

**Decision**  
of the  
**Member of the FIFA Disciplinary  
Committee**

Mrs. Jo Setright [AUS]

on 15 August 2019,

to discuss the case of:

Cruzeiro Esporte Clube, Brazil

(Decision 190509 PST)

---

*regarding:*

failure to comply with

art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

---

## I. inferred from the file

1. On 29 August 2017, the Single Judge of the Players' Status Committee decided that Cruzeiro Esporte Clube (hereinafter also referred to as the Debtor) had to pay to Defensor Sporting Club (hereinafter also referred to as the Creditor), within 30 days as from the date of notification of the decision, the following amounts:

- EUR 1,050,000 as transfer compensation
- EUR 101,500 as a fine

In addition, the Single Judge of the Players' Status Committee decided that the Debtor had to pay costs of proceedings in the amount of CHF 15,000, as follows:

- CHF 5,000 to the Creditor
- CHF 10,000 to FIFA

According to the findings of the aforementioned decision, no costs of proceedings would be due in case the relevant party decided not to request the grounds.

2. The findings of the decision of the Single Judge of the Players' Status Committee were duly communicated to the parties, amongst others, on 13 September 2017. Furthermore, the grounds of said decision, which were requested by the Debtor, were notified to the parties on 19 April 2018. Following the notification of the grounds, the Debtor filed, on 10 May 2018, an appeal before the Court of Arbitration for Sport (CAS) against the decision of the Single Judge of the Players' Status Committee on 29 August 2017.
3. On 9 April 2019, the CAS rendered an Award dismissing the appeal lodged by the Debtor and confirming the decision of the Single Judge of the Players' Status Committee. In addition, the CAS ruled that the costs of the arbitration were to be entirely borne by the Debtor and that the latter had to pay to the Creditor an additional CHF 5,000 as a contribution toward its legal costs and expenses.

4. As a consequence of the CAS Award, the decision of the Single Judge of the Players' Status Committee became final and binding.
5. Since the aforementioned amounts (point 1 & 3 *ut supra*) were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Debtor on 17 July 2019.
6. Additionally, the secretariat to the FIFA Disciplinary Committee invited the Debtor to provide its position within six (6) days of the notification of the relevant correspondence at the latest and informed the Debtor that the case would be submitted to a member of the FIFA Disciplinary Committee on 12 August 2019.
7. After the opening of disciplinary proceedings, the Debtor sent a correspondence to the secretariat to the Disciplinary Committee and informed it, amongst others<sup>1</sup>, that:
  - Cruzeiro Esporte Clube will comply with the payment to the Creditor as soon as possible and once the former overcomes the current financial difficulties that the Debtor's country is experiencing.
  - Despite the sensible financial situation, Cruzeiro Esporte Clube tried to pay as much money as it could and by the end of May 2016, it ended up exhausting all of its back-up funds, which made the payments of the outstanding amounts due to the Creditor become impracticable.
  - Cruzeiro Esporte Clube confirms that it owes the outstanding amounts established by the Single Judge of the Players' Status Committee to the Creditor and that in the upcoming weeks, it will address a payment plan to the latter in order to resolve the dispute as soon as possible.
  - Cruzeiro Esporte Clube believes that its financial situation clearly meets the requirements of an "exceptional circumstance" as developed by the long-standing understanding of the FIFA Disciplinary Committee. Therefore, the FIFA Disciplinary Committee should consider this exceptional circumstance when assessing the present matter.

---

<sup>1</sup> The arguments reflected do not purport to include every single contention put forth by the Debtor. However, the Member of the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

## II. and considered

1. According to article 53 par. 2 of the FIFA Statutes, the Disciplinary Committee may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter also referred to as *the FDC*) on member associations, clubs, officials, players, intermediaries and licensed match agents.
2. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (art. 15 of the FDC):
  - a) will be fined for failing to comply with a decision;
  - b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;
  - c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 15 par. 3 of the FDC).

3. Moreover, in line with article 54 par. 1 h) of the FDC, cases involving matters under article 15 of the FDC may be decided by one member of the Disciplinary Committee alone (hereinafter also referred to as *member of the Committee*).
4. The member of the Committee emphasises that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.
5. Having said that, the member of the Committee notes that the CAS Award rendered on 9 April 2019, is final and binding.
6. In view of what has been explained under paragraph II./4. above, the member of the Committee is not allowed to analyse the case decided by the Single Judge of the Players' Status Committee and, subsequently, by the CAS, as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision rendered by the CAS.

7. Furthermore, the member of the Committee observes that the Debtor has failed to prove in which way the apparent financial crisis that its country was experiencing could have prevented it from fulfilling its obligations towards the Creditor. In this sense, the member of the Committee finds it worthwhile to emphasise that a club has the duty to be aware of its actual financial strength, constitute provision in anticipation of possible issues and finally conclude contracts that can be fulfilled.
8. As the Debtor did not comply with the Award rendered by the CAS on 9 April 2019 and is, consequently, withholding money from the Creditor, it is considered guilty of not respecting a financial decision.
9. The fine to be imposed under the above-referenced art. 15 of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 100 and CHF 1,000,000. The Debtor withheld the amount unlawfully from the Creditor and FIFA. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the member of the Committee regards a fine amounting to CHF 30,000 as appropriate. This amount complies with the Committee's established practice.
10. In application of article 15 par. 1 b) of the FDC, the member of the Committee considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor and to FIFA.
11. In accordance with article 15 par. 1 c) of the FDC and with the Circular n° 1628, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban will be pronounced and demotion to a lower division may be ordered.
12. A ban from registering any new players, either nationally or internationally, will be automatically imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline and until the complete payment of the outstanding amounts due to the Creditor and to FIFA.
13. The Brazilian Football Association is hereby reminded of its obligation to automatically implement the abovementioned transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Brazilian Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Brazilian Football Association fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with

the relevant proof of the transfer ban, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

### III. has therefore decided

8. The club Cruzeiro Esporte Clube is found guilty of failing to comply with the award rendered by the Court of Arbitration for Sport (CAS), by means of which the decision passed by the Single Judge of the Players' Status Committee on 29 August 2017 was confirmed. In this sense, and following the already mentioned CAS Award and decision of the Single Judge of the Players' Status Committee, the Debtor was ordered to pay:
  - a) To Defensor Sporting Club:
    - EUR 1,050,000 as transfer compensation
    - EUR 101,500 as a fine
    - CHF 5,000 as procedural costs in relation to the proceedings before the Players' Status Committee
    - CHF 5,000 as contribution towards the legal expenses incurred before the CAS proceedings
  - b) To FIFA
    - CHF 10,000 as procedural costs
9. The Debtor is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 30 days of notification of the present decision.
10. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor and to FIFA.
11. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Brazilian Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be

implemented automatically at national and international level by the Brazilian Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

12. As a member of FIFA, the Brazilian Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Brazilian Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.
13. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment made and to provide the relevant proof of payment.
14. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Jo Setright  
Member of the Disciplinary Committee

\*\*\*\*\*

## **Note relating to the payment of the fine**

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

\*\*\*\*\*

## **LEGAL ACTION**

According to art. 49 of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.