



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

CAS 2004/A/765 Grzegor Bednarz v/ Arsenal Kyiv FC Ltd

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole arbitrator: Ulrich Haas, Professor, Mainz, Germany

in the arbitration between

**Grzegor Bednarz, Trzciana, Poland
represented by Mr Paweł J. Broniszewski, Attorney-at-law, Warsaw, Poland**

Appellant

and

**Arsenal Kyiv Football Club Ltd, Kiev, Ukraine
represented by Mr Roman I. Golub, General Director, Kiev, Ukraine**

Respondent

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1. The Parties

- 1.1 The Appellant, GRZEGORZ BEDNARZ, (hereinafter referred to as "Player's agent" or "the Appellant") is a licensed player's agent licensed by the Polish Football Association.
- 1.2 The Respondent, ARSENAL KYIV FOOTBALL CLUB LTD, (hereinafter referred to as "Arsenal Kyiv FC" or "the Respondent") is a football club affiliated to the Football Federation of Ukraine, which in turn is a member of the Fédération Internationale de Football Association (hereinafter "FIFA"). FIFA is the international sports federation governing the sport of football worldwide. FIFA is an association established in accordance with Art. 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

2. The Relevant Facts

- 2.1 On 5 March 2003 Arsenal Kyiv FC and the Appellant on behalf of "Sports Management Agency Grzegorz Bednarz" signed a "Contract of Agency" for the transfer of the player Seweryn Gancarzyk (hereinafter referred to as "the Player") to the Respondent. The contract reads, inter alia, as follows:

"

Contract of Agency

"Arsenal-Kiev" Football Club Limited Liability Company, represented by Director General, Roman Golub ... acting on the grounds of the Statutes, called the Club hereinafter, and "Sports Management Agency Grzegorz Bednarz", called the Agency hereinafter, represented by the Licensed Players' Manager, Grzegorz Bednarz, made this Contract of Agency as follows:

1. General Provisions

- 1.1 *The Agency shall render agency services for the benefit of the Club within the scope of the proper securing of the transfer of a footballer, Seweryn Gancarzyk, to the Club.*

2. Obligation of the Parties

2. *The Agency undertakes to:*
- 2.1.1 *to arrange all the required formalities in the territory of Poland necessary for the proper transfer of the footballer Seweryn Gancarzyk.*
- 2.1.2 *to ensure the direct contract between the Club and the footballer. Seweryn Gancarzyk.*
- 2.1.3 *to ensure the arrival of the footballer, Seweryn Gancarzyk, to the Club.*
- 2.1.4 *to act as an intermediary between the footballer and the Club at the execution of the personal contract.*
- 2.2 *The Club undertakes:*
- 2.2.1 *not to disturb the Agency in performing its duties as provided under the present Contract of Agency.*
- 2.2.2 *to execute all the necessary contracts in case of reaching an agreement between the Club and the footballer, Seweryn Gancarzyk.*
- 2.2.3 *to make all and any settlements with the Agency in agreement with Art. 3 of the present Contract of Agency.*

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3. Method of settlement

- 3.1 *By virtue of rendering services by the Agency under the present Contract of Agency, the Club shall pay the Agency the amount of EUR 350,000.00 (three hundred and fifty thousand) until 1st May 2003.*

4. Responsibility of the Parties

- 4.3 *The execution of a personal contract by the football-player and the submission of an international transfer certificate in the Football Federation of the Ukraine shall mean that the Contract of Agency has been fulfilled by the Agency properly, in a due way and without any reservations.*

...”

- 2.2 On 7 March 2003 the Player signed an employment contract with the Respondent. At that time the Player was not under contract to any clubs.
- 2.3 In a letter addressed to the Respondent and dated 21 May 2003 the Director General of the Respondent proposed a schedule for payment of the transfer sum agreed to in the “Contract of Agency”. The letter reads as follows:

“In agreement with the terms of the agreement signed on March 5th, 2003 between the “Arsenal-Kiev” Club and the “Sports Management Agency Grzegorz Bednarz”, the “Arsenal-Kiev” Football Club undertakes to pay for the benefit of Grzegorz Bednarz:

1. *until 1st July 2003 – EUR 150 thousand;*
2. *until 1st August 2003 – EUR 100 thousand;*
3. *until 1st September 2003 – EUR 100 thousand.*

...”

The Appellant replied to the Respondent’s proposal by letter dated 21 May 2003 *inter alia* as follows:

“In reply to your letter ... I do give my consent to the present payment schedule regarding the contract dated March 5th, 2003. At the same time I would like to inform you that in case of failing to keep the deadlines, 1% interests would be calculated for each day of delay.”

- 2.4 On 17 May 2005, the Appellant lodged a claim with the FIFA Players' Status Committee because of non-payment of the transfer sum.
- 2.5 On 10 November 2004 the Single Judge of the FIFA Players' Status Committee passed a decision concerning the present dispute. The decision of the Single Judge (*hereinafter* “the Decision”) dismissed the claim lodged by the Appellant. The decision was served on the parties by fax of 26 November 2004.

3. The Proceedings

- 3.1 On 6 December 2004 the Appellant appealed from the Decision..
- 3.2 On 16 December 2004 the Appellant filed its appeal brief.

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- 3.3 By letter dated 20 December 2004 FIFA informed the CAS Court Office that it was renouncing its right to intervene in these arbitration proceedings.
- 3.4 On 1 February 2005 the Respondent filed its answer.
- 3.5 Further to the agreement of the parties, this matter was referred to a Sole Arbitrator, namely Prof. Dr. Ulrich Haas, who was appointed by the President of the Appeals Arbitration Division.
- 3.6 Upon request of the Sole Arbitrator, FIFA lodged with CAS on 18 May 2005 a copy of its file relating to this matter .
- 3.7 On 24 May 2005, the CAS Court Office issued an order of procedure on behalf of the sole arbitrator which was signed by both parties.
- 3.8 By letter dated 23 May 2005 and 1 June 2005 the Appellant and the Respondent informed the CAS Court Office that they waived their right to hold a hearing and that they wish the Sole Arbitrator to decide the case based on their written submissions.

4. The Parties' Respective Requests for Relief and Basic Positions

4.1 The Appellant

- 4.1.1 In its statement of appeal the Appellant challenges the Decision of 10 November 2004 taken by the FIFA Players' Status Committee. Its application is "*to change the decision challenged through acknowledgement of the claim of Mr Grzegorz Bednarz ... and order adjudication that ... [the Respondent] is to pay to ... [the Appellant] the amount of 350.000 euro,*

Alternatively annul the decision challenged and refer the case back to FIFA Players' Status Committee,

Order a reimbursement in present case from [the Respondent] for the [Appellant]."

- 4.1.2 In support of its claim, the Appellant contends, *inter alia*:

- a) that it had fulfilled its obligations according to the "Contract of Agency" and that
- b) it is a party to the "Contract of Agency" entered into between the Appellant and the Respondent.

4.2 The Respondent

- 4.2.1 The Respondent asks the Panel "*to deny to the full extent the satisfaction of the appeal filed by [the Appellant]*".
- 4.2.2 In support of its request, the Respondent contends, *inter alia*,
- a) that the Appellant is not a party to the "Contract of Agency", since he acted as a representative for the Agency and not in person;

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- b) that the "Contract of Agency" is null and void according to the laws of Ukraine and that
- c) the "Player" was a free agent at the time the employment contract was signed and, hence, the Appellant neither conducted any negotiations, nor rendered any services under the "Contract of Agency" and that consequently he is not entitled to receive any commission for the transfer in question.

5. Jurisdiction and Mission of the Sole Arbitrator

- 5.1 Art. R27 of the Code of Sports-related Arbitration (the "Code") provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement. In casu the jurisdiction of CAS is based on Art. 59 et seq. of FIFA's Statutes and is confirmed by the signature of the order of procedure dated 24 May 2005 whereby the parties have expressly declared the CAS to be competent to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS's general jurisdiction.
- 5.2 The mission of the Sole Arbitrator follows from Art. R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, the article provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

6. The Applicable Law

- 6.1 Art. R58 of the Code provides 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.
- 6.2 Art. 59 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.
- 6.3 In the present case the decision taken by FIFA forms the very subject of the matter in dispute and the parties mainly rely on FIFA's regulations. It follows that such FIFA Regulations shall apply primarily and that Swiss law may, if necessary, apply subsidiarily.

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7. Admissibility of Appeal

The appeal against the decision of the FIFA Players' Status Committee dated 6 December 2004 is admissible, in particular it was filed in due form and in due time. The decision of the FIFA Players' Status Committee was served on the Appellant on 26 November 2004. In the notice of the right to appeal, enclosed with FIFA's decision, attention is drawn to the fact that the deadline for filing an appeal is 10 days according to Art. 60 § 1 of FIFA's Statutes. In the present case the appeal was filed on the last day of the deadline. Therefore, the conditions for a timely appeal have been met in the present case.

8. As to the Merits

- 8.1 Although the FIFA Players' Status Committee held the Appellant's application to be admissible, it held it to be unfounded on the merits and justified the latter with, inter alia, the Appellant's lack of authority in the matter. In this regard the Decision of 10 November 2004 expressly reads as follows:

"Before entering the matter, the Single Judge thoroughly examined the 'Contract of Agency' signed on 5 March 2003. He noted that the contract was signed between Arsenal Kiev FC on one side and the 'Sports Management Agency Grzegorz Bednarz' on the other side. Mr Grzegorz Bednarz acted as representative of the agency. Therefore, Mr Bednarz did not conclude the 'Contract of Agency' directly with the Ukrainian club, but through his company. In this connection, the Single Judge mentioned that, as a legal entity, the said company is an independent legal subject, even if the company is legally represented by Mr Bednarz."

- 8.2 This reasoning does not stand up to legal review. One and the same legal subject is concealed behind the name "Sportowa Agencja Menedzerska Grzegorz Bednarz" and the name "Grzegorz Bednarz". The designation "Sportowa Agencja Menedzerska Grzegorz Bednarz" is the name of a firm, i.e. the designation of an "entrepreneur". The latter can therefore – if it is a natural person – appear in legal transactions both under its "civil law name" and under its trading name, i.e. the firm name.
- 8.3 Whoever wishes to adopt a firm name and especially what rules apply in relation to the creation of the firm name depends in principle on the law applicable to the legal subject's person, in this case therefore on Polish law. This regulates these questions in the Polish Civil Code (hereinafter referred to as the "Civil Code"). According thereto not only trading companies but particularly also natural persons can create a firm name (see Art. 43 of the Civil Code). A condition for this is, of course, that the natural person is an "entrepreneur". Polish law understands this to mean persons, who are commercially active in their own name or who exercise a commercial activity in an organised manner. Under Polish law, when creating a firm name that refers to a natural person one has to observe that the firm name must, in principle, contain the first and last name of said person. The firm name can, however, also include designations that indicate the entrepreneur's activity. Under Polish law if the "entrepreneur" is a legal entity or a trading company the firm name must also include a suffix indicating its legal form, which indicates the precise legal form of the person responsible for the enterprise (e.g. spółka jawna, spółka z ograniczona odpowiedzialnością [Sp. z o.o.], spółka akcyjna [S.A.], etc.).

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- 8.4 The designation under which the Appellant appeared in connection with the "Contract of Agency" and in his letter of 21 May 2003 clearly supports the argument that the Appellant wanted to enter into rights and obligations for himself not for any legal subject distinct from himself. This already follows from the fact that the designation used by him does not include any suffix indicating the legal form of a trading company or of a legal entity. In particular the neutral wording "Agencja" (agency) does not allow one to infer a different legal subject distinct from the Appellant.
- 8.5 This opinion is furthermore supported by the stamp used by the Appellant on the "Contract of Agency" and on the letter of 21 May 2003, for said stamp reads as follows:

*„Sportowa Agencja Menedzerska
Grzegorz Bednarz
36-071 Trzciana 2688
NIP 818-000-31-38 • REGON 005132634“*

Polish law requires that legal subjects, who perform a commercial activity on the market, include certain minimum particulars in written declarations which they give in the course of their business transactions. These include the firm name (including the legal form in which the activity is performed), the registered office (seat) and the address as well as the number in the register. If the "enterprise" is a natural person the identification number issued to said natural person on the basis of the provisions on the public statistics of the National Official Register of Business Entities (so-called REGON number) must also be stated. In the present case therefore the stamp on the "Contract of Agency" indicates that the Respondent's contract partner was not a legal subject distinct from the Appellant, rather it was the Appellant himself as a natural person.

- 8.6 A final argument supporting the legal opinion used as a basis here is the fact that the Polish Football Association confirmed in writing that the Appellant both fulfilled and fulfils all the conditions to be entered into the list of managers of football players. However, as is known, under the FIFA Players' Agents Regulations only natural persons can be entered there, not any – trading – companies.
- 8.7 To summarise therefore, in the present case the Appellant is the contract party under the "Contract of Agency" with the Respondent and therefore – contrary to the opinion of the FIFA Players' Status Committee – has the requisite authority with regard to the matter in dispute. The decision of the FIFA Players' Status Committee is therefore erroneous and must therefore be set aside.
- 8.8 Since, as a consequence of its erroneous legal opinion, the FIFA Players' Status Committee did not comment on the other objections to the Appellant's payment claim argued by the Respondent the case is referred back to the FIFA Players' Status Committee for further examination of the facts and to be decided.

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9. Costs

- 9.1 Pursuant to Art. R64.4 of the Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters. Pursuant to Art. R64.5 of the Code, the foregoing costs shall be stated in the arbitral award, which shall also determine which party shall bear such costs or in which portion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.
- 9.2 In accordance with the consistent practice of CAS, the award will states only how these costs are to be apportioned between the parties. Such costs are later determined and notified to the parties by separate communication from the Secretary General of CAS.
- 9.3 In the present case, the appeal by the Appellant has to be granted. Therefore the costs of the proceedings are to be borne by the Respondent. As to the legal fees and other expenses the Sole Arbitrator considers that a contribution of CHF 2,000 by the Respondent should be awarded to the Appellant.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Grzegorz Bednarz against the decision issued on 10 November 2004 by the FIFA Players' Status Committee is upheld.
2. The decision of the FIFA Players' Status Committee dated 10 November 2004 is set aside and the matter is referred back to the FIFA Players' Status Committee to be re-decided.
3. The costs of the present arbitration, to be determined and served on the parties by the CAS Court Office, are to be borne by Arsenal Kyiv Football Club.
4. Arsenal Kyiv Football Club shall pay to Mr Grzegorz Bednarz the amount of CHF 2,000 (two thousand Swiss Francs) as a contribution towards the legal costs and other expenses incurred in connection with these arbitration proceedings.

Lausanne, 7 July 2005

THE COURT OF ARBITRATION FOR SPORT

Sole Arbitrator



Ulrich Haas