

Agent claiming commission for football transfer caught offside

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Introduction

A recent Supreme Court case found that an arbitral tribunal did not violate public policy by reducing an agent's claim for commission against a football club by approximately 60%, even though the commission was for the transfer of Robert Lewandowski, one of the world's best footballers.⁽¹⁾ The decision underlines that football agents, in the view of the court, should not claim more than 30% of what is due for players themselves if they want to avoid their claims being dismissed as excessive and an abuse of rights.

Sporting disputes (including in football) are often resolved through arbitration. This pertains not only to disputes between professional athletes, clubs and organisations, but also those involving the agents of these athletes. These cases often provide interesting rules that are applicable in general arbitration.⁽²⁾

Facts

In 2010 a leading Polish footballer, Robert Lewandowski (among the 10 most highly valued players in the world at €80 million) transferred from a Polish club to a German one.⁽³⁾ Under the agreement between his agent and the former club, the agent was entitled to a 12% commission in the event of a further transfer of the player. The agreement contained an arbitration clause.

When the club refused to pay the desired fee, the agent filed a claim for commission against the Polish club with the court of arbitration of the Polish Football Association. The club motioned the tribunal to dismiss the claim, arguing that, among other things, it constituted an abuse of right.

Decisions

The first-instance arbitral panel sided with the agent and awarded the claim for a 12% commission almost in its entirety (approximately PLN3.2 million or €750,000). However, the second-instance arbitral panel reduced the sum awarded by 60% to approximately PLN1.3 million or €300,000. The tribunal argued that, in its view, an agent's claim cannot exceed 30% of the sum awarded to the player for playing for the club. Awarding a higher amount would amount to an abuse of the agent's right to a commission.

The agent filed a motion to set aside the award in part dismissing the remaining part of the claim. He argued that the decision violated Polish public policy by ignoring:

- the autonomy and equality of parties;
- the principle of *pacta sunt servanda* (ie, that the agreements must be kept); and
- the principle of commercial freedom.

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The regional court dismissed the agent's motion. It underlined that an arbitral award does not have to agree with all provisions of substantive law provided that it does not violate Polish public policy. In the court's view, the tribunal's application of the principle of the abuse of rights was within the limits allowed by law.

The Court of Appeals dismissed the agent's appeal. It agreed with the first-instance court, noting further that the rules of the arbitral institution had allowed the tribunal to decide the case *ex aequo et bono* (ie, according to what is right and good).

The Supreme Court dismissed the agent's cassation complaint. It noted that the arbitral tribunal had not decided *ex aequo et bono* (which would entail substituting substantive law with some other normative system). Instead, it had decided on the basis of the substantive law and, only after this process had been completed, applied the notion of the abuse of right (which is also part of the substantive law), finding that the agent's claim should be reduced.

The Supreme Court agreed with the arbitral tribunal that the agent's claim exceeded what the footballer had earned while playing for the club, and that it was the joint effort of the footballer (ie, through hard work and abilities) and the club (ie, through training) that had enabled the successful transfer. As a result, awarding commission in the amount claimed by the agent would constitute an abuse of right. Consequently, the tribunal had not violated Polish public policy.

Comment

In addition to setting a precedent in the field of sports law, the decision is important for arbitration practitioners as it confirms that intervention in the arbitral process on the grounds of public policy is limited to the most severe violations of Polish law. A reasoned reduction of a claim on the basis of the abuse of right is in line with this order. This is yet another sign that Polish state courts' intervention into the arbitral process is in line with international standards.

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Endnotes

(1) Polish Supreme Court, March 28 2017, II CSK 444/16, available in Polish [here](#).

(2) This trend was also demonstrated by a recent Austrian Supreme Court decision. For further details please see Nikolas Pitkowitz's recent [update](#).

(3) According to Transfermarkt.com.

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