

Decision

of the

FIFA Appeal Committee

Mr Thomas BODSTROM [SWE], Chairman
Mr Neil EGGLESTON [USA], Deputy Chairman
Mr Andres PATON [ARG], Member

on 27 March 2020,

to discuss the case of:

Player Sayed Baqer, Bahrain

(Decision 191361 APC)

regarding:

Appeal lodged by the player Sayed Baqer against the decision passed by the FIFA
Disciplinary Committee on 19 December 2019 (Decision 191361)

I. Inferred from the file

1. On 14 November 2019, in the context of the preliminary competition of the FIFA World Cup Qatar 2022™, Asian Zone, a match was played in Hong Kong between the representative teams of Hong Kong and Bahrain.
2. In this context, according to a report provided by the FARE Network, the following incident occurred:

“The video footage available shows Bahrain’s player number 2 Sayed Baqer pulling his eyes to the side in an attempt to imitate an Asian’s physical features as the teams go to the locker rooms after the final whistle.”
3. In this sense, a link to a video showing the incident reported by the FARE Network was provided along with the report.
4. On 19 November 2019, disciplinary proceedings were opened against the player Sayed Baqer (hereinafter also referred to as “the Appellant”) for a possible violation of articles 12 and 13 of the FIFA Disciplinary Code (hereinafter, “FDC”).
5. On 19 December 2019, the Disciplinary Committee passed a decision (hereinafter, “the Appealed Decision”) against the Appellant. In particular, the Disciplinary Committee decided as follows:
 1. *The FIFA Disciplinary Committee found the player Sayed Baqer responsible for the infringement of the relevant provision of the FIFA Disciplinary Code related to discrimination (art. 13).*
 2. *The player Sayed Baqer is suspended for ten (10) matches.*
 3. *The FIFA Disciplinary Committee orders the player Sayed Baqer to pay a fine to the amount of CHF 30,000.*
 4. *In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the player Sayed Baqer is warned on his future conduct.*
 5. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
6. The terms of the Appealed Decision were notified to the Appellant on 23 December 2019. Upon request of the Appellant, the grounds of the Appealed Decision were notified on 30 January 2020.

7. On 3 February 2020, the Appellant informed the Secretariat to the FIFA Appeal Committee (hereinafter, "*the Secretariat*") about his intention to appeal the aforementioned decision.
8. On 7 February 2020, the Appellant submitted his reasons for the appeal.
9. On 13 February 2020, the Secretariat acknowledged receipt of the two abovementioned correspondences and confirmed that the payment of the appeal fee had been duly received by FIFA.
10. The position of the Appellant is summarized hereinafter. 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:
 - i. Art. 13 of the FDC "*is clear and concise when limiting the authority of the Committee to choose between the available sanctions. Despite all, it should be noted that the separate terms of "and" and "or" are seemingly contradictory, lending confusion when combining the two terms into "and/or". Clearly, the term "or" refer to choose between the alternatives proposed, while the term "and" is to combine both presented alternatives*";
 - ii. The Disciplinary Committee should have chosen either "*suspension lasting at least ten matches or a specific period*" or "*any other appropriate disciplinary measures*" and should not have combined both sanctions;
 - iii. Combinations of sanctions are allowed according to art. 6 of the FDC, however, the combination of the measures listed in art. 6 of the FDC and the sanction of suspension mentioned in art. 13 of the FDC is not justified;
 - iv. The sanction is very harsh on the Appellant and disproportionate to the player's wages in Bahrain as it is approximately equal to the Appellant's yearly wage. The sanction is beyond the purpose of deterrence and affects the Appellant's financial and social situation to a very high level;
 - v. The Appellant does not have any precedents and apologized to the Hong Kong Football Association by an official letter as well as through social media to every person that felt offended;
 - vi. Such improper behavior was issued by the Appellant in a moment of weakness resulting from the psychological pressure after the end of the match, which coincided with the spectator's provoking chants;

- vii. The fine will unfavorably affect the Appellant's financial and social conditions, especially when the fine is approximately equal to the Appellant's wage over a year and the Appellant no longer gains his normal wage with his club nor the national team due to the deductions resulting from the suspension;
- viii. As a result, the Appellant requests the Appeal Committee to reconsider the decision.

II. and considered

1. In view of the circumstances of the present matter, the FIFA Appeal Committee first decided to address some key procedural aspects (A), before entering into the substance of the case at stake (B).

A. PROCEDURAL ASPECTS

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

2. First of all, the Committee will establish whether the appeal is admissible and whether it is competent to assess the matter as well as which law is applicable. Then it will proceed to analyse the merits of the case.
3. In this context, the Committee underlines that the sanction imposed by the Disciplinary Committee through the Appealed Decision is a fine of CHF 30,000 and a suspension for ten (10) matches. As such, the Committee points out that, in accordance with art. 56 in conjunction with art. 57 of the FDC, it is competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 19 December 2019.
4. This having been established, the Committee acknowledges that:
 - i. the grounds of the decision were notified on 30 January 2020,
 - ii. the Appellant communicated his intention to appeal on 3 February 2020,
 - iii. the appeal fee of CHF 1,000 was paid on 6 February 2020;
 - iv. the Appellant submitted his reasons for the appeal on 7 February 2020.
5. In view of this, the Committee holds, on the one hand, that the time limits established under art. 56 pars. 3 and 4 of the 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. 56 par. 6 of the FDC.
6. Against such background, the Committee declares the Appeal admissible.

b) APPLICABLE LAW

7. In continuation, the Committee deems that it has to determine which edition of the FDC applies to the substance of the matter at stake.
8. In these circumstances, the Committee notes from the Appealed Decision that the Appellant was sanctioned for the incidents during the match played between Hong Kong and Bahrain in the scope of the preliminary competition of the FIFA World Cup Qatar 2022™ on 14 November 2019.
9. Consequently, the Committee considers that the present matter should be analysed in light of the 2019 edition of the FDC.
10. This being established, the Committee will subsequently analyse the merits of the present case.

B. MERITS OF THE CASE

11. 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 for the infringement of art. 13 of the FDC related to discrimination.
12. In this sense, the Committee notes that the Appellant challenges the decision passed by the Disciplinary Committee and claims, *inter alia*, that the Disciplinary Committee was not allowed to combine a suspension and a fine for sanctioning the violation of art. 13 of the FDC. Moreover, he claims that the fine imposed by the Disciplinary Committee is disproportionate.
13. As a consequence, the Committee considers that in order to decide on this appeal, there are three questions that have to be answered:
 - a) Is the “slant-eyed” gesture to be considered racist against Asian people and has the Appellant violated art. 13 of the FDC?
 - b) Does art. 13 of the FDC (in combination with art. 6 of the FDC) allow the Disciplinary Committee to impose a suspension and a fine?
 - c) Is the sanction imposed on the Appellant by the Disciplinary Committee proportionate?

a) Is the “slant-eyed” gesture to be considered racist against Asian people and has the Appellant violated art. 13 of the FDC?

14. As a preliminary remark, the Committee highlights that it is undisputed that the incident mentioned in the FARE Networks’ report was committed by the Appellant.
15. The Committee further notes that the Appellant does not contest that he violated art. 13 of the FDC.
16. However, for the sake of good order, the Committee analyses if the incident, namely the Appellant pulling his eyes to the side in an attempt to imitate an Asian’s physical features, infringes art. 13 of the FDC.
17. First, the Committee would like to recall the content of art. 13 of the FDC, which establishes that *“[a]ny person who offends the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnic, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, wealth, birth or any other status or any other reason, shall be sanctioned with a suspension lasting at least ten matches or a specific period, or any other appropriate disciplinary measure.”*
18. In this sense, the Appealed Decision pointed out that the Appellant’s gesture *“is known as “slant-eyed” gesture, which is recognised as an ethnic slur used to mock and/or refer to Asian people or people of Asian descent in a derogatory, disrespectful, pejorative and insulting manner, and, as such, widely known for mocking. Such slur is to be considered extremely disparaging and offensive”*.
19. Within this context, the Committee fully agrees with the Disciplinary Committee’s analysis in the Appealed Decision, *i.e.* that such gesture is undoubtedly to be considered a derogatory action on account of race and/or ethnic origin that offends the dignity or integrity of a group of people, namely Asian people.
20. Bearing the above in mind, the Committee fully adheres to the Disciplinary Committee’s conclusion that the Appellant violated art. 13 of the FDC.

b) Does art. 13 of the FDC (in combination with art. 6 of the FDC) allow the Disciplinary Committee to impose a suspension and a fine?

21. Having established that the Appellant breached art. 13 of the FDC, the Committee subsequently refers to the allegation made by the Appellant that the Disciplinary Committee was not allowed to impose a match suspension and a fine as art. 13 of the FDC establishes *“(..) shall be sanctioned with a suspension lasting at least ten matches or a specific period, or any other appropriate disciplinary measure”*.

22. In this sense, the Appellant claims that the Disciplinary Committee should have chosen either "suspension lasting at least ten matches or a specific period" or "any other appropriate disciplinary measures" and should not have combined both sanctions. The Appellant acknowledges that combinations are allowed according to art. 6 of the FDC, however, claims that the combination of the measures listed in art. 6 of the FDC and the sanction of a suspension mentioned in art. 13 of the FDC is not justified.

23. In this regard, the Committee first highlights that the Appellant is a natural person, and as such can be subject to the sanctions described under art. 6 par. 1 and 2 of the FDC.

24. Consequently, the Committee would like to recall the content of art. 6 par. 1 and 2 of the FDC:

Art. 6 par. 1 of the FDC:

"The following disciplinary measures may be imposed on natural and legal persons:

a) warning;

(...)

c) fine;

(...)"

Art. 6 par. 2 of the FDC:

"The following disciplinary measures may be imposed on natural persons only:

a) suspension for a specific number of matches or for a specific period;

(...)"

25. Furthermore, the Committee refers to art. 6 par. 6 of the FDC, which establishes that *"[t]he disciplinary measures provided for in this Code may be combined"*.

26. In light of the foregoing, the Committee believes that there is no reason why the Disciplinary Committee should not have been allowed to combine a match suspension and a fine as well as a warning, especially, as art. 6 par. 6 of the FDC clearly allows a combination of several sanctions.

27. Furthermore, the Committee notes that the wording of art. 13 of the FDC does in no way prohibit such a combination. The Committee points out that this is even more evident as art. 13 of the FDC allows the imposition of "any other appropriate disciplinary measures", which implies that any sanction could be imposed by the Disciplinary Committee as long as it is appropriate.

28. In light of the above, the Committee deems that a fine in combination with a match suspension can be considered as "any other appropriate disciplinary measure".

29. Consequently, the Committee confirms that the Disciplinary Committee was allowed to impose a suspension for ten (10) matches in combination with a fine of CHF 30,000 and a warning.

c) Is the sanction imposed on the Appellant by the Disciplinary Committee proportionate?

30. Having established the above, the Committee subsequently notes that the Appellant argues that the sanctions imposed by the Disciplinary Committee are very harsh on the Appellant and the fine is disproportionate to the player's wages in Bahrain. The sanction is beyond the purpose of deterrence and affects the Appellant's financial and social situation to a very high level.
31. In this respect, the Committee recalls that the Appellant was sanctioned with a suspension for ten (10) matches and a fine of CHF 30,000. Additionally, the Appellant was warned as to its future conduct.
32. In this sense, the Committee notes that the Appellant contests the amount of the fine, however, does not appear to contest the suspension for ten (10) matches imposed by the FIFA Disciplinary Committee.
33. Bearing the above in mind, 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 circumstances¹.
34. In light of the foregoing, the Committee observes that the Appellant infringed art. 13 of the FDC, a provision aiming at combatting any form of discrimination or racism during football matches.
35. In this sense, the Committee highlights that in accordance with art. 3 of the FIFA Statutes FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.
36. In this regard, the Committee wishes to endorse the developments of the Appealed Decision in the sense that the gesture made by the Appellant is completely unacceptable. As a professional football player the Appellant serves as an example for his fans around the world and has an exemplary duty, on and off the pitch. He cannot afford to make such an intolerable gesture. The Committee believes that such conduct violates FIFA's values and cannot have any room in football.
37. However, the Committee takes into account that the Appellant apologized to the Hong Kong Football Association for his conduct by means of an official letter and has no precedent.

¹ CAS 2014/A/3813.

38. Furthermore, the Committee notes that the Appellant alleges that the fine is approximately equal to his wage over a year, and that due to the deductions resulting from the suspension for ten (10) matches he is no longer gaining his normal wage.
39. Consequently, the Appeal Committee considers that the sanction imposed by the Disciplinary Committee is disproportionate and that the Appellant's situation was not fully taken into consideration when determining the sanction.
40. In this sense, the Committee highlights that despite FIFA's zero tolerance policy on discrimination, the sanction imposed shall not be oppressive. The aim of the sanction is to have a deterrent effect in order to avoid conducts like the one of the Appellant in the present case.
41. In view of all the circumstances pertaining to the present matter, the Committee deems that a reduction of the fine to CHF 5,000 would be an appropriate and congruent sanction. Furthermore, the Committee confirms the suspension of the Appellant for ten (10) matches and the warning.

C. CONCLUSION

42. 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 19 December 2019 is to be amended with regard to the fine imposed on the Appellant.

D. COSTS

43. The Committee decides based on art. 45 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 1,000 shall be borne by the Appellant.
44. In this sense, the Committee notes that the Appellant has already paid the appeal fee of CHF 1,000 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 player Sayed Baqer responsible for the infringement of the relevant provisions of the FIFA Disciplinary Code related to discrimination (art. 13).
2. The appeal lodged by the player Sayed Baqer is partially upheld.

3. The decision of the FIFA Disciplinary Committee rendered on 19 December 2019 is modified as follows:
 2. *The player Sayed Baqer is suspended for ten (10) matches.*
 3. *The FIFA Disciplinary Committee orders the player Sayed Baqer to pay a fine to the amount of CHF 5,000.*
 4. *In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the player Sayed Baqer is warned on his future conduct.*
 5. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
4. The costs and expenses of these proceedings in the amount of CHF 1,000 are to be borne by the player Sayed Baqer. This amount is set off against the appeal fee of CHF 1,000 already paid by the player Sayed Baqer.

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.

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