

Decision

of the

FIFA Appeal Committee

Mr Thomas Bodstrom [SWE], chairman;
Mr Victor Garza [MEX], member;
Mr Salman Al Ansari [QAT], member;
Ms Larissa Zakharova [RUS], member.

on 6 September 2019,

to discuss the case of:

Club Amora FC, Portugal

(Decision 190208 APC)

regarding:

Appeal lodged by the club Amora FC against the decision passed by the FIFA Disciplinary Committee on 9 May 2019

I. Inferred from the file

1. On 1 August 2018 and 24 January 2019, the club Amora FC (hereinafter also referred to as "*the Club*" or "*the Appellant*") entered into three transfer agreements with the club Associação Black Bulls (hereinafter, "*ABB*") to engage the players Nibrass Mohamed Juma, Abel Jochua Nhantumbo and Johnson Juah (hereinafter "*the Players*"). The three transfer agreements contained, amongst others, the same clause (clause 2) which reads as follows:

"The first party is obliged, subject to a penalty fee of minimum €1,000,000.00 (one million euros) not to assign, either temporarily or definitively, directly or indirectly, the economic and/or federative rights of the player to any sports club/entity that plays any football championship in Mozambique, without the written consent of the second party."

2. Following an investigation conducted by FIFA's TMS Compliance Department, disciplinary proceedings were opened against the Appellant on 25 March 2019 for a possible violation of art. 18bis of the Regulations on the Status and Transfer of Players [ed. 2018] (hereinafter, "*the RSTP*" or "*the Regulations*") and art. 4 par. 3 of Annexe 3 of the RSTP.
3. On 9 May 2019, the Disciplinary Committee passed a decision (hereinafter, "*the Appealed Decision*") against the Appellant. In particular, the Disciplinary Committee decided as follows:
 1. *The Club Amora FC is ordered to pay a fine to the amount of CHF 25,000.*
 2. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
 3. *In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code, the Club Amora FC is warned on its future conduct.*
4. The terms of the Appealed Decision were notified to the Appellant on 16 May 2019. Upon request of the Appellant, the grounds of the Appealed Decision were notified on 24 May 2019.
5. On 29 May 2019, the Appellant informed the secretariat to the FIFA Appeal Committee (hereinafter, "*the Secretariat*") about its intention to appeal the aforementioned decision.
6. On 3 June 2019, the Appellant submitted its reasons for the appeal and provided a copy of the proof of payment of the appeal fee.
7. On 22 August 2019, the Secretariat to the Appeal Committee acknowledged receipt of the two abovementioned correspondences and confirmed that the payment of the appeal fee had been duly received by FIFA.

8. The position of the Appellant is summarized hereafter. However and for the sake of clarity, this summary does not purport to include every single contention put forth by the Appellant. Nevertheless, the FIFA Appeal Committee (hereinafter, "*the 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 these arguments in the following outline of their positions and in their ensuing discussion on the merits.

9. The Appellant considers that the Appealed Decision lacked evidence and that the Disciplinary Committee made an inaccurate interpretation of the facts. In this sense, the Appellant claimed the following:
 - i. The Appellant did not infringe art. 18bis of the RSTP;
 - ii. The Appellant used an old draft available at its archive in order to formalize in writing the agreements between the two clubs;
 - iii. The agreements were signed by each player freely and with full consent of its content. The clause did not interfere with the Players' rights or prevented them from being transferred;
 - iv. After having been informed by FIFA, the parties realised that such clause, which had not been negotiated, was in the agreements and immediately removed it as it did not manifest the will of the parties and immediately made a written amendment to the first agreement which was signed by the parties. Copies of the amended agreements, where such clause was declared void, were uploaded into TMS;
 - v. In the event that the FIFA Appeal Committee does not agree with the above facts and arguments and decides that they shall not prevail it should consider that the clause only attributes a right of preference to the club ABB in the event of a transfer;
 - vi. 50% of the economic rights of the Players remained with ABB, therefore, it is normal that the Appellant should give ABB the right to reacquire its percentage before selling the economic rights of the Players. Such clauses are very usual and it is normal for the clubs to have an opportunity to protect their investment in young players;
 - vii. The interpretation of the clause, which was in Portuguese language, does not coincide with the conclusions drawn by FIFA;
 - viii. With regards to art. 4 par. 3 of Annexe 3 of the RSTP, the Appellant underlined that neither the Appellant nor ABB are to be considered third-parties, nor was any third-party involved;
 - ix. The fine of CHF 25,000, which represents a large part of the Appellants annual budget, is too high and contravenes the spirit of the FIFA transfer rules. In order to pay the fine the Appellant will have to make a huge financial effort which can damage its financial and sportive goals;
 - x. The clause should be interpreted as an opportunity for the counter club to protect their investment on young players by reacquiring the Players economic rights by making an offer which should always at least be equivalent to the one offered by a third party.

In light of the above explanations, the Appellant requests that the sanction imposed by the FIFA Disciplinary Committee shall be set aside and all legal expenses shall be refunded. Should the Appeal Committee still consider that there was any kind of infringement, the sanction should be a warning or a reprimand instead of a fine as such a fine is damaging for a club of the Appellant's size.

II. and considered

A. PROCEDURAL ASPECTS

1. First of all, the Committee will analyse whether the appeal is admissible and whether it is competent to assess the matter and then it will proceed to analyse the merits of the case.

a) COMPETENCE OF THE FIFA APPEAL COMMITTEE AND ADMISSIBILITY OF THE APPEAL¹

2. Primarily, the Committee recalls that the procedural aspects of the matter at stake are governed by the 2017 edition of the FIFA Disciplinary Code (hereinafter, "the 2017 FDC"), in particular considering that the present appeal was lodged while the 2017 FDC was applicable and before the entry into force of the 2019 edition of the FDC.
3. In this context, the Committee underlines that the sanction imposed by the Disciplinary Committee through the Appealed Decision is CHF 25,000. As such, the Committee pointed out that, in accordance with art. 79 in conjunction with art. 118 of the 2017 FDC, it is competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 9 May 2019.
4. This having been established, the Committee acknowledges that:
 - i. the grounds of the decision were notified on 24 May 2019,
 - ii. the Appellant communicated its intention to appeal on 29 May 2019,
 - iii. the Appellant submitted its reasons for the appeal on 3 June 2019,
 - iv. the appeal fee of CHF 3,000 was paid on 3 June 2019.
5. In this regard, the Committee underlines that according to art. 120 of the 2017 FDC, the final day for the Appellant to notify FIFA of its intention to appeal was on 27 May 2019. Nevertheless, in view of the particularities of the case, i.e. the lack of experience of the Appellant with FIFA procedures, but also and mainly the transitional period before the launch of the new FIFA Disciplinary Code, the Committee exceptionally accepted to hear the appeal at hand despite its late filing.

¹ Under the Disciplinary Code edition 2017.

6. In view of this, the Committee holds, on the one hand, that the time limits established under art. 120 pars. 1 and 2 of the 2017 FDC in order for an appeal to be admissible have been met in the case at hand, and, on the other hand that the appeal fee was duly paid in accordance with art. 123 of the 2017 FDC.
7. Against such background, the Committee declares the Appeal admissible.

b) APPLICABLE LAW

8. In continuation, the Committee deems that it has to determine which edition of the RSTP applies to the substance of the matter at stake.
9. In these circumstances, the Committee notes from the Appealed Decision that the Appellant was sanctioned for entering into two transfer agreements on 1 August 2018 and one transfer agreement on 24 January 2019, which enabled the counter club to influence its independence and policies in employment and transfer-related matters.
10. Consequently, the Committee considers that the present matter should be analysed in light of the 2018 edition of the RSTP which was in force from 1 June 2018 to 31 May 2019.
11. This being established, the Committee will subsequently analyse the merits of the present case.

B. MERITS

12. In this context, the present proceedings are related to a decision rendered by the Disciplinary Committee by means of which the Appellant has been sanctioned (i) for entering into three transfer agreements which enable the counter club to influence its independence and policies in transfer-related matters, and (ii) for not declaring that influence in the relevant transfer instructions entered in TMS by the Appellant to engage the Players from ABB.
13. In this sense, the Committee notes that the Appellant challenges the decision passed by the Disciplinary Committee and claims that the clause which the Disciplinary Committee found to be in breach of art. 18bis of the RSTP only grants a right of preference to ABB, and, as such, does not breach any provision of the RSTP.
14. The Committee considers that in order to decide on this appeal, there are four questions that have to be answered:
 - a) What is the prohibition foreseen in art. 18bis of the RSTP?
 - b) Does the transfer agreement contain clauses contrary to art. 18bis of the RSTP?
 - c) Did the Appellant fail to enter correct information in TMS and breach art. 4 par. 3 of Annexe 3 of the RSTP?

d) If so, are the sanctions imposed by the Disciplinary Committee proportionate?

a) What is the prohibition foreseen in art. 18bis of the RSTP?

15. First and foremost, the Committee refers to the allegations made by the Appellant that the Disciplinary Committee made a wrong application of art. 18bis of the RSTP as the clause at stake only granted ABB a right of preference to engage the Players in the event of a future transfer, but did not prevent them from being transferred.
16. In this sense, the Committee wishes to stress that a correct interpretation of the FIFA regulations in general, and of art. 18bis of the RSTP in particular, must show their true meaning. This is possible only through the analysis of the purpose sought, of the interest protected as well as of the legislator's intent².
17. In this respect, the Committee would like to recall the content of art. 18bis par. 1 of the RSTP [2018 edition], which establishes that:

"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams."
18. In this context, the Committee would first of all point out that according to the wording of art. 18bis of the RSTP – *"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence [...]"* –, there is a passive stance: a club must not empower another entity to influence it by means of a contractual obligation, meaning that a club will be violating article 18bis of the RSTP if it allows a third party or another club to acquire the ability to exercise influence over its own decision-making process on employment or transfer-related matters.
19. Secondly, the Committee refers to the jurisprudence of the Court of Arbitration for Sport (CAS), which has shed some light on the notion of "influence"³. In this regard, CAS ruled that the prohibition foreseen in art. 18bis of the RSTP applies whenever *"any other party to that contract or any third party"* is granted the real ability to effect on, determine or impact the behaviour or conduct of the concerned club in relation to employment and transfer-related matters in such a way as to restrict the club's independence or autonomy in such matters.
20. Consequently, the Committee considers that a club will be in breach of art. 18bis of the RSTP every time it enters into an agreement that enables another club (or any third party – natural or legal person –) to have a real ability to effect on, determine or impact its behaviour or conduct in employment and transfer-related matters or the performance of its team, and therefore influence the club's independence and policies

² CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; CAS 2017/A/5173

³ CAS 2017/A/5463

in these matters. Furthermore, the Committee emphasises that the mere fact that such a clause is included in an agreement is an infringement *per se* and it is therefore irrelevant whether any influence has actually been exercised or not.

21. In light of the above, the Committee observes that the Appealed Decision clearly set out the regulatory content and the scope of application of art. 18bis of the RSTP.

22. As a result, the Committee is fully satisfied with the Disciplinary Committee's analysis of art. 18bis of the RSTP and therefore considers that the said Committee has correctly interpreted this provision.

b) Does the transfer agreement contain clauses contrary to art. 18bis of the RSTP?

23. As a preliminary remark, the Committee highlights that it is undisputed that the Appellant entered into three transfer agreements with ABB in order to engage the players Nibrass Mohamed Juma, Abel Jochua Nhantumbo and Johnson Juah.

24. It is equally undisputed that every one of these transfer agreements contains the clause 2 which indicates, amongst others, that *"[the Appellant] is obliged, subject to a penalty fee of minimum € 1,000,000.00 (one million euros) not to assign, either temporarily or definitively, directly or indirectly, the economic and/or federative rights of the player to any sports club/entity that plays any football championship in Mozambique, without the written consent of the second party"*.

25. In this respect, the Disciplinary Committee considered that clause 2 of the transfer agreements was contrary to art. 18bis of the RSTP since it entitled ABB to influence the Appellant.

26. In particular, the Disciplinary Committee pointed out that in the hypothetical case of a transfer offer of EUR 500,000 (twenty times the amount paid for two of the players) sent from a Mozambican Club (other than ABB), the Appellant would very likely have to renounce to such an offer due to the fact that it would have to pay the amount of EUR 1,000,000 as a penalty fee. In this regard, the Disciplinary Committee was unanimously convinced that a fully independent club would not be subject to such an obligation, which directly impacts the transfer-related matters, the independence, the policy, and in general, its functioning as a football club.

27. With this in mind, the Committee acknowledges that the Appellant contests the aforementioned conclusion of the Disciplinary Committee and considers that this clause does not breach art. 18bis of the RSTP. In particular, the Appellant argues that the clause only grants ABB a "right of preference".

28. In this respect, the Committee notes that the Appellant seems to claim that it is a buy-back clause which does not violate art. 18bis of the RSTP.

29. In this sense, the Committee points out that a buyback clause is a provision in a contract that allows the seller of property the right or opportunity to repurchase the property under stated conditions. It gives the original seller the first right to buy before any other attempt to sell is made.
30. However, the Committee observes that the clause states that there is a penalty fee of EUR 1,000,000 if the Appellant transfers the Player to another club in Mozambique without ABB's written consent. The fact that the Appellant has to seek ABB's written consent when receiving an offer from a club in Mozambique and that it has to pay a penalty fee if it fails to do so, clearly shows that it is by no means a right of preference as the Appellant cannot decide independently in transfer-related matters.
31. Furthermore, the Committee would like to highlight that the penalty fee of EUR 1,000,000 is much higher than the transfer fees paid for the Players (Johnson Juah was transferred free of payment, the other 2 players were transferred for EUR 25,000 each) and as such is a real deterrent – thus exerting a real influence on the Appellant – in the event that the latter would receive an offer from a club in Mozambique with regard to one of the Players at hand.
32. The Committee further notes that the Appellant claims that clause 2 was already present in old drafts and was not negotiated between the parties. In this regard, the Committee underlines that clubs have the responsibility to ensure that they do not enter into any transfer agreements that contravene any FIFA regulations or public law. As a result, the Committee held that such argument can obviously not be taken into account.
33. In light of the foregoing and for the sake of good order, the Committee would like to recall that it is irrelevant if any influence was actually carried out or not as the mere fact of contractually agreeing upon a clause that entitles a third party to influence the club's independence and policies in employment or transfer-related matters represents an infraction per se.
34. In this sense, the Committee highlights that this type of clause erases a whole domestic transfer market (Mozambique) from the current club's spectrum in case it wishes to release the Players. There is no reason why a club should be prohibited from transferring a player back to the country where he was recruited from.
35. Consequently, the Committee confirms that clause 2 of the transfer agreements contravenes art. 18bis of the RSTP since it is evident that this clause not only impacts on the Appellant's conduct but also determines that the Appellant has to pay a penalty fee of at least EUR 1,000,000 if it transfers the Players to a club in Mozambique without ABB's written consent.
36. Having established that clause 2 of the transfer agreements breached art. 18bis of the RSTP, the Committee will subsequently analyse if the Appellant failed to enter correct information in TMS.

c) Did the Appellant fail to enter correct information in TMS and breached art. 4 par. 3 of Annexe 3 of the RSTP?

37. The Committee notes that the Disciplinary Committee found the Appellant in breach of art. 4 par. 3 of Annexe 3 of the RSTP since it falsely declared that there was no third-party influence in the scope of the transfer of the three players.
38. In this context, the Committee first stresses that the objective of TMS is to improve the credibility and transparency of the entire transfer system.
39. In this regard, it is essential that clubs are aware of their responsibility and the importance of inserting correct information supported by the relevant documents in a responsible manner and at regular intervals in TMS.
40. In line with the above, clubs have the obligation to declare in TMS whether they have entered into any agreement enabling a third party to acquire the ability to influence the club's independence in employment and transfer-related matters.
41. In this regard, even though the Appellant uploaded the relevant agreements in TMS, it was a mandatory obligation to declare the third-party influence, even more taking into consideration that the said agreements – as has been demonstrated - breach the provision of art. 18bis of the Regulations. Therefore, by falsely declaring in TMS that there was no third-party influence in relation to the transfer, the Appellant failed to disclose full and correct information in TMS and breached art. 4 par. 3 of Annexe 3 of the RSTP.
42. In light of all the foregoing, the Committee totally adheres to the Disciplinary Committee's conclusions with respect to the violation by the Appellant of art. 4 par. 3 of Annexe 3 of the RSTP.

d) If so, are the sanctions imposed by the FIFA Disciplinary Committee proportionate?

43. Having established that the Appellant has breached the aforementioned provisions, the Committee subsequently notes that the Appellant considered that the sanctions imposed by the Disciplinary Committee were disproportionate and that the Disciplinary Committee failed to take into consideration the Appellant's annual budget when determining the sanction.
44. In this respect, the Committee notes that the Appellant was sanctioned with a fine of CHF 25,000. Additionally, the Appellant was warned as to its future conduct and has to bear the costs and expenses of the disciplinary proceedings amounting to CHF 3,000.
45. In this respect, the Committee recalls the jurisprudence of CAS according to which a decision-making body fixing the level of pecuniary sanctions should, amongst others,

take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances⁴.

46. In light of the foregoing, the Committee observes that the Appellant infringed art. 18bis of the RSTP, a provision aiming at protecting the clubs' freedom and independence in relation to recruitment and transfer-related matters as well as to ensure that the integrity of the game of football and its most essential values were safeguarded. In other words, this provision intends to protect one of the FIFA objectives which is to *"to promote integrity, ethics and fair play with a view to preventing all methods and practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, Players, Officials and members or give rise to abuse of Association Football"*⁵.
47. In this regard, the Committee wishes to endorse the developments of the Appealed Decision in the sense that any possible situation where a third-party acquired a possibility to directly influence a club in its employment and transfer-related matters should not be tolerated and is absolutely forbidden. In particular, the Committee reiterates that clubs are responsible to assure that the RSTP are duly respected and to ensure that no third-party acquires a possibility to directly influence them in such areas.
48. In particular, the Committee notes that since the Appellant committed multiple violations of the Regulations, the Disciplinary Committee based the sanction on the most serious offence, namely the breach of art. 18bis of the RSTP. In this regard, the Disciplinary Committee recalled the logic behind the application of art. 18bis and the seriousness of an infringement of this provision and therefore imposed a fine amounting to CHF 25,000.
49. In this sense, the Disciplinary Committee recalled that the breaches of the Regulations have occurred three times. Therefore, the fine to be imposed could be multiplied by the number of times the violation occurred.
50. However, the Disciplinary Committee took into account *"the low level in which [the Appellant] is evolving"* as well as *"the efforts undertaken by [the Appellant] in what concerns the new versions of each agreement uploaded in TMS even before the disciplinary proceedings were initiated"*. Consequently, the Disciplinary Committee decided not to multiply the sanctions and to keep them as a unique infraction. The Disciplinary Committee considered a fine of CHF 25,000 for the breach of art. 18bis of the RSTP to be adequate. With regard to the other infringement committed the Committee decided to supplement the fine of CHF 25,000 by a warning for the violation of art. 4 par. 3 of Annexe 3 of the RSTP.

⁴ CAS 2014/A/3813.

⁵ Cf. art. 2 lit g) of the FIFA Statutes.

51. Against such background, the Committee is however of the opinion that the fine imposed on the Appellant is oppressive, particularly taking into account the low level in which it is evolving. In continuation, the Committee praised the Appellant's behaviour in the sense that it directly rectified the transfer agreements after having been made aware of the potential breaches of the RSTP. As a result of these considerations, the Committee deems that the fine imposed on the Appellant is to be reduced.
52. In view of all the circumstances pertaining to the present matter, the Committee deems that a reduction of the fine to CHF 10,000 would be an appropriate and congruent sanction. Furthermore, the Committee confirms the warning imposed by the Disciplinary Committee.

C. CONCLUSION

53. Bearing in mind the foregoing, the Committee concludes that the appeal lodged by the Appellant is to be partially upheld and the decision taken by the FIFA Disciplinary Committee on 9 May 2019 is to be amended with regard to the fine imposed on the Appellant.

D. COSTS

54. Finally, the Committee decides based on art. 105 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the Appellant.
55. In this sense, the Committee notes that the Appellant has already paid the appeal fee of CHF 3,000 and decides that the aforementioned costs and expenses of the proceedings are set off against this amount.

III. has therefore decided

1. The FIFA Appeal Committee found the club Amora FC responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfer of Players related to third-party influence on clubs (art. 18bis) and to the obligations of clubs with respect to the TMS (art. 4 par. 3 of Annexe 3).
2. The appeal lodged by the club Amora FC is partially upheld.
3. The decision of the FIFA Disciplinary Committee rendered on 9 May 2019 is modified as follows:
 1. *The Club Amora FC is ordered to pay a fine to the amount of CHF 10,000.*

2. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
3. *In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code [ed. 2017], the Club Amora FC is warned on its future conduct.*
4. The costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by the club Amora FC. This amount is set off against the appeal fee of CHF 3,000 already paid by the club Amora FC.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodstrom
Chairman of the FIFA Appeal Committee

LEGAL ACTION

According to 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.

The full address and contact numbers of the CAS are the following:

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