

CAS 2023/A/10014 Morten Beck Guldsmid v. The Football Association of Iceland & The Football Department of FH

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Nilsson, Attorney-at-Law, Stockholm, Sweden

in the arbitration between

Morten Beck Guldsmid, Silkeborg, Denmark

Represented by Mr Kristinn Björgúlfsson, Hafnarfjörður, Iceland

Appellant

and

The Football Association of Iceland, Reykjavik, Iceland

Represented by Mr Jón Gunnar Ásbjörnsson, Attorney-at-law, Reykjavik, Iceland

First Respondent

&

The Football Department of FH, Hafnarfjörður, Iceland

Represented by Mrs Ingibjörg Palmadóttir, Attorney-at-law, Reykjavik, Iceland

Second Respondent

I. PARTIES

1. Morten Beck Guldsméd (“the Player” or “the Appellant”) is a Danish citizen who was registered as a professional football player with the Second Respondent during the years 2020-2021.
2. The Football Association of Iceland (“the KSI” or “the First Respondent”) is the national football association in Iceland, affiliated to the Fédération Internationale de Football Association (“FIFA”).
3. The Football Department of FH (“the Club”, “the Second Respondent” or “Knattspyrnudeild”) is a member of the KSI, currently competing in the Icelandic First League.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 23 December 2019, the Club and the Player entered into a Standard KSI Contract (the “Player Contract”) valid from 1 January 2020 to 31 December 2021. According to the Player Contract the Player was entitled to a net monthly salary of € 4,800 and certain conditional bonuses and employment benefits.
6. A dispute arose between the Player and the Club as to whether the Player Contract should be considered as an employment contract, as submitted by the Player, in which case the Club would be responsible for paying taxes and other salary-related charges, or a Contractor Contract, as submitted by the Club.
7. The disputed issue was referred to KSI’s Contracts and Transfer Committee (the “Transfer Committee”) for decision. In a ruling dated 10 August 2022 the Transfer Committee came to the conclusion that the Player Contract was an employment contract and that the Club was responsible for paying taxes and other salary-related charges, including pension payments.
8. Following a complaint filed by the Player against the Club with the KSI Disciplinary and Ruling Committee (the “KSI DRC”), and after having stipulated that the Club had failed to provide evidence that taxes and other wage-related charges had been settled from payments to the Player, the KSI DRC issued the following ruling on 30 March 2023:

“Knattspyrnudeild FH shall be fined in the amount of ISK 150,000. Knattspyrnudeild FH in the men’s championship category shall be subject to a transfer ban for one transfer period if a settlement is not completed in accordance with the conclusion of the Contracts

and Transfer Committee from August 10, 2022, within 30 days from when this judgment is issued”.

9. On 4 April 2023 the Club appealed the KSI DRC decision to the KSI Court of Appeal (the “KSI CA”).
10. On 15 June 2023 the KSI CA confirmed the decision from the KSI DRC, concluding *inter alia* that “*It cannot be seen from the available documents of the case before the KSI Court of Appeal that Knattspyrnudeild FH has paid withholding taxes or other wage-related charges from the gross wages in each case as stipulated [...] and that the Club “will be required to be subject to a transfer ban for one transfer period [...] if the appellant fails to demonstrate that a settlement has been completed [...]” in accordance with the Transfer Committee’s decision.*
11. On 15 July 2023, the Club submitted a letter to the KSI CA in which the Club confirmed that it would abide by the Transfer Committee’s ruling and that it would pay withholding tax, wage insurance fees and pension fund fees as they fall due when such a settlement “is in place”. As a consequence, the Club requested that the transfer ban and the fine be lifted.
12. On 17 July 2023, the KSI CA rejected the request from the Club on the basis that the Club had not demonstrated that it had made a settlement in accordance with the judgment from KSI CA on 15 June 2023.
13. In a letter dated 25 July 2023, the Club requested the KSI CA to lift the imposed transfer ban. The request was accompanied by the Club’s letters to the Tax Office and the Appellant’s pension fund, respectively, wherein the Club referred to corrected pay slips for the Appellant and requested the imposition of withholding tax, other wage-related charges and pension fund fees to be revised.
14. On 28 July 2023, the KSI CA accepted said request from the Club by stating the following (the “Decision”):

“From the aforementioned letter from Knattspymudeild FH and with reference to the supporting documents that accompanied the letter, it can only be seen that Knattspymudeild FH has demonstrated that it has fulfilled the criteria stated in the judgment of the KSI Court of Appeal in case no. 3/2023. With reference to the provisions of the laws and regulations of KSI and then also the FIFA Disciplinary Code, which complements them, the transfer ban of Knattspymudeild FH in the men’s championship category according to the judgment of the KSI Court of Appeal is hereby lifted”.
15. On 4 August 2023, the Appellant appealed the Decision to the Court of Appeal of the National Olympic and Sports Association (the “ISI CA”). In his appeal the Appellant alleged that the KSI CA’s decision to lift the transfer ban, and to change its judgement from 15 June 2023, was taken without legal authority and in violation of KSI’s laws and regulations and also in opposition to the Olympic Charter.
16. On 29 August 2023, the ISI CA dismissed the case concluding, i.a. the following:

“The role and jurisdiction of the KSI Court of Appeal and indeed also the ISI Court of Appeal are limited to the cases that are appealed to the Court. Accordingly, it is the role of courts of appeal to review existing judgments or rulings. The decision of the KSI Court of Appeal of 28 July last does not pertain to the review of the decision of the KSI disciplinary and ruling committee and therefore cannot lead to a final and binding decision according to Article 6.1 of the KSI regulations, nor was there a basis for an appeal to the ISI Court of Appeal. Furthermore, it is neither a ruling nor a judgement of the KSI Court of Appeal that concerns the Olympic Charter or its interpretation, which falls under the exemption authority of Article 35.2 in the ISI rules and Article 38.6 in the rules of KSI.

The Icelandic Football Association is a special association within ISI that has adopted its own court system with a lower court level and an appeal court level. This means that all disputes concerning members of KSI must be settled in the courts of KSI, other than the fact that cases concerning the Olympic Charter or its interpretation are subject to appeal to the Court of Appeal of ISI. It is not the role of the ISI Court of Appeal to review the decisions of the KSI courts, regardless of whether the appealed decision is clearly wrong in form or substance.”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 18 September 2023, pursuant to Article R47 of the Code of Sports-related Arbitration (“the CAS Code”), the Player filed a Statement of Appeal against the KSI and the Club at the Court of Arbitration for Sport (“the CAS”). The Statement of Appeal contained the following requests for relief:

- “1. To annul the decision of the Football Association of Iceland passed on 28 July 2023 to lift the registration ban imposed upon the men’s soccer team of The Football Department of FH by the Court of Appeals of the Football Association of Iceland in a judgment in case no. 3/2023 from 15 June 2023.*
- 2. To pass a new decision accepting the Appellant’s appeal in its entirety.*
- 3. To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.*
- 4. To rule that the Respondent has to pay the Appellant a contribution towards his legal costs.”*

18. In his Statement of Appeal, the Appellant requested that the matter be heard by a Sole Arbitrator. He also requested an extension of 30 days to submit his Appeal Brief.
19. In a letter dated 29 September 2023, the First Respondent consented to the Appellant’s request for an extension of time to submit the Appeal Brief and the request by the Appellant that the present case be submitted to a Sole Arbitrator.

20. In a letter on the same date, the Second Respondent consented to the request by the Appellant that the present case be submitted to a Sole Arbitrator but did not consent to the Appellant's request for an extension of time to submit the Appeal Brief. In addition the Second Respondent commented shortly on the Statement of Appeal, *inter alia* pointing out that the appealed decision was taken on 28 July 2023, leading to that the time limit for an appeal had passed and the case therefor should be dismissed. In addition, the Club alleged that it should not be a party to the dispute since the dispute is only between the Appellant and the KSI.
21. On 4 October 2023, the CAS Court Office wrote to the Appellant and the First Respondent inviting them to file their comments to the Second Respondent's submission with regard to time limit to appeal and the request to be excluded as a party.
22. On 9 October 2023, the First Respondent responded to said invitation. The First Respondent requested that the case should be dismissed and that the procedure should be bifurcated in order for CAS to first hear the grounds for dismissal before hearing the case on its merits. The First Respondent asserted in this respect – in short – that the time limit to appeal the Decision had expired and that the Appellant has not demonstrated how his own personal interests were affected by the Decision and therefor lacks a standing to appeal the decision. In addition, the First Respondent argued that CAS lacks jurisdiction to hear the appeal, alleging that the Decision was neither a decision in the meaning of Article 47 of the CAS Code, as it was not intended to affect the interests of the Appellant, nor a result of a dispute or a complaint within the meaning of Article 40.3 of the KSI Statutes since it was not based on a complaint and does not solve a dispute between the parties. The First Respondent added that it did not agree with the Second Respondent's request to be excluded as a party, alleging that the Appellant's request for relief in the dispute is primarily intended to affect the interests of the Second Respondent by that the relief pertains to the annulment of the registration ban imposed upon the Second Respondent's men's soccer team.
23. On the same date, the Appellant objected to the First Respondent's request for dismissal of the case.
24. On 10 October 2023, the CAS Court Office invited the Appellant and the Second Respondent to comment on the First Respondent's request for bifurcation.
25. On 11 October 2023, the CAS Court Office informed the parties that the Appellant's request for a 30-day extension to file his Appeal Brief was granted.
26. On 13 and 17 October 2023, both the Appellant and the Second Respondent agreed to the First Respondent's request for bifurcation.
27. On 18 October 2023, the CAS Court Office informed the parties that subsequent to the parties' agreement with regard to the bifurcation of the proceedings, only the issues of standing to sue and of CAS jurisdiction should be addressed in the brief.
28. On 8 November 2023 the Appellant filed his Appeal Brief with the CAS Court Office.

29. In a letter on 10 November 2023, the Respondents were requested to submit their respective Answer to the Appeal Brief within 20 days from the receipt of the letter by courier.
30. On 2 December 2023, the Second Respondent filed its Answer with the CAS Court Office.
31. On 6 December 2023, the First Respondent filed its Answer with the CAS Court Office.
32. On the same date, the CAS Court Office informed the parties, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that Mr Lars Nilsson, Attorney-at-law in Stockholm, Sweden, had been appointed as Sole Arbitrator to decide on this case. The parties were also provided with a disclosure made by Mr Nilsson further to Article R33 of the CAS Code, which none of the parties challenged further to Article 34 of the CAS Code.
33. On 10 January 2024 the CAS Court Office invited the parties to state whether they would accept that the jurisdiction/admissibility issue be decided by way of a preliminary decision, or respectively a final decision based solely on the Parties' written submissions, without a hearing. In addition, the CAS Court Office invited the Appellant, in case he maintained that the Second Respondent owed the Appellant money pertaining to his former employment, to specify the components of said money.
34. On 16 and 17 January 2024, all Parties accepted that the jurisdiction and admissibility issues be decided based solely on the Parties' written submissions. In addition, the Appellant maintained that the Second Respondent owed him the amount of ISK 23,234,425.

IV. THE SUBMISSIONS OF THE PARTIES

35. The following summary of the Parties' positions with regard to the jurisdiction and admissibility issues is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's Submissions

36. The Appellant's submissions, in essence, may be summarized as follows.
37. In the prayers for relief in his Appeal Brief, the Appellant submits "*that CAS is competent to adjudicate on this appeal procedure, that the time limit to appeal had not lapsed and that the Appellant and both Respondents have standing in this procedure*".
 - i. *The decision of the Football Association of Iceland passed on 28 July 2023 to lift the registration ban imposed upon the Second Respondent constitutes an appealable decision*

38. Applying the description outlined by the jurisprudence of CAS (cf. for example CAS 2008/A/1633), it is evident that the communication of KSI dated 28 July 2023 contains a ruling which affects the legal situation of the Appellant. The decision by KSI to lift the transfer ban on the Second Respondent affects the situation of the Appellant since it means that there is no consequence for the failure to comply with the decision of the KSI dispute resolution bodies. Without consequences for the Second Respondent, the Appellant will not receive the money awarded to him which undoubtedly affected the Appellant's legal position.
39. Further, it is fully confirmed by CAS that both a letter and an email can constitute a "decision" and that the term must be construed in a broad sense; meaning *inter alia* that the form of the communication in question is irrelevant for its qualification and that a decision must be a unilateral act issued to one or more recipients that is intended to produce legal effects that impacts upon the legal situation of the Appellant (cf. CAS 2015/A/4162 and CAS 2019/A/6436).
40. On account of the above said KSI's communication of 28 July 2023 is to be considered a decision that can be appealed to CAS.

ii. The Appellant has standing to appeal the decision

41. It is widely recognised in CAS jurisprudence that the standing to appeal is recognised if a person appealing against a decision can show sufficient legal interest in the matter being appealed and if it is aggrieved, i.e. that it has something at stake (cf. CAS 2019/A/6636).
42. The KSI CA first rendered a decision in favour of the Appellant by imposing sanctions on the Second Respondent should it not find a settlement with the Appellant regarding the outstanding financial obligations. In the communication of KSI dated 28 July 2023 the KSI CA took a new decision by lifting the transfer ban, wrongfully concluding that the Second Respondent had demonstrated that it had fulfilled the criteria stated in the judgment of the KSI CA on 15 June 2023.
43. Without the transfer ban in place, the Second Respondent has no incentive to pay the money it owed to the Appellant. Thus, the Appellant is undoubtedly affected by the decision to lift the transfer ban.

iii. The time limit to appeal the Decision has not lapsed

44. It follows from Article 38 par. 6 of the KSI Statutes that, as a main rule, the decisions of the Appeals Tribunal shall be binding for the parties concerned. However, decisions of the KSI CA may be appealed to the ISI CA in respect of matters that concern the Olympic Charter or its interpretation.
45. Article 40.3 of the KSI Statutes stipulates that:

"The results of disputes and/or complaints within KSI may be appealed to the Court of Arbitration of Sports (CAS). This only applies if the avenues for appeal within Icelandic

sports have been exhausted. CAS will then finally resolve the dispute in accordance with the Code of Sports-Related Arbitration, unless otherwise required by domestic law.”

46. In the appeal to the ISI CA the Appellant invoked that the Decision from 28 July, 2023, to cancel the transfer ban and to change its former judgment, was taken without legal authority and in violation of the laws and regulations of KSI and also in opposition of the Olympic Charter.
47. The Appellant alleged that the KSI CA has erroneously, suddenly and without informing the Appellant violated page 8 of the Olympic Charter as well as Article 2.1, 2.9, 2.11 and 2.18. The KSI CA has thereby, in conflict with the Olympic Charter, failed to protect the player, not acted with integrity and not ensured good governance.
48. It is clear that Article 40.3 of the KSI Statutes prescribes that a party must first exhaust all avenues for appeal within the Icelandic *sports* system before it can appeal to CAS. In this case this means that a party must first go through all the channels for appeal within the KSI, and thereafter within the ISI should the appeal relate to a matter that concerns the Olympic Charter or its interpretation. Only thereafter, a party is able to appeal to CAS.
49. Consequently, the Appellant rightly first went to the ISI CA and only after he exhausted that avenue he could appeal to CAS to finally resolve the dispute. The 21-day period for appeal should therefore start counting on 29 August 2023 being the date the ISI CA announced its decision.

iv. The Second Respondent has standing to be sued

50. Pursuant to CAS jurisprudence, a party has standing to be sued if it is personally obliged by the “disputed right” at stake or has de facto interest in the outcome of an appeal (cf. CAS 2017/A/5359).
51. The Second Respondent has a stake in the outcome of this decision and has a tangible interest, given that if the Appellant is successful, the decision to lift the transfer ban and revoke the fine will be annulled and therefore clearly has an impact on the position of the Second Respondent. The core of this matter is the fact that the Second Respondent has not pay the money owed to the Appellant and is in debt to the Appellant, which must result in a sporting sanction.
52. The money owed by the Second Respondent to the Appellant amounts to ISK 23,234,425, consisting of pension payments, insurance payments and tax payments and including interest for late payment.

B. The First Respondent’s Submissions

53. The First Respondent has, with reference to the bifurcation of the proceedings, requested that:

“1. The case should be dismissed.

2. *The Appellant be ordered to pay all costs in conjunction with the proceedings, including legal costs of the First Respondent and all CAS costs related to the arbitration proceedings.”*

54. In support of its request the First Respondent has submitted the following.

i. The Appellant lacks legally protected interest and a legal standing to sue

55. Pursuant to CAS case law (cf. e.g. CAS 2013/A/3140, CAS 2010/A/2354 and CAS 2008/A/1674) an appellant has to demonstrate, at the risk of the case being dismissed, that he or she is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature at stake. The Appellant has however not demonstrated how his own personal interests will be affected by its annulment as per his request for relief.
56. Although the First Respondent concedes that the Appellant originally may have had legally protected interests relating to his demand for a transfer ban, those interests stemmed from the coercion of payment contained in such a ban. Once the Second Respondent had demonstrated to the KSI CA that it had made a settlement in accordance with the judgment from KSI CA on 15 June 2023, the Appellant can no longer be considered to have a legally protected interest with regard to the consequences of the transfer ban.
57. Pursuant to Icelandic law, an employer must turn to the Tax Office regarding the payment of withholding taxes on an employee's wages and to his pension fund regarding the payment of pension fund fees. The employee is not the rightful creditor of such payments and does not have the authority to make disposals regarding them.
58. In consequence herewith, there was no need for the Second Respondent to finalize a settlement with the Appellant. The Second Respondent has instead, correctly, finalized settlements with the pension fund and the tax authorities. If the Tax Office and the Appellant's pension fund state that a settlement has been reached with the Second Respondent such statement must be considered true and valid. Nothing in either the KSI DRC's or the KSI CA's rulings indicates that the Second Respondent was in default in other aspects of the Appellant's contract, e.g. payments which the Appellant could claim personally.
59. The Decision only lifted the transfer ban imposed on the Second Respondent. The decision to fine the Second Respondent was not affected and remains in force. In addition, the registration period for which the transfer ban was originally imposed on the Second Respondent, and later lifted with the Decision, has lapsed. If the Appellant is requesting CAS to deliver a new decision to impose a transfer ban on the Second Respondent, the First Respondent argues that such decision falls out of the scope of CAS competence.

ii. CAS lacks jurisdiction to hear the Appellant's appeal

60. The First Respondent has doubts as to whether the Decision constitutes a decision within the meaning of Article R47 of the CAS Code, as it was not intended to affect the interests of the Appellant, but only the interests of the Second Respondent. It is the First

Respondent's understanding that in principle, simple letters addressed from a federation to a club cannot qualify as an appealable decision unless they affect the legal situation of their addressee.

61. Regardless of the above, according to Article 47 of the CAS Code an appeal of a decision of a federation, association or sports-related body may only be filed with CAS if the statutes or regulations of said body so provide or if the parties have concluded a specific arbitration agreement. None of these conditions exist in this case. The Appellant relies on the arbitration clause in Article 40.3 of the KSI Statutes. Contrary to this the First Respondent argues that the Decision was neither a result of a dispute between the parties nor a result of a complaint. The Decision was addressed unilaterally to the Second Respondent and it has not been demonstrated that it affected the interests of the Appellant.
62. Article 40.3 of the Statutes is in this respect similar to Article 38.6 of the Statutes which the Appellant tried to rely on when he appealed the Decision to the ISI CA. The ISI CA held however that its role was limited to the review of existing judgments or rulings, but not of decisions by the KSI CA. As the decision of the KSI CA did not pertain to the review of a verdict by the KSI DRC it could not form a basis for an appeal to the ISI CA. The same should be true, *mutatis mutandis*, for an appeal to CAS.

C. The Second Respondent's submissions

63. The Second Respondent has, with reference to the agreed bifurcation of the proceedings, requested CAS to:
 - "1. Dismiss the Appeal of the Appellant.*
 - 2. Subsidiarily exclude the Second Respondent as a party to the proceedings before CAS.*
 - 3. Order the Appellant to pay the full arbitration costs.*
 - 4. Order the Appellant to pay the Second Respondent an amount towards its costs of CHF 6,000."*
64. In support of its request for dismissal the Second Respondent has to large parts submitted the same grounds as the First Respondent. In addition hereto, the Second Respondent has set forth and emphasized the following.
65. In the decision from the Transfer Committee from 10 August 2022 the Committee ruled that the Club was responsible for paying taxes and other wage-related charges from salary payments according to the Player Contract. The Second Respondent does not owe the Appellant any salary or other remuneration (cf. para. 75 below). None of the involved KSI entities have stated that the Second Respondent owes any money to the Appellant.
66. In addition, the Second Respondent has made agreements with all relevant parties concerning taxes and other salary related fees, including pension payments. An individual like the Appellant is not entitled to collect tax payments, salary related charges or

contributions to pension funds. There is therefore no settlement to be made with the Appellant.

67. The Appeal to CAS was made on 18 September 2023. The Decision was taken by the KSI CA on 28 July 2023, that is long after the 21-day limit to appeal to CAS. Consequently, the Appeal should be dismissed already on this ground.
68. The ISI CA did not have jurisdiction to rule on the appeal by the Appellant. It was evident that the ISI CA was only competent to consider appeal of judgments and rulings, but not individual decisions, of the courts of sports associations such as the KSI CA. The latter make various decisions which cannot be appealed to ISI CA. Articles 35.1 and 35.3 of the Statutes of ISI state that the ISI CA deals with judgments and rulings. Consequently, the ISI CA stated in its decision that *“It is not the role of the ISI Appeal Court to review decisions of the courts of KSI whether the appealed decisions is formally wrong or wrong on the merits”*.
69. In Article 35.2 in the Statutes of ISI the conditions for an appeal to the ISI CA are set out as follows:

“Where a special association decides to have special courts, their cases will not be appealed to the ISI Appeal Court. However, it is permitted to appeal cases of the appeal courts of the special associations that concern the Olympic Charter or its interpretation. In these instances, the ISI Appeal Court decides whether the complaints are of such a nature that it should consider them. If the ISI Appeal Court rejects the appellant’s points of appeal, the case is finally closed”.
70. The Olympic Charter was never an issue in the case before the three KSI judicial instances that ruled on the case. It was only first in his Appeal brief to the ISI CA, that the Appellant invoked various provisions in the Olympic Charter that had allegedly been breached by the First and Second Respondents, respectively. These provisions had, however, had no relevance in the Appellant’s case or as basis for the Decision.
71. The time limit for appeal according to Article R49 of the CAS Code can only start to run upon exhaustion of Icelandic sports legal remedies available to the Appellant. The Appellant’s appeal of the Decision to ISI CA was evidently meaningless and without any merits whatsoever and can therefore not be regarded as an exhaustion of a legal remedy within the Icelandic sports sector. The Decision subject to the appeal to CAS was taken by KSI CA on 28 July 2023 which means that the appeal to CAS, dated 18 September 2023, was made long after the expiration of the 21-day time limit according to Article R49 of the CAS Code.
72. The Appellant was not obliged to appeal to ISI CA before appealing to the CAS. The case did not have any connection with the Olympic Charter as can be seen from the ruling of the ISI CA. There is neither any ambiguity in the ruling nor is there any ambiguity in the Statutes of KSI concerning what kind of cases can be appealed to the ISI CA. The Appellant must stand the consequences of his decision to submit an appeal to the ISI CA that was totally unjustified.

73. It is not correct that the Appellant has financial interest in the transfer ban being enforced until a debt is fully paid and that the Appellant, due to that, has a legal interest in having the transfer ban re-imposed. The Second Respondent does not owe any money to the Appellant and none of the judicial instances have stated that the Second Respondent should make a settlement with the Appellant regarding any outstanding financial obligations. The Appellant is therefore not affected by the decision to lift the transfer ban and lacks legally protected interest/standing to appeal the Decision.
74. The Appeal should also be dismissed on the ground that CAS lacks jurisdiction. The Decision is not a decision within the meaning of Article R47 of the CAS Code which states that the results of disputes and/or complaints within KSI may be appealed to CAS. The Decision was neither a result of a dispute nor a complaint but a result of a request to lift the transfer ban, as the Second Respondent provided proof that it had fulfilled all obligations imposed on the Second Respondent by the KSI instances.
75. The Second Respondent should not be a party in the appeal proceedings at CAS as the dispute is now only between the Appellant and the First Respondent. The case has concerned whether the Appellant should be considered to be an employee and sanctions for lack of settlement with regard to taxes and other salary related charges to public institutions and pension fund. The Decision confirms that all these issues have been settled.
76. According to the Player Contract (a Standard KSI Contract dated 23 December 2019) the parties agreed that the monthly payments during the contract period 2020-2021 should amount to EUR 4,800 net per month. The Second Respondent has fulfilled all of these payments which can be seen by the bank transfer receipts for each of the months submitted in the proceedings before CAS.

V. JURISDICTION OF THE CAS

77. Article R47 of the CAS Code provides as follows:

“An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.”

78. Article 40.3 of the KSI Statutes provides as follows:

“The results of disputes and/or complaints within KSI may be appealed to the Court of Arbitration for Sports (CAS). This only applies if the avenues for appeal within Icelandic sports have been exhausted. CAS will then resolve the dispute in accordance with the Code of Sports-Related Arbitration, unless otherwise required by domestic law”.

79. The Respondents have objected to CAS jurisdiction and argue that CAS does not have jurisdiction as the Decision by KSI CA of 28 July 2023 is mere a letter and cannot be considered as an appealable decision under Article R47 of the CAS Code.
80. The Sole Arbitrator notes in this respect that the issue whether the Decision being an appealable decision or not are not an issue in relation to jurisdiction, but rather in relation to the admissibility of the case (see Mavromati/Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Kluwer Law International, 2015, Article R47 CAS Code, para. 8, p. 382; see also CAS 2019/A/6677, paras 44-56).
81. On the basis of the foregoing, the Sole Arbitrator finds that, following the KSI Statutes as well as the CAS Code, the CAS is competent to decide on the present case.
82. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

83. The Appellant filed his Statement of Appeal on 18 September 2023. He stated in this respect that the appeal pertained to the Decision rendered by the KSI CA on 28 July 2023. It can therefore be ascertained that the Statement of Appeal was filed after the expiration of the 21-day time limit provided by Article R49 of the CAS Code.
84. As appears from the statements of the Parties' pleadings above, the Respondents have, in summary, relied on various grounds for their claim that the appeal shall be declared inadmissible, which are all contested by the Appellant:
 - the appeal was not filed within 21 days from the actual appealable decision, which is the decision of KSI CA from 28 July 2023 to lift the transfer ban for the Second Respondent, and is therefore late;
 - said decision cannot be considered as a decision pursuant to Article R47 of the CAS Code. The Decision from the KSI CA is not a formal decision but a mere letter only stating that the transfer ban imposed the Second Respondent had been annulled;
 - the obligation to exhaust all internal legal remedies before initiating an appeal to CAS only relates to ordinary remedies, whilst the appeal to the ISI CA was only an attempt to invoke extraordinary remedies which do not have effect of suspending time to appeal;
 - the Appellant has not demonstrated in what way his own personal interests would be affected by an annulment of the Decision, so that he lacks legally protected interest and a legal standing to sue.

A. Is the Decision a “decision” pursuant to Article R47 of the CAS Code

85. In general, a communication is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties. The relevant criterion is not the form of the communication but its content.

86. The Sole Arbitrator notes in this respect that the Decision means to amend the decision taken by the KSI CA on 17 July 2023 whereby the KSI CA rejected the request from the Second Respondent on the basis that it was not demonstrated that it had made a settlement in accordance with the judgment from KSI CA on 15 June 2023.
87. Up until the Decision was taken by the KSI CA the Appellant obviously has been considered as a party in the relevant matter before the various judicial instances of KSI. The Decision annulled the transfer ban which had previously been imposed on the Second Respondent. In the Sole Arbitrator's opinion, this means that the "legal state" of the Appellant was affected by the Decision.
88. On the basis of the foregoing, the Sole Arbitrator finds that the Decision should be considered as a decision within the meaning of Article R47 in the CAS Code.

B. Was the appeal timely?

89. It has already been established above that the Appeal was not filed within 21 days from the actual appealable decision, which is the decision of KSI CA from 28 July 2023 to lift the transfer ban imposed on the Second Respondent.
90. Article R47 of the CAS Code and Article 40.3 of the KSI Statutes state the conditions for a decision to be appealed to CAS (cf. paras 77 and 78 above). The question that arises in this respect is whether it was mandatory for the Appellant, in order to exhaust the legal remedies available to him prior to the appeal to CAS, to file an appeal with the ISI CA.
91. Article 38 of the KSI Statutes provides that:

"The decisions of the Appeals Tribunal shall be binding for the parties concerned. However, decisions of the KSI Appeals Tribunal may be appealed to the Appeals Tribunal of ISI in respect of matters that concern the Olympic Charter or its interpretation. Procedure before the ISI Appeals Tribunal is governed by the statutes of ISI".
92. The conditions for an appeal to the ISI CA are set out in Article 33.2 of the ISI Statutes:

"In instances where National Federations decide to have special courts, their cases shall not be referred to the [ISI CA]. However, cases of National Federations' appeals courts may be appealed if they pertain to the Olympic Charter or interpretation thereof. The [ISI CA] decides in such instances whether any aspects of a complaint require court procedure. If the [ISI CA] rejects the appellant's points of appeal, the case is closed once and for all. "
93. In support of his appeal to the ISI CA, the Appellant has claimed that the KSI CA violated in the Decision certain provisions of the Olympic Charter, namely "*the Fundamental Principles of Olympism*" and some articles under section 2 of the Charter, that describes "*the Mission and role of the IOC*". The Sole Arbitrator notes that none of these provisions had been invoked in the proceedings before the KSI judicial instances.
94. In the opinion of the Sole Arbitrator the references to the provisions in the Olympic Charter, which can only be described as general principles, are completely baseless.

95. The obligation to exhaust internal remedies according to Article R47 of the CAS Code only concerns the prior judicial instances foreseen by the applicable regulations, in this case the KSI CA (see CAS 2013/A/3272, para. 64; CAS 2003/A/443, para. 8.5). Therefore, it is not necessary to exhaust all legal remedies but only the legal remedies available to the Appellant under the regulations prior to the CAS appeal. The wording of Article R47 of the CAS Code has been interpreted as encompassing ordinary remedies only and not extraordinary remedies (CAS 2002/A/409, para. 17; CAS 2011/A/2670, paras 4.6 ff; CAS 2021/A/8034, para. 90). In the Sole Arbitrator's opinion, the appeal filed before the ISI CA cannot be considered as an ordinary legal remedy which needed to be exhausted.
96. On the basis of the foregoing, the Sole Arbitrator concludes that the Appellant could still, simultaneously, have filed an appeal with CAS within the 21-day time limit as from the date of the Decision on 28 July 2023. In other words, the Appellant could have submitted his appeal to ISI CA before filing his CAS appeal, but did not have to wait to receive a response from the ISI CA before proceeding to file his appeal before CAS. By failing to file an appeal with CAS within 21 days following the notification of the Decision, the Appellant lost the possibility to challenge the Decision before CAS. The notification of the ISI CA decision did not and could not "revive" the 21-day time limit to file an appeal.
97. This means that the appeal filed by the Appellant on 18 September 2023 was late according to Article R49 of the CAS Code.

VII. CONCLUSION

98. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator finds that the Appeal is not admissible.
99. Accordingly, the Sole Arbitrator does not have to assess the validity of the Parties' remaining arguments regarding the admissibility issues.

VIII. COSTS

(...).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Morten Beck Guldsmid on 18 September 2023 with respect to the decision issued by the Court of Appeal within the Football Association of Iceland (KSI) on 28 July 2023 is inadmissible.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 28 February 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Nilsson
Sole Arbitrator