

CAS 2022/A/8975 Corrado Saccone v. Al Faisaly Football Club

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Michele A.R. **Bernasconi**, Attorney-at-Law, Zurich, Switzerland

Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

Mr Corrado Saccone, Italy

Represented by Mr Paolo Lombardi, Mr James Mungavin and Mr Ian Laing, Attorneys-at-Law, Edinburgh, United Kingdom

- Appellant -

and

Al Faisaly Football Club, Harma, Saudi Arabia

Represented by Mr Anis Ben Mime, Attorney-at-Law, Tunis, Tunisia

- Respondent -

* * * * *

I. PARTIES

1. Mr Corrado Saccone (the “Appellant”), is a professional football coach and/or fitness coach of Italian nationality.
2. Al Faisaly Football Club (the “Respondent” or “Al Faisaly”) is a professional football club with its registered office in Harma, Saudi Arabia. Al Faisaly is registered with the Saudi Arabian Football Federation (the “SAFF”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
3. The Appellant and Al Faisaly are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. The present appeal arbitration proceedings concern an employment-related disputed arising from an employment contract concluded between the Appellant and Al Faisaly (the “Employment Contract”).
5. Following a claim lodged by the Appellant against Al Faisaly, a Single Judge of the Players’ Status Chamber of FIFA (the “FIFA PSC Single Judge”) decided on 19 April 2022 that the Appellant’s claim was inadmissible (the “Appealed Decision”).
6. The Appellant challenged the Appealed Decision before the Court of Arbitration for Sport (“CAS”), claiming that (i) his claim before the FIFA PSC Single Judge was admissible and that the FIFA PSC Single Judge was competent; (ii) he had just cause to terminate the Employment Contract; and (iii) he is, *inter alia*, to be awarded outstanding bonuses (Saudi Arabian Rial – “SAR” 4,000), an amount of SAR 1,948 for the reimbursement of his return flight ticket to Italy following the termination of the Employment Contract and compensation for breach of the Employment Contract by Al Faisaly (United States Dollars – “USD” 38,400), plus interest. Al Faisaly requested the Appealed Decision to be confirmed.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

7. On 17 June 2022 by email, and on 21 June 2022 by e-filing, the Appellant filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Appellant named Al Faisaly as Respondent, he applied for legal aid, and requested that the case be submitted to a Sole Arbitrator.
8. On 7 July 2022, FIFA renounced its right to request its possible intervention in the present arbitration proceedings pursuant to Article R52.2 and R41.3 CAS Code, maintaining however that the appeal should have been directed exclusively against FIFA.
9. On 12 July 2022, the CAS Court Office informed the Parties that, in the absence of a reaction by Al Faisaly on the Appellant’s request for the appointment of a Sole

Arbitrator, it was for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on this issue.

10. On 19 August 2022, the CAS Court Office informed the Parties that, pursuant to Article R50 CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator.
11. On 13 September 2022, the CAS Court Office informed the Parties that legal aid had been granted to the Appellant.
12. On 27 September 2022 and within the relevant time-limit, the Appellant filed his Appeal Brief in accordance with Article R51 CAS Code. In its submission, the Appellant requested a hearing via video-conference to be held.
13. On 5 October 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to decide the procedure was constituted as follows:

Sole Arbitrator: Mr Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland

Ad hoc Clerk: Mr Dennis Koolgaard, Attorney-at-Law, Amsterdam, The Netherlands
14. On 26 October 2022 and within the relevant time-limit, Al Faisaly filed its Answer in accordance with Article R55 CAS Code. In its Answer, it requested the Sole Arbitrator to issue an award as soon as possible and for a hearing to be held.
15. On 1 November 2022, the Appellant reiterated its request for a hearing to be held.
16. On 7 November 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing.
17. On 30 November and 2 December 2022 respectively, Al Faisaly and the Appellant returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office on 30 November 2022.
18. On 6 December 2022, a hearing was held by video-conference. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.
19. In addition to the Sole Arbitrator, Ms Pauline Pellaux, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - For the Appellant: Mr Corrado Saccone, the Appellant; Mr Paolo Lombardi, Counsel; Mr James Mungavin, Counsel; Mr Ian Laing, Counsel; Ms Samantha Cipollina, Interpreter.
 - For the Respondent: Mr Anis Ben Mime, Counsel; Ms Olfa Arjoun, Counsel.

20. In light of settlement discussions initiated at the start of the hearing, which resulted in the conclusion of an oral settlement agreement the Parties requested to be embodied in a Consent Award, no witnesses testified, and no arguments were heard.
21. With respect to arbitration costs, the Parties agreed at the end of the hearing on a 50/50 split of the arbitration costs, provided, for the Appellant, that he shall actually not bear any arbitrations costs, and, for the Respondent, that he would not have to pay any additional costs besides those already advanced and be reimbursed any excess amount. This agreement on the arbitration costs was thus based on the Appellant's understanding that no costs would be charged on him since he received legal aid. While the Sole Arbitrator mentioned at the hearing that legal aid was a separate issue, he did not refer the Parties to the provision applicable to this issue.
22. By letter of 3 February 2023, the CAS Court Office did so, on behalf of the Sole Arbitrator. The Parties were then expressly referred to the content of Article 17 of the November 2020 edition of the Guidelines on Legal Aid before the Court of Arbitration for Sport (the "CAS Guidelines on Legal Aid") and invited to comment on whether this would have any implications on their agreement how the arbitration costs had to be dealt with. In the letter it was clarified that in case the Parties would not have a fully consensual position, the Sole Arbitrator would have to decide in his Award on the issue of the arbitration costs.
23. On 10 February 2023, the Appellant confirmed his position expressed at the hearing and indicated, *inter alia*, that the Parties agreed on the following two points: "[the Appellant] would not bear any procedural costs and [the Respondent] would not pay any procedural costs in addition to the costs paid in advance – in fact, the [Respondent] would, in all likelihood, be reimbursed a portion of such advance of costs". He therefore deemed that the Respondent should be ordered to pay the totality of the arbitration costs.
24. On 14 February 2023, the CAS Court Office acknowledged receipt of this letter and invited the Respondent to express its position on the Appellant's request.
25. On 16 February 2023, the Respondent indicated that it refused the Appellant's request that it should bear the full arbitration costs. At the same time, the Respondent confirmed its position expressed at the hearing that for the Respondent what was essential was that the Respondent would not be requested to pay any additional amounts to CAS.
26. On 24 February 2023, the CAS Court Office informed the Parties that the Sole Arbitrator took note of their agreement on a substantial point i.e. that the Respondent shall not bear any money in addition to the advances of costs it already paid. The Sole Arbitrator noted that this was what had also been agreed at the Hearing and that the Respondent might have misunderstood the request submitted by the Appellant who was not asking that the Respondent bears any additional arbitration costs. Since there was however no full consensus on this issue, the Parties were informed that, as announced on 3 February 2023, it would be for the Sole Arbitrator to decide this issue pursuant to Article R64 of the CAS Code.

IV. THE SETTLEMENT AGREEMENT

27. During the hearing, after having been granted time by the Sole Arbitrator to privately discuss the possibility of reaching an amicable agreement, counsel for both Parties indicated that the Parties had reached an oral amicable agreement (the “Settlement Agreement”) to resolve their dispute.
28. The Parties requested the Sole Arbitrator to enshrine the following agreed terms of their Settlement Agreement in a Consent Award:
- a. For the full and final settlement of any and all claims in relation to the proceedings referenced *CAS 2022/A/8975 Corrado Saccone v. Al Faisaly Football Club* and the previous dispute between the Appellant and Al Faisaly (FIFA case FPSD-4349), Al Faisaly shall pay the all-encompassing amount of USD 32,500 to the Appellant.
 - b. The amount of USD 32,500 shall be paid by Al Faisaly to Mr Corrado Saccone in one instalment only and is to be paid within 3 business days of issuance of the present Consent Award.
 - c. Al Faisaly shall also pay to Mr Corrado Saccone an amount of SAR 1,948 as reimbursement for his return flight ticket to Italy following the termination of the Employment Contract.
 - d. The amount of SAR 1,948 shall be paid by Al Faisaly to Mr Corrado Saccone in one instalment only and is to be paid within 3 business days of issuance of the present Consent Award.
 - e. Each party shall bear his/its own legal fees and other expenses incurred in connection with the present arbitration proceedings.
 - f. In case of non-compliance with the terms of the Consent Award, the matter will be submitted to the FIFA Disciplinary Committee.
 - g. In case of any dispute arising out of or in connection with the Settlement Agreement, CAS is exclusively competent to resolve such dispute.
29. Upon explicit question of the Sole Arbitrator, both Parties agreed that the above listed elements constituted the orally, validly agreed terms of the Settlement Agreement reached by the Parties.
30. Accordingly, the Sole Arbitrator shall embody this Settlement Agreement in the present consent award and exclusively rule on the issue of the arbitration costs.

V. JURISDICTION

31. Article R47 CAS Code provides the following:

“An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body.”

32. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (2021 Edition), as it determines that “[a]ppeals 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 receipt of the decision in question”, and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.
33. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. RATIFICATION OF THE SETTLEMENT AGREEMENT

34. In accordance with Article R42 CAS Code:

“The President of the Division, before the transfer of the file to the Panel, and thereafter the Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties.”

35. Under Swiss Law, an arbitration tribunal sitting in Switzerland has authority to issue a Consent Award embodying the terms of the parties’ settlement if the parties agree to a termination of their dispute in this manner. The ratification of a settlement agreement and its incorporation into a Consent Award serves the purpose of vesting the settlement agreement with a *res judicata* effect and of enabling the enforcement of their agreement (CAS 2013/A/3395; CAS 2017/A/5280; CAS 2108/A/5866).
36. The Parties have requested that the Sole Arbitrator ratifies and incorporates the Settlement Agreement into a Consent Award. It is the task of the Sole Arbitrator to verify the *bona fide* nature of the Settlement Agreement, to ensure that the will of the Parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of law applicable to the dispute.
37. After reviewing the terms of the Settlement Agreement, the Sole Arbitrator finds no grounds to object or to disapprove the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to his attention.
38. In accordance with the mutual consent of the Parties, the Sole Arbitrator hereby directs the Parties to fully comply with the terms of the Settlement Agreement.

39. In view of the above, the present Consent Award puts an end to the arbitration procedure *CAS 2022/A/8975 Corrado Saccone v. Al Faisaly Football Club*.
40. All other and further motions or prayers for relief are dismissed.

VII. COSTS

(...).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Settlement Agreement dated 6 December 2022 is hereby ratified with the consent of the Parties and its terms are incorporated in this Consent Award.
2. The procedure *CAS 2022/A/8975 Corrado Saccone v. Al Faisaly Football Club* is terminated and removed from the CAS roll.
3. Both Parties are ordered to perform their respective obligations under the Settlement Agreement.
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 1st March 2023

THE COURT OF ARBITRATION FOR SPORT

Michele A.R. **Bernasconi**
Sole Arbitrator

Dennis **Koolaard**
Ad hoc Clerk