

CAS 2014/A/3861 Alan Pulido Izaguirre v. Club Tigres de la UANL & Federación Mexicana de Fútbol Asociación

ORDER

on Request for Provisional Measures

issued by the

**President of the Appeals Arbitration Division of the
Court of Arbitration for Sport**

in the arbitration between

Mr Alan Pulido Izaguirre, Mexico

Represented by Mr Jaime Castillo, attorney-at-law in Mexico D.F., Mexico, and by Mr Ariel Reck, attorney-at-law in Buenos Aires, Argentina

-Appellant-

and

Club Tigres de la UANL, San Nicolás de los Garza, Mexico

Represented by Mr Lucas Ferrer, Pintó Ruiz & del Valle law firm, Barcelona, Spain

- First Respondent-

and

Federación Mexicana de Fútbol, Mexico DF, Mexico

Represented by Mr Fernando Cerrilla, Secretary General

- Second Respondent-

I. THE PARTIES

1. Alan Pulido Izaguirre (the “Player” or the “Appellant”) is a professional football player of Mexican nationality.
2. Club Tigres de la UANL (the “Club” or the “First Respondent”) is a football club with its registered office in San Nicolás de los Garza, Mexico. It is a member of the Mexican Football Federation, which in turn is affiliated to the Fédération Internationale de Football Association (“FIFA”).
3. The Federación Mexicana de Fútbol (the “FMF” or the “Second Respondent”) is the governing body of football in Mexico.

II. THE FACTS.

4. On 1 July 2010, the Player and the Club entered into an employment agreement (the “Agreement”), which was in force as of the “Torneo Apertura 2010” until the end of “Torneo Clausura 2013” (i.e. a period of 3 years). The Agreement included the possibility to extend the Agreement for one more year, subject to a further agreement between the Player and the Club.
5. On 9 July 2010, the Agreement was registered by the Club before the FMF.
6. On 24 July 2012, the Player and the Club allegedly entered into two different addendums to the Agreement (so-called “Addendum number 2” and “Addendum number 3”). In accordance with Addendum number 2, the Player and the Club allegedly agreed to extend the Agreement until 2016. The Player contests the validity of this Addendum, arguing that he never agreed to extend the Agreement until 2016 and that the signature included therein was forged.
7. On 8 January 2013, Addendum 2 of the Agreement was registered before the FMF.
8. On 17 July 2013, Addendum 3 of the Agreement was registered before the FMF.

III. THE PROCEEDINGS BEFORE THE FMF

9. On 29 June 2014, the Player filed a claim with the “Comisión de Conciliación y Resolución de Controversias” of the FMF (the “CCRC”) against the Club, seeking a decision of the FMF which would declare him a free agent as of 1 July 2014.
10. On 3 December 2014, the CCRC dismissed the claim filed by the Player. The CCRC considered that there was sufficient proof that the signature included in the Addendum 2 corresponded to that of the Player, and therefore he specifically agreed to extend the

Agreement until 30 June 2016. As a result, the CCRC concluded that the contractual relationship between the Player and the Club would remain in force until 30 June 2016.

IV. PROCEEDINGS BEFORE THE CAS AND THE PARTIES' SUBMISSIONS

11. On 18 December 2014, the Player filed with the Court of Arbitration for Sport (the “CAS”) an appeal against the Club and the FMF with respect to the decision rendered by the CCRC on 3 December 2014 (the “Appealed Decision”).
12. Together with his statement of appeal, the Player made an application for provisional measures, pursuant to Article R37 of the Code of Sports-related Arbitration (the “Code”), seeking the following relief:
 1. *Declare que el futbolista no está obligado a permanecer-contra su voluntad- en Tigres y puede vincularse con otros clubes deportivos, sin perjuicio de quién sea responsable de la ruptura contractual y de las consecuencias derivadas.*
 2. *Ordene a club Tigres y a la Federación Mexicana de Fútbol Asociación (FMF) proceder con la emisión inmediata del Certificado de Transferencia Internacional (CTI) ante el requerimiento de cualquier club en el mundo.*
 3. *Publique la medida cautelar en el sitio web del TAS/CAS para conocimiento de los clubes de fútbol que pudieran tener un interés en la contratación del jugador.*

The above-mentioned relief can be informally translated into English as follows:

1. *To declare that the Player is not obliged to stay, against his will, with Tigres and can sign with other clubs, regardless of whom would be liable for the termination of the contract and the consequences that may derive thereafter from such termination.*
2. *To order Club Tigres and Mexican Football Federation to immediately issue the International Transfer Certificate (ITC) upon request of any club in the world.*
3. *To publish the Order in the website of CAS for the knowledge of other clubs which could be interested in signing the Player.*

13. The Player sustains that the conditions listed in Art. R37 of the Code for granting his request for three different provisional measures have been met in the case at hand. The Player does not make any distinction among his three specific requests and provides his position as follows:
 - a) The Player considers that his appeal is likely to succeed because the Appealed Decision cannot be upheld in view of the Player’s desire to leave the Club. The Player also argues that the Addendum II to the Agreement is not signed in all its pages and such circumstance should be also taken into account for assessing the likelihood of success of his appeal.

- b) The Player argues that there is a risk of irreparable harm if these provisional measures are not granted because he has been “de facto” not allowed to exercise his professional activity since July 2014.
- c) The Player considers that his interests outweighs those of the Club and the FMF because he is currently not able to exercise his professional activity.

14. By letter dated 22 December 2014, the CAS Court Office notified the Player’s request on provisional measures to the Club and the FMF, and invited them to file their respective positions in this regard.

15. By letter dated 31 December 2014, the Club objected to the Player’s request on provisional measures, providing the following arguments:

- The Club considers that the President of the CAS Appeals Arbitration Division cannot declare that the Player is not obliged to remain with the Club because such matter is inherently related to the merits of this dispute.
- The Club argues that the ITC of the Player should be requested by the appropriate proceedings established by FIFA Regulations rather than by an application for provisional measures before CAS. In accordance with FIFA Regulations, the new club of a Player shall request, through its national association, the issuance of the relevant ITC. However, the Club notes that, at this stage, no club has requested that the FMF transfers the ITC of the Player. Therefore, the Player’s request regarding the immediate issuance of his ITC shall be rejected.
- The Club maintains that, in any event, the Player failed to prove that the three requirements for granting the provisional measures had been fulfilled. More specifically:
 - a) The Club considers that there is no risk of irreparable harm because such harm, if any, is caused by the Player himself. The “de facto” suspension alleged by the Player is the result of his own decision not to reintegrate the Club, despite being contractually bound to do so.
 - b) The Club argues that the Player failed to provide any new evidence proving the likelihood of success of his appeal.
 - c) The Club considers that its interests outweighs those of the Player because it is trying to protect the principle of contractual stability as established by the FIFA Regulations

16. By letter dated 2 January 2015, the FMF also objected the Player's request on provisional measures, providing the following reasons:

- CAS has no power to authorize a player with an employment contract still in force to sign with a different club, before such player exhausted all internal legal remedies.
- The FIFA Regulations foresee the possibility to issue a provisional ITC. Therefore, the Player shall follow the procedure established by the FIFA Regulations in order to exhaust all the internal legal remedies as provided by Article R37 of the Code.

V. JURISDICTION OF THE CAS

17. In accordance with Swiss Private International Law Act (Article 186), the CAS has power to decide upon its own jurisdiction.
18. The extent of the jurisdictional analysis at this point is to assess whether, on a *prima facie* basis, the CAS can be satisfied that it has jurisdiction to hear the application. The final decision on jurisdiction will be made by the Panel in its award.
19. Article R47 of the Code states that, "*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.*"
20. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.
21. Article 86 of the Statutes of the FMF provides that decisions of the CCRC can be appealed before CAS. Furthermore, the Respondents have not objected to the jurisdiction of CAS.
22. Therefore, the President of the CAS Appeals Arbitration Division is satisfied that, *prima facie*, CAS has jurisdiction to decide on the present dispute, without any prejudice to any final decision in that regard by the Panel once appointed.

VI. ADMISSIBILITY

23. Article 86 of the Statutes of the FMF provides that the time limit for filing an appeal against decisions of the CCRC before CAS is twenty-one days from receipt of such decisions.
24. The Appealed Decision was rendered on 3 December 2014 and the appeal was filed before CAS on 18 December 2014. Therefore, the appeal was filed within the term of twenty-one days. Furthermore, the Respondents have not raised any objection in this regard.
25. Therefore, the President of the CAS Appeals Arbitration Division is satisfied that, *prima facie*, the appeal is admissible, without any prejudice to any final decision in that regard by the Panel once appointed.

VII. LEGAL DISCUSSION

26. Pursuant Article R37 of the Code, the President of the CAS Appeals Arbitration Division is competent to consider an application for provisional measures if the Panel is not yet constituted.
27. As an initial matter, the President of the CAS Appeals Arbitration Division notes that the Player requested to be granted two different provisional measures: 1) To declare that the Player is no longer obliged to stay, against his will, with the Club and, therefore, that he is free to sign with other clubs; and 2) To order the Club and the FMF to immediately issue the ITC, upon the request of any club of the world.
28. The President of the CAS Appeals Arbitration Division, having analyzed the provisional measures requested by the Player, notes as follows:
29. Regarding the first provisional measure requested by the Player, i.e to declare that the Player is no longer obliged to stay, against his will, with the Club and, therefore, that he is free to sign with another club, the President of the CAS Appeals Arbitration Division considers pertinent to refer to the Player's request for relief on the merits, which in part reads as follows:

Declarar que en cualquier caso el Apelante carece de vinculación contractual con Tigres y ostenta actualmente el estatus de jugador libre de contrato

The above-mentioned request for relief can be informally translated into English as follows:

To declare that, in any case, the Appellant no longer has any contractual relationship with Tigres and he currently has the status of free player.

30. The President of the CAS Appeals Arbitration Division notes that the Player basically seeks with his application for provisional measure the same objective he seeks with the relevant appeal filed before CAS, namely the declaration that the Player is no longer contractually bound with the Club and, consequently, he is free to sign with other clubs.
31. In this regard, the President of the CAS Appeals Arbitration Division notes that, in the context of a request for provisional measures, she would not be in a position to decide on the merits of the appeal and grant the relief sought.
32. In view of the above, the President of the CAS Appeals Arbitration Division concludes that the first provisional measure requested by the Player shall be rejected.
33. Regarding the second provisional measure requested by the Player (i.e. to order the First and Second Respondent to immediately issue the ITC upon request of any club of the world), the President of the CAS Appeals Arbitration Division considers pertinent to refer to Article R37 of the Code, which relevant part reads as follows:

No party may apply for provisional or conservatory measures under these Procedural Rules before all internal legal remedies provided for in the rules of the federation or sports-body concerned have been exhausted. [...] (emphasis added by the President of the CAS Appeals Arbitration Division)

When deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim and whether the interests of the Applicant outweigh those of the Respondent (s).

34. The President of the CAS Appeals Arbitration Division notes that, pursuant to Article R37 of the Code, she shall examine whether the Player has exhausted all the internal legal remedies provided in the rules of the FMF, which made applicable FIFA Regulations before applying to this second provisional measure.
35. The President of the CAS Appeals Arbitration Division notes that the FIFA Regulations foresee a legal avenue to obtain the ITC of a player, i.e. the national association of the new club which already signed the relevant player shall file a request (including a copy of the Player's new contract) to the association where the player's former club is affiliated. Thereafter, after having verified that the contract of the relevant player with his former club is no longer in force, the national association where the former club is affiliated shall issue the ITC.

36. Furthermore, the President of the CAS Arbitration Division notes that the former association has the power to deny the issuance of the ITC. However, even in this scenario, the President of the CAS Arbitration Division points out that the FIFA Regulations provide the possibility to provisionally issue the ITC of the relevant player.
37. In the case at hand, the Appellant has not provided any evidence proving that any association has even requested the transfer of the Player's ITC to the FMF and, obviously, that such request has been denied by the latter. As a result, the President of the CAS Appeals Arbitration Division concludes that the Player has not exhausted all the internal legal remedies and, therefore, he cannot request the issuance of his ITC as a provisional measure at this time.
38. In any event, the Appellant has not provided any evidence proving the existence of any risk of irreparable harm in the absence of proof of any concrete offer from another club. In other words, the Appellant's request is based on a mere hypothetical (i.e. that the Player may receive an offer from another club).
39. Furthermore, the President of the CAS Appeals Arbitration Division agrees with the Club that there is no risk of irreparable harm because such harm, if any, is caused by the Player himself who decided not to reintegrate the Club and failed to prove that the latter does not allow him to do so.
40. In view of the above, the President of the CAS Appeals Arbitration Division concludes that the second provisional measure requested by the Appellant shall be rejected.

VIII. PUBLICATION

41. In view of the agreement of the parties, the present Order will be published on the CAS website.

IX. COSTS

42. According to standard CAS practice, the cost of this part of the proceedings will be settled in the final award or in any other final disposition of this arbitration.

* * * * *

ORDER

The Court of Arbitration for Sport rules that:

1. The request for provisional measures filed by Mr Alan Pulido Izaguirre on 18 December 2014 in the matter *CAS 2014/A/3861 Alan Pulido Izaguirre v. Club Tigres de la UANL & FMF* is rejected.
2. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration

Lausanne, 29 January 2015

THE COURT OF ARBITRATION FOR SPORT

Corinne Schmidhauser
President of the Appeals Arbitration Division