



Labornet No. 1450

Professional Football Player Contract. The Early Termination of the Employment Contract. Contract Assignment (Player Contract). 15% Compensation in Euros. Analysis of Payment in Foreign Currency and the Applicable Exchange Rate.

Dear All,

This is a brilliant case about the implications of a payment in foreign currency and the applicable exchange rate. The National Labor Court No. 69 issued its judgment in April 2022, and Panel VIII ratified it.

I. Brief summary of the case

- This case involves the early termination of an employment contract by a professional soccer player, who joins another club. The transfer agreement contains a buy-out clause about compensation for the club and for the player payable in EUROS.
- Section 8 of Collective Bargaining Agreement (CBA) No. 507/09 mentions "assignment". Resolutions No. 4335 and No 4337 by the Argentine Football Association (AFA, for its acronym in Spanish) **establishes that for the purposes of the amounts to be paid and transferred, assignment equates to any form of transfer.** And this is a reasonable measure as otherwise the parties may conceal the actual contract assignment as termination in order to avoid taxes or payment of relevant amounts.

- Therefore, the Court resolved to award CRISTIAN OMAR ESPINOZA €750,000, as established in Section 15 of the Collective Bargaining Agreement No. 507/09.
- Annex I submitted by the Defendant on page 19, signed by the Plaintiff and his agents, states that **"in the event of early termination of this contract at the express decision of the Player or through fault of his own, the parties agree to pay compensation to the club in the amount of €5,000,000 (five million euros)", 15% of which is for the Player.**

II. LOWER COURT DECISION. On October 18, 2018, Judge José Ignacio Ramonet at the NATIONAL LABOR LOWER COURT No. 69 issued his decision after conducting a careful and detailed analysis of this case and based on precedent about payments in foreign currency;

- 1. CRISTIAN OMAR ESPINOZA files a claim against CLUB ATLÉTICO HURACAN seeking payment of the amount in Argentine pesos calculated in the complaint.
- 2. He explains that he began his career in the club's youth team and became a professional player on July 1, 2014 when he signed a professional contract with the Defendant for four years and a half, expiring on December 31, 2018 according to Collective Bargaining Agreement No. 557/2009.
- 3. The Annex to this contract contained a "buy-out clause" **in accordance with Section 21 of the applicable Collective Bargaining Agreement, whereby the Defendant agreed to receive €5,000,000 if the Plaintiff decided to terminate the contract early. This amount had to be paid by the Plaintiff or the hiring club.**
- 4. The Annex also established the payment of compensation plus taxes in case of contractual termination, including a **15% share for the player under Section 8 of the Collective Bargaining Agreement No. CT 557/09 as a salary item.**
- 5. Reference is made to Resolutions by the Argentine Football Association, whereby the early termination of contracts by professional footballers is equated to 'traditional' transfer agreements between two clubs (...), **plus taxes, fees and charges (naturally, including the 15% share for the player, which is taxable income) with the aim of ruling out the possibility of concealing the contract termination to evade taxes.**
- 6. The Plaintiff says that **in June 2016, acting entirely within his rights, he agreed to join the Villarreal C.F. S.A.D. in Spain.** This Club had to pay the buy-out clause contained in the Annex. *He explains that when deciding on his salary, he considered the 15% share he was supposed to receive as termination pay (€750,000) in accordance with Section 8 of Collective Bargaining Agreement No. 557/09.*
- 7. The following day, on July 5, 2016, a notarized request was sent to the Argentine Football Association asking to "clarify whether the amount of

€5,000,000 for the early termination of the contract included additional charges or not". In other words, AFA was asked to explain "**whether the amount to be paid to the Defendant was a net amount or not**". AFA replied indicating that "**the transaction involved five million euros plus expenses**" and Villarreal CS was asked to pay (€5,000,000 plus 25.7% of expenses and taxes) into two bank accounts, one belonging to the Defendant and the other to AFA.

- 8. So Villarreal had to transfer €450,000 to AFA "as 2% of related administrative expenses and 7% according to Executive Order No. 1212/03" and €5,835,000 to the Defendant. This amount included the early termination fee of €5,000,000 plus €750,000 as the 15% share under Section 8 of CBA No. 557/09, €60,000 as "CABA stamp tax" and €25,000 as 0.5% of AFA. Villarreal complied with this payment and sent the respective receipts to AFA on July 29, 2016.
- 9. This payment to the Defendant included the amount of €750,000 for the Plaintiff to be paid to the Union of Argentine Footballers (FAA, for its acronym in Spanish) based on Section 8 of CBA No. 557/09. **However when the Defendant received the amount, it "inadequately withheld it for its own benefit", although it belonged to the Plaintiff.**
- 10. The Plaintiff submitted a note to the Union of Argentine Football Players so that it could take all necessary steps to recover this payment. Even though the Union was actively involved, the Defendant refused payment consistently. Then the Plaintiff sent a registered letter to the Defendant with his claim.
- 11. CLUB ATLETICO HURACAN was sued. According to Section 8 of CBA No. 557/09 the player was entitled to receive a 15% share of the total termination fee "solely and exclusively" in case of "contract assignment" (**commonly known as player contract**). In this case there is no doubt that the Plaintiff "was not assigned but rather he terminated his employment early as per the buy-out clause".

III. Summary of the Dispute

The discussion revolves around the issue of whether the Plaintiff should have been paid €750,000, 15% of the total termination fee under the buy-out clause of the contract he held with the Defendant, paid by Villarreal CS. The Plaintiff believes that in accordance with Section 8 of CBA No. 557/09 he should have been paid such a percentage. However the Defendant claims Section 8 of CBA 557/09 arguing the player is entitled to 15% of the total termination fee "solely and exclusively" in case of "contract assignment". In this case there is no doubt that the Plaintiff "was not assigned but he terminated the contract at his own discretion early as per the 'buy-out clause'. The Plaintiff referred to the Resolutions by the Argentine Football Association, whereby "the early termination of contracts by professional footballers is equated to 'traditional' transfer agreements between two clubs (...), plus fees, charges and taxes (naturally, including the

15% share for the player, which is taxable income), in order to rule out the possibility of tax evasion by concealing a contract transfer as a contract termination.

IV. Lawsuit

So, the first paragraph of Section 8 of CBA No. 557/09 establishes that "the contract of a soccer player may be (...) assigned to another club" and "in this case the player shall be entitled to at least fifteen percent (15%) gross of the total assignment fee (...) that the assignor must pay to the Union of Argentine Soccer Players (FAA)".

V. Legal Analysis and Applicable Law

On October 17, 2019, in re "ESPINOZA CRISTIAN OMAR v CLUB ATLETICO HURACAN on Employment Termination", the Court of Appeals resolved as follows:

- Applicable law:

a) Section 8 of CBA No. 557/09, about "Contract Assignment": The contract of a soccer player may be assigned to another club during its effective term provided the player gives his express written consent. In this case, the player shall be entitled to at least fifteen percent (15%) gross of the total assignment fee, whether the assignment is temporary or final, which the assignor must pay to FAA..."

b) Section 21 of CBA No. 557/09 about **Employment Termination as a result of a Serious Breach by the Player**: If the contract is terminated as a result of a serious breach of contract by the player, as duly proved in Court, the player shall not be entitled to any compensation. In the absence of an express agreement in this regard, the Labor Court may award compensation to the club, as appropriate, based on the economic damages caused by this breach. Under no circumstances shall an employment termination as a result of a serious breach of contract prevent the player from playing for another club. Any law, regulation or contractual provision stating otherwise shall be null and void.

c) AFA Bulletin 4335 (page 203) about Fees for Unilateral Contract Rescission by Soccer Players. **Players shall be entitled to compensation when they rescind their contracts unilaterally, with the same legal effects as if it were a contract transfer ... including the termination fee.** This is a reasonable measure to rule out the possibility of tax evasion by disguising a contract transfer as a termination. So it was unanimously resolved that in case of contract unilateral termination by a soccer player, AFA authorizes payment of the relevant percentage to the player provided the obligations under Executive Order No. 1212/03 are duly met, including payment of AFA and FAA related administrative expenses.

d) AFA Bulletin 4337 (page 213) indicates that AFA should have proof of payment of the percentage for players, a payment receipt issued by FAA.

- 15% of the value of the transfer fee intended for players was determined under the applicable collective bargaining agreement in the event that two clubs

negotiate the transfer of a player. **Obviously, the deal and fee are based on the player's performance, track record, training, and potential worth**, aspects with which the assignor club has been deeply involved. So the assignee must pay the fee agreed in the negotiation. The assignment fee includes a percentage for the player, which based on customary law must be paid by the assignor. This is usually weighed out when setting the fee.

When a player unilaterally terminates the contract, there is no negotiation between the two clubs. According to FIFA, in cases like this, Article 17 (page 189) stipulates that the party terminating the contract (player or club) must pay compensation, and if the player is required to pay compensation, the amount may be specified in the contract or agreed between the parties.

- **In this case, Annex I of the Professional Contract entered into between the Plaintiff and the Defendant establishes that, in the event of the early termination of the contract expressly at the player's discretion or through fault of his own, the club shall receive compensation in the amount of €5,000,000 from the Plaintiff, and his hiring club shall be jointly and severally liable for this payment.** In addition, the player would cover all expenses, taxes, fees and charges.

- The early termination clause actually determines the amount of compensation that the player must pay to the club where he used to play. Normally, as in this case, the player and the hiring club discuss and negotiate it without the involvement of the club where he plays. This is proved as shown on pages 232 and 237, where it is established that Villarreal CS paid the buy-out clause at the request of the Plaintiff, which led to the claim by the Defendant who wanted to resume negotiations.

However, the situation is pretty similar to a standard transfer. *The buy-out clause usually contains a significant amount by way of offer to any club wanting to hire the player.* The hiring club pays a fee that is unilaterally established.

- It goes without saying that as this implies a breach of contract by the player, it is the player who must pay the termination fee plus expenses, taxes and charges according to the buy-out clause.

- As explained above, in the event of transfer, the 15% share must be paid by the transferring club. The amount must be paid from the fee received as a result of the player's transfer.

In addition, the fee in the buyout clause to be paid by the player, which is usually paid by the hiring club, as in this case, is compensation for the club where the player used to play, and it receives the total amount in full.

- Although Section 21 of the applicable CBA refers to employment termination, Section 17 of the FIFA Regulations governs the consequences of a unilateral termination of a professional footballer's employment contract without just cause. The player must pay compensation to the club where he used to play. In this case, compensation was established in the amount of €5,000,000, plus expenses, taxes and charges.

- The payment of the termination fee is a benefit for the club where the player used to play because the club receives it in full. The player and his hiring club must also cover the respective expenses, taxes, charges, etc. That is why Villarreal CS paid all the expenses, including the 15% share for the player and Club Huracán should have received the wire transfer and paid it.

- It is worth mentioning that the only compensation received by the club where the player used to play is the amount agreed in the contract. Obviously, expenses, taxes, charges, fees must be paid to third parties from the termination fee. That is why the 15% share for the player, which was also paid by Villarreal CS (and which ultimately had to be paid by Huracán), could not in any way be withheld by Huracán.

- This is the only way the provisions of the collective agreement and the player contract can be interpreted, even though AFA Executive Committee decided to give a particular interpretation to this type of negotiation through Resolutions 4335 and 4337, as published in its Bulletin.

VI. Legal Analysis of Payment in Foreign Currency

- (a) Although there is no doubt about the amount that the player would receive, it is important to highlight that at the time of the deal, the new Civil and Commercial Code was in force.
- (b) As a matter of fact, **according to the previous wording of Argentine Civil Code, payment in foreign currency is considered an obligation to deliver a certain sum of money in a currency that is not legal tender in Argentina.**
- (c) However, the new language of the Civil and Commercial Code makes reference to the provisions of the Civil Code in place before **the Convertibility Act, whereby payments in foreign currency was regarded as "obligations to deliver a quantity of things", and enabling those who have a debt in foreign currency to pay its equivalent in legal tender.**
- (d) It is worth mentioning that the original text of the Preliminary Draft of the Civil and Commercial Code of Argentina kept the nominalist system of the old Civil Code based on the "respect for the principles of Argentine monetary law, as well as the broad guidelines of case law and scholars' opinions".

- (e) Then, the original text considered the obligations agreed in a currency that was not Argentine legal tender as "obligations to deliver certain amounts of money", enabling payment in foreign currency as agreed by the parties.
- (f) However, after the inclusion of Article 765 of the new Civil and Commercial Code, the Executive amended the text to read as follows: *"The obligation is to deliver a certain sum of money in the event the debtor owes a certain amount of money, whether determined or determinable, at the time of taking on the obligation. If the obligation agreed is to pay in a currency that is not Argentine legal tender, it must be considered an obligation to deliver things and as such the debtor may pay the equivalent in legal tender."*
- **Therefore, the debtor may fulfill his/her obligation by paying the equivalent in Argentine pesos. It is worth mentioning that this rule does not make it clear how the "equivalent in legal tender" should be determined** (read opinion by Judge JOSÉ IGNACIO RAMONET).
- In addition, the text of Article 766 about obligations to deliver a certain sum of money now states that "debtors must deliver the respective amount as agreed". Then Article 766 is violating the provisions of Article 765.
- **It is made clear that payments in foreign currency are not prohibited, but the problem is how to actually make those payments.** According to the Code, debtors have the option to pay the equivalent in legal tender. The option to pay the equivalent amount does not transform it into an optional obligation, because there is no main or ancillary obligation (Article 786 of the Civil and Commercial Code). There are *exceptions to this rule, namely: a) the parties expressly agree to a payment in foreign currency and waive the option of its equivalent in legal tender (Articles 95, 959, in matters of contracts; 1121, subsection a. in consumer contracts); b) another solution is expressly agreed.*
- None of the exceptions applies in this case. Here the question is the payment of a percentage for the player, as provided in the regulations, in a transaction where the Plaintiff is not a party. Evidence has shown that the termination fee was not made by the player (in which case, he would be a party) but by Villarreal CS. And no other solution has been expressly agreed.
- It is worth mentioning that the applicable law widely used in case law and scholars' opinions states: "a) the debtor may pay its obligation in foreign currency or the equivalent in legal tender; b) for contracts having effects outside of Argentina, payment shall be made in foreign currency without any other option; c) for contracts whereby payment in foreign currency is

essential, payment shall be made in foreign currency without any other alternative" (see Lorenzetti, "La Emergencia Económica y los contratos", page 188, quoted in the Civil and Commercial Code of Argentina, annotated version, volume V, page 127).

- It is made clear that the payment for the buy-out clause (and the respective percentage for the player) did not have effects outside of Argentina, and as informed by Banco Santander Rio, the currency in which payment was agreed (euros) had not been considered "essential".
- **The payment awarded in the court ruling should be made in legal tender (Argentine pesos), and converted at the respective exchange rate at the time of payment.**
- The interest on the amount awarded in the court ruling is set at 6% annually, as from the date in which the Club received the wire transfer by the Plaintiff. As per the information provided (page 182) it was on August 5, 2016 as reported by Banco Santander Rio effective payment (see Section 767 Civil and Commercial Code). This interest rate must be calculated on the amount in euros (i.e. on €750,000) on the date when calculation is made, and the resulting amount should be converted into Argentine pesos as explained above.
- If calculation is made as provided by Section 132 of the LO, and upon expiration of the term agreed, the debtor does not comply with its obligation, interest will capitalize (see Section 770 of the Civil and Commercial Code), and the resulting amount (expressed in Argentina pesos) will accrue in accordance with the Record No. 2658 dated November 8, 2017 as amended from the date of default and until the effective payment.

IV. Very interesting analysis on the exchange rate for payment in foreign currency

1. On April 26, 2022, The National Labor Court of Appeals, Panel VIII, ratified the Lower Court decision, ordering Huracán to pay the Plaintiff €750,000 (SEVEN HUNDRED AND FIFTY THOUSAND EUROS) or the equivalent in Argentine pesos at the time of payment.
2. The Court decision was rendered on October 18, 2018, when there were no restrictions for buying foreign currency. The announcement on restrictions was first made on September 1, 2019 by Argentine Central Bank and then tightened over time.
3. The National Civil Court of Appeals ruled (Panel L, "O. S . A. et al v B, AG o housing allowance", Case File No. 3833/2018, dated November 5, 2020), "1

there is no reason to interpret that the equivalent in legal tender referred to in Article 765 of the Civil and Commercial Code means that the conversion must be carried out according to the official exchange rate.

4. A simple calculation shows that the Defendant's claim seeking to convert the debt in euros at the official exchange rate does not result in an "equivalent" amount in Argentine pesos to fully comply with the court ruling because with the amount in Argentine pesos the Plaintiff cannot buy the same amount in euros at the forex market. Consequently, taking into account the restrictions imposed by the Central Bank of the Argentina (Comunicado A6815 and related provisions) and the variations regulated by this authority on foreign exchange transactions on the financial market, paying an equivalent amount does not provide a solution to the conflict.
5. However, within the range of possibilities offered by the legal and regulated foreign exchange market, there is the so-called "MEP" dollar (electronic payment market) which this Court finds to be the most appropriate solution to comply with the court ruling.
6. This is the price arising from buying and selling public securities (with specific regulations), according to market values that does not affect public reserves.
7. In addition, the price of the foreign currency is reported daily on the press. That is how foreign currency may be bought legally with Argentine pesos and there is also the exchange rate between US dollars and euros.
8. <https://www.cronista.com/finanzas-mercados/super-cepo-al-dolar-una-por-una-todas-las-restricciones-vigentes-y-que-alternativas-quedan/>
9. In sum, if a debt in Euros cannot be paid off, it may be paid in Argentine pesos at the price of the MEP dollar on the date of payment, according to the exchange rate between US Dollars and Euros. There is an additional valid reason to do so. As explained in this court ruling, the amount awarded is 15% of the total termination fee in the Plaintiff's contract, which was paid in Euros by the Spanish club in due course for the Plaintiff.
10. **Now the payment of Argentine pesos at the official exchange rate would mean enrichment without cause for the Defendant. It would reward an entity that illegitimately withheld a significant amount of money that had a specific intended recipient: Espinoza. The Court of Appeal unanimously found that the Defendant's misconduct was intentional and should be punished.**

VIII. Summary of the Dispute

The discussion revolves around the issue whether the Plaintiff should have been paid €750,000, the 15% share of the total termination fee in the buy-out clause, paid by Villarreal CS. The Plaintiff believes that in accordance with Section 8 of CBA No. 557/09 he should have been paid such percentage. However the Defendant claims Section 8 of CBA

557/09 arguing the player is entitled to a 15% rate of the total termination fee "solely and exclusively" in case of "contract assignment". In this case there is no doubt the Plaintiff "was not assigned but he terminated the contract at his own discretion early as per the 'buy-out clause'. The Plaintiff referred to the Resolutions by the Argentine Football Association, whereby "the early termination of contracts by professional footballers is equated to 'traditional' transfer agreements between two clubs (...), with the payment of the same rates, charges and taxes (naturally, including the 15% rate for the player, which is taxable income), in order to rule out the possibility of tax evasion by concealing the contract transfer as a contract rescission.

Lawsuit

So, the first paragraph of Section 8 of CBA No. 557/09 establishes that "the contract of a soccer player may be (...) assigned to another club" and "in this case the player shall be entitled to at least fifteen percent (15%) gross of the total assignment fee (...) that the assignor must pay to the Union of Argentine Soccer Players (FAA)".

On October 17, 2019 ESPINOZA CRISTIAN OMAR v CLUB ATLETICO HURACAN on Employment Termination

I.- Applicable law:

a) Section 8 of CBA No. 557/09, about "Contract Assignment": The contract of a football player, during its effective term, may be assigned to another club, with the player's express written consent. In this case, the player is entitled to at least fifteen percent (15%) gross of the total amount of the termination fee, whether his transfer is temporary or final, that the club

assignor must pay to FAA..."

b) Section 21 of CBA No. 557/09 about Employment Termination as a result of a Serious Breach by the Player: If the contract is terminated as a result of a serious breach of contract by the player, as duly proved at Court, the player shall not be entitled to any compensation. In the absence of an express agreement in this regard, the Labor Court may award compensation for the club, as appropriate, based on the economic damages caused by this breach. Under no circumstance, an employment termination as a result of a serious breach of contract shall prevent the player from playing for another club. Any law, regulation or contractual provision stating otherwise shall be null and void.

c) AFA Bulletin 4335 (page 203) 203) about Fees for the Unilateral Contract Rescission by Soccer Players. Players shall be entitled to compensation when they decide to terminate their contracts unilaterally, with the same legal effects as if it were a contract transfer ... including the termination fee.

This is a reasonable measure to rule out the possibility of tax evasion by disguising a contract transfer as a rescission. So it was unanimously resolved that in the case of a unilateral rescission of the contract of a soccer player, AFA shall authorize the payment of the rate for the player provided the obligations under Executive Order

No. 1212/03 are duly met, including payment of related administrative expenses for AFA and FAA.

d) AFA Bulletin 4337 (page 213) indicating that AFA should have proof of payment of percentage for the player, a payment receipt issued by FAA.

II.- The 15% share of the transfer fee intended for the player was determined under collective bargaining agreement in the event that two clubs negotiate the transfer of a player.

It is made clear that this is agreed by the parties taking into consideration the player's performance, track record. Article 17 of the FIFA Regulations (page 189) determines that the party terminating the contract (player or club) is required to pay compensation, and if this compensation must be paid by the player, the amount may be stipulated in the contract or agreed between the parties.

In this case, Annex I of the Professional Contract entered into between the Plaintiff and the Defendant establishes that, in the event of the early termination of the contract expressly at the player's discretion or through fault of his own, the club shall receive compensation in the amount of €5,000,000 by the Plaintiff, and his hiring club shall be jointly and severally liable for this payment. In addition, the player would cover all expenses, taxes, fees and charges. page 93).

The buy-out clause determines the amount of compensation that the player must pay to the club where he used to play. Normally, as in this case, the player and the hiring club discuss and negotiate it without the involvement of the club where he plays. This is proved as shown on page 232 and 237, where it is established that Villarreal CS paid the buy-out clause at the request of the Plaintiff, which led to the claim by the Defendant who wanted to resume negotiations.

However, the situation is pretty similar to a standard transfer. The buy-out clause usually contains a significant amount by way of offer to any club wanting to hire the player by paying a fee that is unilaterally established.

It goes without saying that as this implies a breach of contract by the player, it is the player who must pay the termination fee plus expenses, taxes and charges according to the buy-out clause.

As explained above, in the event of transfer, the 15% share must be paid by the transferring club. The amount must be paid from the fee received as a result of the player's transfer.

In addition, the amount of the buy-out clause to be paid by the player, which is usually covered by the hiring club, as in this case, is compensation for the club where the player used to play, which it receives in full.

Although Section 21 of the applicable CBA refers to employment termination, Section 17 of the FIFA Regulations governs the consequences of a unilateral termination of a professional footballer's employment contract without just cause. The player must pay compensation to the club where he used to play. In this case,

compensation was established in the amount of €5,000,000, plus expenses, taxes and charges.

Payment of the buy-out clause is a benefit for the club where the player used to play because it receives it in its entirety. The player and his hiring club must also cover the respective expenses, taxes, charges, etc. That is why Villarreal CS paid all the expenses, including the 15% share for the player and Huracán should have received the wire transfer and paid it.

It is worth mentioning that the only compensation received by the club where the player used to play is the amount agreed in the contract. Obviously, expenses, taxes, charges, fees must be paid to third parties from the termination fee. That is why the 15% share for the player, which was also paid by Villarreal CS (and which ultimately had to be paid by Huracán), could not in any way be withheld by the Club.

This is the only way the provisions of the collective agreement and the player contract can be interpreted, even though AFA Executive Committee decided to give a particular interpretation to this type of negotiation through Resolutions 4335 and 4337, as published in its Bulletin.

Please do not hesitate to contact us for further information.

Best regards,

Natalia Gimena de Diego

Leading Law Firm - de Diego & Asociados [These reports are prepared by the Senior Labor Consulting Team, a sophisticated team of specialized lawyers with more than 40 years of solid experience serving clients with the latest trends, carefully selecting topics for Human Resources executives.]