff City FC to FC Nantes; 2.2.3. neither party shall have any ongoing obligations or liability in relation to this Transfer Agreement."

The Transfer Agreement also provided for a transfer fee of €17m, payable in three instalments, the first "within five days of the player registering with Cardiff City FC", the second by 1 January 2020 and the final payment by 1 January 2021.

Jurisdiction challenge

As a preliminary point, Cardiff argued that the PSC was not the competent body to hear Nantes' claim. Specifically, it argued that because the disputes clause in the Transfer Agreement incorrectly stated that any dispute would be subject to the jurisdiction of the FIFA Dispute Resolution Chamber, rather than the PSC, the matter should therefore be referred to the Court of Arbitration of Sport, which was stated in the Transfer Agreement as the competent body to hear a final appeal of any dispute between the parties.

The PSC rejected this argument, finding that FIFA is competent to hear a claim lodged by a club against another club affiliated to a different association and that, regardless of any mistakes in the drafting of the disputes clause, it was clear that the intention of the parties was to refer any dispute to FIFA.

Cardiff also argued that the FIFA proceedings should be stayed pending the outcome of the ongoing regulatory investigations into the causes of the plane crash which killed Mr Sala. The PSC rejected this argument on the basis that the outcome of this contractual dispute would not have any impact on the ongoing investigations.

Nantes' liability to Cardiff in damages

As to the substantive matters raised by Cardiff, the PSC first dealt with the argument that Nantes' was liable to Cardiff in damages for its involvement in the events which led to Mr Sala's death. Specifically, Cardiff argued that Mr Sala's flight had been booked by the agency used by Nantes to broker the transfer, Mercato Sports, which was operated by Willie McKay. Cardiff argued that, as a matter of French law, all acts of an agent are to be enforced against the principal who hired the agent as if the principal had performed the acts himself.

Consequently, Cardiff argued that in the event the PSC found that the transfer had been completed and the transfer fee was owing, Nantes should be considered liable for the acts of Mercato Sports / Willie McKay and was therefore liable to Cardiff in damages totalling €17m (i.e. the value of Mr Sala's transfer fee), meaning that Cardiff had no outstanding liability to Nantes.

However, the PSC found that it was not in a position to consider the allegations of Nantes' alleged civil liability towards Cardiff because those matters lie outside of the PSC's competence as a body designed to adjudicate upon contractual matters.

Alleged invalidity of Transfer Agreement

The majority of argument focused on whether the conditions at Clause 2.1 of the Transfer Agreement had properly been fulfilled.

By way of background, on 18 January 2019, Mr Sala successfully completed his medical examination with Cardiff and, on 19 January 2019, Nantes signed a termination of their employment contract with Mr Sala, which was duly ratified by the LFP. Subsequently on 19 January 2019, Mr Sala signed an employment contract with Cardiff, who officially announced him as a Cardiff player the same day. On 21 January 2019, Mr Sala's International Transfer Certificate ("ITC") was issued in favour of the FAW and, a few minutes later, he was registered with Cardiff in the FIFA Transfer Matching System ("TMS").

(i) Failure to terminate Mr Sala's employment contract with Nantes

Cardiff alleged that this condition had not been met because two conditions included in the termination agreement between Mr Sala and Nantes had not been fulfilled, namely the definitive transfer of the player to Cardiff and the issuance of the player's ITC to the English FA (rather than the FAW which was the correct governing body). Cardiff therefore argued that Mr Sala's employment with Nantes had not been validly terminated.

The PSC found that by signing the termination agreement with Nantes, Mr Sala had agreed to all of the terms therein, regardless of whether the conditions set out in that termination were, at a later stage, complied with or not. Consequently, the PSC dismissed this argument.

(ii) The termination of Mr Sala's employment contract with Nantes was not registered by the LFP

Cardiff also argued that the termination of Mr Sala's employment contract with Nantes had not been registered by the LFP.

However, Nantes produced a copy of the relevant termination agreement dated 19 January 2019 which bore a stamp stating "Homologué le 21/01/2019", i.e. "Ratified on 21/01/2019". Therefore, PSC found that this condition had been met.

(iii) Confirmation from the LFP and the FAW that Mr Sala had been registered as a Cardiff player and that his ITC had been released

The main condition with which Cardiff took issue was whether Mr Sala had been properly registered as a Cardiff player.

Cardiff argued that Mr Sala's employment contract had not been registered with the Premier League and, therefore, had to be considered null and void, thus invalidating the player's ITC. Specifically, the Premier League had requested that Cardiff resubmit Mr Sala's employment contract as it had incorrectly been filed by Cardiff as a "new registration" rather than a "permanent transfer" and because the payment schedule for Mr Sala's signing on fee was drafted incorrectly.

Firstly, the PSC found that the Transfer Agreement did not contain a condition that Mr Sala's employment contract be registered with the Premier League. Moreover, it was clearly Cardiff's intention to register Mr Sala with the Premier League and the contract had only been rejected as a result of mistakes by Cardiff. Moreover, the registration of Mr Sala's employment contract was an internal matter between Cardiff and the Premier League and/or the FAW, over which Nantes had no influence. Therefore, this could in no way affect the validity of the Transfer Agreement.

Secondly, the PSC found that the transfer of the player in the TMS was completed at 17:30 on 21 January 2019 and, therefore, the player's transfer from Nantes to Cardiff had to be considered as validly concluded between the parties. Therefore, Mr Sala was a Cardiff player regardless of the registration of his employment contract with the Premier League.

Sanctions

The PSC therefore upheld Nantes' claim and found that the first transfer fee instalment of €6m must be paid by Cardiff, as well as interest at a rate of 5% per annum accruing from 27 January 2019 when the first instalment had become due. Moreover, the PSC noted that the further instalments would remain payable when they fall due on 1 January 2020 and 1 January 2021 respectively.

In the circumstances, however, the PSC exceptionally decided not to make any award as to costs.

The PSC noted that, pursuant to FIFA Regulations, in the event that Cardiff does not pay the amount due to Nantes within 45 days (i.e. by 27 November 2019), Cardiff would be banned from registering any new players, either nationally or internationally, for up to three transfer windows.

Given that Cardiff has indicated that it will be appealing this decision to the Court of Arbitration for Sport, these sanctions will be suspended pending determination of the appeal.

Conclusion

This is a deeply tragic set of circumstances and it is regrettable that the parties were unable to reach an amicable settlement of their dispute.

The main point that should be taken away is to ensure that transfer agreements, in particular any conditions precedent, are carefully drafted to ensure that they properly reflect both the intentions of the parties and the regulatory procedure which underpins both the national and international transfer and registration of players.

Moreover, clubs should ensure that any conditions are properly fulfilled following signature of the transfer agreement, as these can often be forgotten about by the respective clubs after a transfer is announced, potentially causing issues down the line.

It should be noted that many transfer agreements are drafted such that a club's obligation to transfer a player is conditional upon the conditions precedent being met. However, it is not possible for a club's obligation to complete a transfer to be crystallised once that transfer has been completed. Therefore, clubs should ensure that the obligation to transfer a player is conditional upon signature of the transfer agreement and that payment of the transfer fee is conditional upon the conditions precedent being met.

It is also worth comparing this case with the transfer of [Adrien Silva from Sporting Lisbon to Leicester City in 2017](#), where FIFA refused to release the player's ITC as the relevant documentation was filed by Leicester 14 seconds after the relevant deadline expired, resulting in the player being employed by, but unable to play for, Leicester. This further highlights the distinction between employment and registration.

Onside Law have substantial experience advising English and European clubs on transfers (including loans) and all ancillary matters, as well as acting in inter-club disputes. We also have extensive experience advising players and agents on transfers, playing contracts and commercial matters. Do not hesitate to get in touch to discuss how we can be of assistance on any similar matters you may have.

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