Arbitration CAS 2011/A/2652 Bulgarian Football Union (BFU) v. Manchester City FC, award of 24 August 2012

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Solidarity contribution
Payment of the solidarity contribution to the national association
Burden of proof in connection with the payment of the solidarity contribution
Consequence of the payment of the solidarity contribution to a wrong creditor

1. **According to the Commentary to the FIFA Regulations on the Status and Transfer of Players which is relevant for the interpretation of the Regulations in accordance with CAS jurisprudence, if a football national association has irrefutable evidence that one of its affiliated clubs that is entitled to solidarity contribution no longer exists, the solidarity contribution should be paid immediately to the national association which becomes formally the right creditor at the time the amount is due.**

2. **In compliance with the general legal principle of burden of proof, a club, in its capacity as debtor, carries the burden of proof that payment of the alleged instalment of the solidarity contribution has been made as claimed. Where the payment of a disputed instalment of the solidarity contribution to the training club cannot be assumed to have been made, there is no sense in discussing the question of whether such payment, if it had been made, must be deemed to have been made in good faith and in full discharge of the debtor's obligations.**

3. **If a debtor has paid the solidarity contribution to a wrong creditor, it has done so at its own risk with the consequence that the creditor is not precluded from taking action against the debtor for said solidarity contribution, especially in view of the debtor's failure to explain adequately, where relevant, why such payment could be regarded as made in good faith.**

1. THE PARTIES

1.1 The Bulgarian Football Union (the **Appellant**) is the national football federation of Bulgaria affiliated with FIFA.

1.2 Manchester City FC (the **Club** or the **Respondent**) is an English football club affiliated with the British Football Association Ltd. (the **FA**), which in turn is affiliated with FIFA.

2. FACTUAL BACKGROUND

2.1 The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (**FIFA DRC**) on 28 May 2010 (the **Decision**) in the case between the Appellant and the Respondent, the written submissions of the Appellant and the exhibits filed together with the FIFA file on the case. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 The Bulgarian player, M. (the **Player**), born [in] 1979, was registered with the Bulgarian football club, PFC Botev-1921-Vratsa JSC (the **Training Club**), from 1 July 1990 until 1 January 1997 (i.e. from the start of the season of the Player's 12th birthday (1990/1991) until the middle of the season of his 18th birthday (1996/1997), as an amateur. At that point, the football season in Bulgaria ran from 1 July to 30 June of the following year.

2.3 According to the information put forward by the Appellant, the Training Club lost its status as a member of the Appellant as of 31 December 2003 due to the fact that the Training Club did not pay its membership subscription and did not participate in any official competitions and championships. This information has not been disputed by the Respondent before CAS. However, in the FIFA file, there is a letter date-stamped 8 August 2008 from Mr Issak Almaleh, the President of the Training Club to Mr Andrew Hardman, Finance Manager, Manchester City FC, in which Mr Almaleh states *"I am not informed that my club is suspended from the Bulgarian Football Union... Last year when the transfer of M. happened my club was entitled for the whole sum of the compensation nevertheless your agreement with Atletico Madrid is in three payments. Then my club was an active member of the Bulgarian Football Union"*.

2.4 In July 2007, the Player was transferred from the Spanish football club FC Atlético Madrid (**Atlético Madrid**) to the Respondent, in which connection the Respondent agreed to pay as transfer compensation an amount of EUR 7,000,000.00, which was agreed upon by these two clubs in the relevant transfer agreement.

The transfer compensation was agreed to be payable as follows:

"2,333,333 EUROS on the 31st July 2007

2,333,333 EUROS on the 31st July 2008

2,333,333 EUROS on the 31st July 2009".

2.5 The Player was registered with the FA on 3 August 2007.

2.6 On 29 September 2008, the Appellant contacted FIFA claiming a proportion of the solidarity contribution in connection with the transfer of the Player from Atlético Madrid to the Respondent.

2.7 In this respect, the Appellant stated that the Player had been registered with the Training Club as indicated under para 2.2. above, in which connection the Appellant provided a copy of the player passport attesting this information.

2.8 In November 2008, the Appellant informed FIFA that the Respondent had transferred EUR 52,546.66, apparently constituting a solidarity contribution for the second instalment of EUR 2,333,333.

2.9 Moreover, FIFA obtained information from the FA that such an amount constituting a solidarity contribution for the first instalment had apparently already been transferred by the Respondent directly to the Training Club, which - according to the information available - had allegedly taken place further to an assumed request from the Training Club for such payment.

2.10 On 11 September 2009, the Appellant informed FIFA that it had received the full payment of solidarity contribution related to the third instalment of the pertinent transfer compensation from the Respondent.

2.11 Accordingly, it is only the payment of solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation that is disputed by the parties, i.e., EUR 52,500, as this is the amount claimed by the Appellant.

2.12 The FIFA DRC decided as follows on 28 May 2010 (the **Decision**):

1. "The claim of the Claimant, the Bulgarian Football Union, is rejected.

2. The final amount of costs of the proceeding in the amount of CHF 5,000.00, of which CHF 2,000 have already been paid by the Claimant, the Bulgarian Football Union, are to be paid by the Claimant, the Bulgarian Football Union, within 30 days of notification of the present decision as follows to FIFA to the following bank account …".

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE CAS

3.1 On 7 December 2011, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), challenging the Decision, which was notified to the Appellant with its grounds on 17 November 2011.

3.2 On 9 December 2011, the Respondent was requested to advise the CAS Court Office within ten days of receipt of the letter whether it agreed to the appointment of a sole arbitrator as suggested by the Appellant in the Statement of Appeal.

3.3 On 14 December 2011, the Appellant filed its Appeal Brief.

3.4 By fax of 19 December 2011, the Respondent was given a deadline of twenty days to submit an answer to the CAS Court Office.

3.5 On 21 December 2011, FIFA renounced its right to request its possible intervention in the arbitration proceedings.

3.6 By letter of 9 January 2012, the Respondent was informed by the CAS Court Office that no answer was received regarding the number of arbitrators and that the President of the Division would therefore decide on the matter. Furthermore, the CAS Court Office provided the parties with a copy of the DHL receipt proving delivery of the appeal brief to the Respondent on 20 December 2011 and reminded the Respondent that its answer was due that day.

3.7 On 13 January 2012, the CAS Court Office noted that the Respondent had failed to file an answer within the time limit granted and informed the Parties that pursuant to Article R50 of the Code of Sports-related Arbitration (the "Code") the Panel, once constituted, would proceed with the arbitration and deliver an award.

3.8 By letter of 2 February 2012, on behalf of the President of the CAS Appeal Arbitration Division, the Parties were informed that Mr. Lars Hilliger, attorney-at-law in Copenhagen, Denmark, had been appointed Sole Arbitrator to decide the matter.

3.9 On 16 February 2012, on behalf of the Sole Arbitrator, FIFA was invited to lodge a copy of its file related to this matter.

3.10 On 27 February 2012, the CAS Court Office forwarded a copy of the FIFA file to the Sole Arbitrator and the Parties.

3.11 By letter of 30 March 2012, the Appellant was directed to provide the CAS Court Office with a copy of the relevant provisions of Swiss law, translated into English, on which it was relying in its Appeal.

3.12 By letter of 4 April 2012, the Appellant provided the relevant excerpts from Swiss law.

3.11 On 10 May 2012, the CAS Court Office sent the Order of Procedure to the Parties, which only the Appellant signed and returned to CAS.

4. HEARING

4.1 On 30 March 2012, the Parties were requested to advise the CAS Court Office whether their preference was for a hearing to be held or for the Sole Arbitrator to decide the matter based on the written submissions.

4.2 On 4 April 2012, the Appellant advised the CAS Court Office that the Sole Arbitrator could render a judgment based on the written submissions without holding a hearing.

4.3 The CAS Court Office never received an answer from the Respondent.

4.4 On 3 May 2012, the Parties were informed that the Sole Arbitrator deemed himself to be sufficiently well informed to decide the matter without holding a hearing.

4.5 All written material has been duly taken into consideration by the Sole Arbitrator in his decision-making process even if they have not been referred to in the present Award.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Article R47 of the Code states as follows: *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body"*.

5.2 With respect to the Decision, the jurisdiction of CAS derives from art. 63 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of CAS.

5.3 The Decision with its grounds was notified to the Parties on 17 November 2011, and the Appellant's Statement of Appeal was lodged on 7 December 2011, *i.e.* within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal complied with all other requirements of Article R48 of the Code.

5.4 It follows that CAS has jurisdiction to decide on the present Appeal and that the Appeal is admissible.

5.5 Under Article R55 of the Code, the Sole Arbitrator may proceed with the arbitration and deliver an award even if no answer is filed by the Respondent.

5.6 Furthermore, under Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one.

6. APPLICABLE LAW

6.1 Article 62 para. 2 of the FIFA Statutes states as follows: *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*.

6.2 Article R58 of the Code states as follows: *"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"*.

6.3 In the present matter, the Parties have not agreed on the application of any particular law. The applicable law in this case shall consequently be the regulations of FIFA and, additionally, Swiss law.

6.4 Taking into consideration that the Player was registered on 3 August 2007 for the Respondent and that the pertinent transfer compensation was due in three instalments and the first – and only disputed – instalment of the transfer compensation was due on 31 July 2007, the Sole Arbitrator analysed which regulations should be applicable as to the substance of the matter.

6.5 The Sole Arbitrator finds in accordance with article 26 paragraphs 1 and 2 of the FIFA Regulations on the Status and Transfer of Players (2008 and 2009 editions) that the previous version of the FIFA Regulations on the Status and Transfer of Players (2005 edition) (the **Regulations**) is applicable to the matter at hand.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions filed by the Parties with CAS and before FIFA, even if there is no specific reference to those submissions in the following summary.

7.2 The Appellant

7.2.1 In its Appeal Brief of 14 December 2011, the Appellant requested the following from CAS:

1. *"To entirely uphold the appeal filed by the Bulgarian Football Union against the decision passed on 28 May 2010 by the FIFA Dispute Resolution Chamber.*
2. *To entirely annul the decision passed on 28 May 2010 by the FIFA Dispute Resolution Chamber, and to issue a new decision, replacing the challenged FIFA decision.*
3. *To condemn Manchester City FC to pay to the Bulgarian Football Union EUR 52,500 for first installment of the solidarity contribution for the player, M., plus interest at the rate of 5% per annum as of 31 August 2007 until the date of the effective payment.*
4. *To condemn Manchester City FC to pay to the Bulgarian Football Union EUR 2,000 for the advance of costs paid by the Bulgarian Football Union to FIFA, plus interest at the rate of 5% per annum as of 19 November 2008 until the date of effective payment.*
5. *To order Manchester City FC to bear all the costs incurred with the present procedure as well as with the procedure at FIFA.*
6. *To order Manchester City FC to pay the Bulgarian Football Union a contribution towards it legal and other costs, in an amount to be determined at the discretion of the Panel".*

7.2.1 In its Appeal Brief of 14 December 2011, the Appellant further submitted its position with regard to its requests for relief as follows:

a) Article 21 of the Regulations provides as follows: *"If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his previous club (solidarity contribution). The provisions concerning solidarity contributions are set out in annex 5 of the Regulations"*.

b) Article 2 of annex 5 of the Regulations provides as follows: *"1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments". 2. It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided for in the player passport. The player shall, if necessary, assist the new club in discharging this obligation. 3. If a link between the professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the associations(s) of the country (or countries) where the professional was trained. …"*.

c) The Commentary to the Regulations, which is relevant for the interpretation of the Regulations, provides as follow: *"… The new club has to contact the player's former club in order to receive the bank details necessary to remit the solidarity contribution that the club in question is entitled to. The player passport will play a central role in this respect, as it will help to ascertain the clubs entitled to the contribution…. The association is entitled to claim the solidarity contribution as soon as 18 months have elapses since the registration of the player for the new club. It will have six months to do so, as this right will prescript two years after registration. However if the association has irrefutable evidence that one of its affiliated clubs that is entitled to solidarity contribution no longer exists, the solidarity contribution should be paid immediately to the association and not only after 18 months….".* Footnote 181: *"Typical situations in which an association has an entitlement to a solidarity contribution are when a training club no longer exists, e.g. due to bankruptcy, or when the training club does not claim the solidarity contribution…"*.

d) Referring to the fact that the Training Club ceased to exist in 2007, the Appellant is of the opinion that the parties agree that the Appellant was in principle entitled to receive the disputed solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation from the Respondent.

e) Hence, the parties only disagree on whether the Training Club claimed and received this contribution beforehand from the Respondent and, if so, which is firmly opposed, whether such payment was made by the Respondent to the Training Club itself in good faith.

f) In this connection, neither FIFA nor CAS has been presented with any material documentary evidence whatsoever that is capable of proving that such payment has been made, and this is therefore denied.

g) In the event that the Sole Arbitrator concludes nonetheless that the Respondent has paid the disputed solidarity contribution related to the first instalment to the Training Club, it

is submitted that this payment has not been made in full discharge of the Respondent's obligations as it has not been made in good faith as required.

h) Prior to this alleged transfer of the amount, for instance, the Respondent did not ask the relevant football association to issue an official player passport, which actually appears from the Commentary quoted above.

i) Such an inquiry would have informed the Respondent that the Training Club was no longer entitled to receive the amount in question as the Training Club ceased to exist as a member of the Appellant as of 31 December 2003.

j) In its decision No. 117526, passed on 2 November 2007, FIFA Dispute Resolution Chamber decided as follows: *"The members of the chamber remarked that in accordance with article 1 of the Regulations for the Status and Transfer of Players (edition 2005) in connection with art. 6 par. 1 of the Procedural Rules, training compensation (and solidarity contribution) related to transfers of players may only be claimed by clubs, which are properly affiliated to the member association of the country to which they belong and regularly participate to the competition and championships organized by the relevant association and that no other entities can be entitled to receive such compensation"*.

k) Similarly, the Respondent has apparently failed to contact the Training Club with a view to receiving the bank details required for the transfer. Furthermore, there is no evidence to prove that the Training Club has contacted the Respondent to request payment of the contribution concerned.

l) Moreover, the good faith principle is not intended to excuse any possible negligence or lack of diligence by a party, and is not applicable in cases where a party does not take reasonable steps or specific precautions to prevent or limit the effects of its carelessness, causing harm to another party. Greater diligence also ought to have been displayed by the Respondent to ensure that it had paid, which allegation is strongly opposed, to a football club that was duly affiliated with the Appellant at the time and not to any other (legal or natural) person. Each club that is liable to pay solidarity contribution undertakes, in keeping with its duty of diligence, to clarify whether the relevant club entitled to receive a portion of such contribution actually exists or whether the contribution has to be transferred to the relevant football association.

m) *In casu*, had the Respondent turned to the Appellant with a request to issue an official player passport, the Respondent would surely have been informed that the Training Club had ceased existence and that it is only the Appellant that was and is entitled to receive the entire solidarity contribution for the Player.

n) If the Respondent has paid the disputed instalment to the Training Club (or to any other (personal or legal) person) as claimed before FIFA, then the Respondent has paid the wrong creditor and it has done so at its own risk with the consequence that the Appellant is not precluded from taking action against the Respondent for the first instalment. See for example CAS 2004/A/706, para 8.1.5, in which CAS ruled: *"The Appellant also cannot*

invoke the argument that it had already paid the full transfer sum to FC Porto and was thereby discharged from paying the "solidarity contribution", because payment by the Appellant can only have the effect of a discharge if payment is made to the correct creditor". "However, if the Appellant pays the wrong creditor – as in the present case – it does so at its own risk with the consequence that the Respondent is not prevented from still taking action against the Appellant for the "solidarity contribution".

o) As far as the size of the disputed instalment is concerned, the Parties agree that the total solidarity contribution in question accounts for 45% of 5% of the total transfer amount of EUR EUR 7,000,000.00, which transfer amount fell due for payment in three equal instalments of EUR 2,333,333.33 each on 31 July 2007, on 31 July 2008 and on 31 July 2009, respectively.

p) The disputed solidarity contribution related to the instalment that fell due for payment on 31 July 2007 thus amounts to EUR 52,500 (i.e. 45% of 5% of EUR 2,333,333.33).

q) The Appellant also claims default interest from the Respondent at the rate of 5% per annum as from the day following the due date of payment, i.e. as from 31 August 2007. In the absence of a specific contractual rate, the legal interest rate set forth in Article 104 par. 1 of the Swiss Code of Obligation (i.e. 5 %) is applicable.

7.3 **The Respondent**

7.3.1 As mentioned above, the Respondent has not filed any answer to CAS or otherwise notified CAS directly of its opinion on the Appellant's submissions.

7.3.2 Against this background, this leaves the Sole Arbitrator with no other option but to conclude that the Respondent must be deemed to rely on the statements in the Decision, requesting that the Appeal be dismissed and the Decision upheld.

7.3.3 In that connection, it was submitted to FIFA that the Respondent, through the FA, effected payment in good faith of the solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation on 18 September 2007 and that this payment was made because of a received player passport and a request for such a passport from a representative of the Training Club. At that point, the Respondent was not aware of the legal situation of the Training Club. As payment has thus already been made in good faith, the Respondent cannot be expected to pay the same amount once more.

8. DISCUSSION ON THE MERITS

8.1 The Sole Arbitrator initially notes that it is undisputed between the parties that the Player, born on 15 January 1979, was registered with the Training Club from 1 July 1990 until 1 January 1997 (i.e. from the start of the season of the Player's 12th birthday (1990/1991) until the middle of the season of his 18th birthday (1996/1997), as an amateur. At that point, the football season in Bulgaria ran from 1 July to 30 June of the following year.

8.2 Moreover, it is undisputed between the Parties that a proportion of the solidarity contribution in connection with the transfer of the Player from Atlético Madrid to the Respondent is payable in accordance with the Regulations for training carried out in the above-mentioned period, such a proportion corresponding to 45% of the total solidarity contribution.

8.3 Finally, it is undisputed between the Parties that the only issue in dispute is the payment of solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation, as the payment of solidarity contribution related to the second and third instalments has been correctly made by the Respondent to the Appellant.

8.4 The Sole Arbitrator notes in this connection that the Appellant has submitted that the Decision, on account of various errors of formality, including in particular the FA's failure to observe the rules on written authority, are so procedurally flowed that the Decision needs to be annulled in its entirety and a new decision on the merits must be issued.

8.5 As the Sole Arbitrator, with reference to Article R57 of the Code, has full power to review the facts and the law and to issue a *de novo* decision superseding, entirely or partially, the appealed one, the Sole Arbitrator finds that the formal shortcomings in the Decision referred to above, as the case may be, are immaterial in connection with this de novo decision, and this question will therefore not be addressed further in this Award.

8.6 Thus, the main issues to be resolved by the Sole Arbitrator are:

a) Is the Appellant entitled to receive the payment of solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation from the Respondent and, if so, what is the size of the amount?

And in case question a) is answered in the affirmative;

b) Can the Respondent be assumed, in good faith and in full discharge of its obligations, already to have paid the solidarity contribution related to the first instalment of EUR 2,333,333 to the Training Club?

a) Is the Appellant entitled to receive the payment of solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation from the Respondent and, if so, what is the size of the amount?

8.7 The Sole Arbitrator notes initially that it is undisputed between the Parties to this matter that the Training Club lost its status as a member of the Appellant as of 31 December 2003, and based on the circumstances arising during the proceedings it must further be assumed that the Training Club no longer exists as a legal entity.

8.8 As stated by the Appellant, Article 2 of Annex 5 of the Regulations provides, inter alia, as follows:

"1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.

2. It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided for in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.

3. If a link between the professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the associations(s) of the country (or countries) where the professional was trained. …".

8.9 The Commentary to the Regulations, which the Sole Arbitrator finds relevant for the interpretation of the Regulations in accordance with CAS jurisprudence (cf. CAS 2006/A/1018) provides, inter alia, as follow:

"….The new club has to contact the player's former club in order to receive the bank details necessary to remit the solidarity contribution that the club in question is entitled to. The player passport will play a central role in this respect, as it will help to ascertain the clubs entitled to the contribution…. The association is entitled to claim the solidarity contribution as soon as 18 months have elapses since the registration of the player for the new club. It will have six months to do so, as this right will prescript two years after registration. However if the association has irrefutable evidence that one of its affiliated clubs that is entitled to solidarity contribution no longer exists, the solidarity contribution should be paid immediately to the association and not only after 18 months….". Footnote 181: *"Typical situations in which an association has an entitlement to a solidarity contribution are when a training club no longer exists, e.g. due to bankruptcy, or when the training club does not claim the solidarity contribution…".*

8.10 The Sole Arbitrator also refers to FIFA, which, in the Dispute Resolution Chamber's Decision No. 117526, passed on 2 November 2007, established as follows:

"The members of the chamber remarked that in accordance with art.1 of the Regulations for the Status and Transfer of Players (edition 2005) in connection with art. 6 par. 1 of the Procedural Rules, training compensation (and solidarity contribution) related to transfers of players may only be claimed by clubs, which are properly affiliated to the member association of the country to which they belong and regularly participate to the competition and championships organized by the relevant association and that no other entities can be entitled to receive such compensation".

8.11 The Sole Arbitrator notes in that connection that the disputed instalment fell due for payment on 31 August 2007, which is after the date when the Training Club's membership of the Appellant terminated, the effect of which was that the Training Club was no longer the right debtor at the time when the amount fell due for payment in August 2007.

8.12 Against the background of the foregoing and considering the fact that it has not been disputed between the Parties during the proceedings whether it is correct and reasonable that the Training Club, after the end of 2003, has no longer been a member of the Appellant, and as the

Sole Arbitrator notes in particular that the Respondent, in connection with the payment of the second and third instalments, has accepted de facto that the Appellant is the right creditor for the solidarity contribution related to the transfer of the player from Atlético Madrid to the Respondent, the Sole Arbitrator can conclude that the Appellant is formally the right recipient of such amounts, of which the Appellant has indeed already received the second and third instalments.

8.13 As far as the question about the size of the disputed instalment is concerned, the Parties agree that the total solidarity contribution in question accounts for 45% of 5% of the total transfer amount of EUR 7,000,000.00, which transfer amount fell due for payment in three equal instalments of EUR 2,333,333.33 each on 31 July 2007, on 31 July 2008 and on 31 July 2009, respectively.

8.14 The disputed solidarity contribution related to the instalment that fell due for payment on 31 July 2007 (first instalment) thus amounts to EUR 52,500 (i.e. 45% of 5% of EUR 2,333,333.33.), which is therefore the amount for which the Appellant is formally the right creditor in regard to payment of solidarity contribution. As the claim for interest is undisputed by the Parties, the amount must, in case the Appellant succeeds in its request for payment, in compliance with Swiss CC art. 104, carry interest at the rate of 5% per year as from 31 August 2007 as requested by the Appellant.

b) Can the Respondent be assumed, in good faith and in full discharge of its obligations, already to have paid the solidarity contribution related to the first instalment of EUR 2,333,333 to the Training Club?

8.15 As mentioned under para 7.3 above, it was submitted in support of the Respondent's claim to FIFA that the Respondent, through the FA, effected payment in good faith of the solidarity contribution related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation on 18 September 2007 and that this payment was made because of a received player passport and a request for such a passport from a representative of the Training Club. The Appellant denies that this was the case, referring inter alia to the fact that neither FIFA nor CAS has been presented with any documentary evidence in support of this alleged payment.

8.16 The Sole Arbitrator would first like to consider whether payment must be assumed to have been made to the Training Club from the Respondent or, on its behalf, of the first instalment. If this question can be answered in the affirmative, the question of whether this payment must be assumed to have been made in good faith and in full discharge of the Repondent's obligations will subsequently be considered.

8.17 To be able to decide whether such payment must be assumed to have been made, the Sole Arbitrator wishes to clarify the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed.

8.18 The Sole Arbitrator notes that this is in line with art. 8 of the Swiss Civil Code (**Swiss CC**), which stipulates as follows:

"Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit".

In English translation:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".

8.19 As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them …. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

8.20 The Sole Arbitrator notes in that connection that in compliance with this principle, the Respondent, in its capacity as debtor, carries the burden of proof that payment of the alleged instalment has been made as claimed.

8.21 In a letter of 6 November 2009 from the FA to FIFA, the FA *writes "From the documents in your possession and the Players Passport issued by the Bulgarian Football Union it is clear that the first (now disputed payment) of GBP 52,546.66 (transferred to the Club's nominated account on the 18 September 2007) was issued in good faith through the FA's clearing house as part of the transparent process".*

8.22 That the FA has actually made such payment of GBP 52,546.66 is supported by various factors, including the contents of letters of 14 April and 29 April 2008, respectively, from Mr. Todorov and Mr. Gradev, respectively, both of whom state that they act on behalf of the Appellant, as both Mr. Todorov and Mr. Gradev confirm their awareness that such payment was made through the FA in September 2007.

8.23 However, they write in both of the above-mentioned letters that the payment concerned was apparently made into a private account belonging to Mr. Isaak Almaleh, who is described as the former president of the Training Club, and, according to the information provided, the amount paid was therefore never received by the Training Club. That this was the case is confirmed in a letter of August 2008, in which Mr. Isaak Almaleh reminds the Respondent of payment of the residual amount, and it can therefore be concluded that he has already received the first instalment.

8.24 Against the background of the material of the FIFA file and the other information and evidence presented during the proceedings, the Sole Arbitrator finds that adequate evidence is available to show that payment of GBP 52,546.66 must actually be assumed to have been made by the FA in September 2007.

8.25 However, the Sole Arbitrator finds that evidence has not been produced to identify the Training Club as the recipient of such payment, neither when the matter was pending before FIFA nor during these proceedings.

8.26 For instance, neither bank details, a receipt of payment nor any other documentary evidence relating to this payment has been produced, and furthermore, no attempt has been made in any other manner - for instance by way of a testimony or the like - to prove that it was the Training Club who received the payment.

8.27 Similarly, the Sole Arbitrator notes that the Respondent has also failed to produce adequate evidence to show on what basis the disputed payment was made or in what way the Respondent had allegedly tried to make sure that the payment recipient in question was actually the appropriate creditor in the strictly formal sense.

8.28 Against the background of an examination of the material submitted to FIFA and during the appeal proceedings, the Sole Arbitrator therefore finds that the Respondent has not successfully satisfied the Sole Arbitrator that such payment has actually been made to the Training Club as the Respondent has not been capable of discharging its burden of proof in this respect.

8.29 The Sole Arbitrator notes in particular in this connection that the Respondent has failed to submit documentary evidence to prove the alleged payment. Nor has any other adequate evidence been produced to prove such payment.

8.30 Against the background of these circumstances, the Sole Arbitrator concludes that the Respondent has failed to discharge the burden of proof that payment of the first instalment has been made to the Training Club by the Respondent or on behalf of the Respondent.

8.31 As payment of the disputed instalment to the Training Club cannot be assumed to have been made, there is no sense in discussing the question of whether such payment, if it had been made, must be deemed to have been made in good faith and in full discharge of the Respondent's obligations.

8.32 When it comes to the payment of GBP 52,546.66 made by the FA in September 2007, the Sole Arbitrator concludes that the Respondent has paid the wrong creditor (probably Mr. Isaak Almaleh) and it has done so at its own risk with the consequence that the Appellant is not precluded from taking action against the Respondent for the first installment, especially in view of the Respondent's failure to explain adequately, where relevant, why such payment could be regarded as made in good faith.

8.33 In that connection, the Sole Arbitrator refers to CAS 2004/A/706, para 8.1.5, in which CAS ruled: *"The Appellant also cannot invoke the argument that it had already paid the full transfer sum to FC Porto and was thereby discharged from paying the "solidarity contribution", because payment by the Appellant can only have the effect of a discharge if payment is made to the correct creditor". "However, if the Appellant pays the wrong creditor – as in the present case – it does so at its own risk with the consequence that the Respondent is not prevented from still taking action against the Appellant for the "solidarity contribution".*

9. SUMMARY

9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Appellant is entitled to receive from the Respondent the first instalment of the solidarity contribution of EUR 52,500 related to the first instalment of EUR 2,333,333 of the pertinent transfer compensation regarding the transfer of the Player from Atlético Madrid to the Respondent with interest at the rate of 5% per year as from 31 August 2007.

9.2 The Appeal is therefore upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed on 7 December 2011 by the Bulgarian Football Union against Manchester City FC regarding the decision pronounced by the FIFA Dispute Resolution Chamber on 28 May 2010 is upheld.

2. The decision of the FIFA Dispute Resolution Chamber of 28 May 2010 is annulled.

3. Manchester City FC is ordered to pay to the Bulgarian Football Union the amount of EUR 52,500 plus interest at 5% as from 31 August 2007.

(…)

6. All further and other requests for relief are dismissed.