Swiss Supreme Court confirms CAS award in dispute between Brazilian soccer player and Portuguese football club

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In *decision 4A_678/2015*, the Swiss Supreme Court considered a petition to set aside an award rendered by a Court of Arbitration for Sport (CAS) panel for being *infra petita* and in violation of the right to be heard.

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Speedread

In a German-language decision dated 22 March 2016 and published on 14 April 2016, the Swiss Supreme Court rejected a soccer club's petition to set aside a Court of Arbitration for Sport (CAS) award on the ground that it partially failed to decide its claim (*infra petita*) and violated its right to be heard.

The Supreme Court held that the CAS award had in fact addressed all elements of the claim, either directly or interpreting the award in good faith, whilst the remainder of the petition merely criticised the reasoning of the CAS award and the outcome of the case, without establishing a violation of the right to be heard. (*Decision 4A_678/2015*.)

Background

Article 190(2)(c) of the Private International Law Act (PILA) provides that an award will be set aside if the arbitral tribunal's decision goes beyond the claims submitted to it, or if it fails to decide one of the elements of the claim.

Article 190(2)(d) of the PILA provides that an award will be set aside if the principle of equal treatment of the parties or the parties' right to be heard is violated.

Facts

A Brazilian soccer player (B) and a Portuguese soccer club (A) entered into an employment agreement for the period between 1 August 2009 and 30 June 2014, for a monthly gross salary of EUR16,670. B was then loaned to another club until 30 June 2010.

Following the Portuguese football championship in May 2010, B subsequently failed to return from a holiday in Brazil to Portugal for the next season starting on 1 July 2010. Therefore, A terminated the employment agreement with immediate effect, stating that B had been obliged to return by 28 June 2010 or 1 July 2010 at the latest.

B filed a claim against A before FIFA's Dispute Resolution Chamber, asking for EUR800,160 in damages (as opposed to continued pay) due to A's unjustified termination. On 17 January 2014, the Dispute Resolution Chamber partially granted B's claim, ordering A to pay EUR550,000 in damages for breach of contract.

Subsequently both parties appealed to the Court of Arbitration for Sport (CAS), which rejected A's appeal in full while partially accepting B's appeal. The CAS award modified the Dispute Resolution Chamber's decision by also ordering A to pay five percent interest on the amount of EUR550,000 as of 19 August 2010. All other motions were rejected.

A then filed a petition to set aside the CAS award before the Supreme Court arguing that some of the prayers for relief it had filed in the CAS proceedings had not been decided upon. In particular, A requested a motion to cap any compensation for B at a maximum of EUR229,725, and a motion to declare that any compensation payable under the employment agreement was net. In addition, and relying on essentially the same set of facts, A argued that its right to be heard was violated.

Decision

The Supreme Court rejected the petition. It found that the CAS panel had not ruled *infra petita*. A's motion for a cap of EUR229,725 had in fact been addressed by the CAS panel when awarding the sum of EUR550,000 to B. With regard to A's second motion regarding the purported ambiguity as to whether the compensation due was net or gross, the Supreme Court held that the compensation could in good faith only be understood as a net amount. In addition, in its prayers, A had only asked for clarification in terms of net versus gross with regard to B's salary, but not with regard to any compensation.

Comment

Whilst the Supreme Court's decision mainly confirms its established case law, it is a useful reminder for parties and their representatives to take the utmost care when drafting prayers for relief. In arbitration, it has become customary to compose extensive prayers for relief including the legal basis of the claim. This is contrary to long-standing tradition in civil law jurisdictions and, as this case shows, a potential source for unnecessary problems.

As a rule, less is often more in this context, especially for monetary claims where parties are well-advised to simply request the amount payable as such (plus interest, if any) instead of also mentioning the legal ground(s) and/or nature for their purported claim. A's prayers before the CAS are a good case in point: instead of mentioning the grounds for the requests made combined with usually unnecessary motions for declaratory relief, a simple request for dismissal often suffices and leaves room for the legal reasoning in the submissions.

Case

Decision 4A_678/2015 (Swiss Supreme Court).

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