



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6406 Football Association of Penang v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Manfred **Nan**, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Football Association of Penang, Penang, Malaysia

Represented by Mr Vassil Dimitrov, Attorney-at-Law, Sofia, Bulgaria

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Ms Audrey Cech, Legal Counsel FIFA Litigation Department, Zurich, Switzerland

Respondent

* * * * *

I. PARTIES

1. Football Association of Penang (the “Appellant” or the “Club”) is a football club with its registered office in Penang, Malaysia. The Club is registered with the Football Association of Malaysia (the “FAM”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
3. The Club and FIFA are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Proceedings before the FIFA Dispute Resolution Chamber judge (FIFA DRC judge)

5. On 3 October 2018, the FIFA DRC judge rendered a decision in a case involving the Club and the player Reinaldo Rodrigues de Oliveira Lobo (the “Player”), with the following findings (the “FIFA DRC Decision”) (emphasis in original):

“1. *The claim of [the Player] is partially accepted.*

2. *The [Club] is ordered to pay to [the Player], within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 90,000, plus 5% interest p.a. until the date of effective payment .as follows:*

a. 5% p.a. on the amount of USD 15,000 as of 8 July 2017;

b. 5% p.a. on the amount of USD 15,000 as of 8 August 2017;

c. 5% p.a. on the amount of USD 15,000 as of 8 September 2017;

d. 5% p.a. on the amount of USD 15,000 as of 8 October 2017;

e. 5% p.a. on the amount of USD 15,000 as of 8 November 2017;

f. 5% p.a. on the amount of USD 15,000 as of 8 December 2017;

3. *In the event that the aforementioned sum plus interest is not paid by the [Club] within the stated time limit, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *Any further claim lodged by the [Player] is rejected.*
5. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received."*
6. On 22 October 2018, the operative part of the FIFA DRC Decision was communicated to the Parties. The Club did not request for the grounds of the FIFA DRC Decision and therefore the FIFA DRC Decision became final and binding.
7. On 27 November 2018, the Player informed FIFA that the Club had failed to comply with the FIFA DRC Decision.
8. On 18 December 2018, FIFA requested the Club to immediately pay the relevant amounts to the Player and to provide a copy of the payment receipt by 23 January 2019 at the latest, and informed it that otherwise the entire file would be forwarded to the FIFA Disciplinary Committee for consideration and a formal decision.
9. On 8 February 2019, FIFA informed the Player and the Club that the file would be forwarded to the FIFA Disciplinary Committee.

B. Proceedings before the FIFA Disciplinary Committee

10. On 8 March 2019, the Deputy Secretary to the FIFA Disciplinary Committee informed the Club and the Player of the opening of disciplinary proceedings against the Club due to its failure to respect the final and binding FIFA DRC Decision. The Club was urged to pay the amount due to the Player by 14 March 2019 at the latest and was informed that the FIFA Disciplinary Committee would take a decision based on the documents in its possession, should the Club fail to submit any statement or pay the outstanding amount by the specified deadline.
11. On 18 March 2018, in the absence of any response or proof of payment from the Club, the Chairman of the FIFA Disciplinary Committee rendered his decision with the following operative part (the "FIFA DC Decision") (emphasis in original):
 - “1. *The [Club] is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the [FIFA DRC Decision] according to which it was ordered to pay the [Player]:*

USD 90,000 as outstanding remuneration within 30 days of notification of the decision plus 5% interest p.a. until the date of effective payment as follows:

- a. 5% p.a. on the amount of USD 15,000 as of 8 July 2017;
 - b. 5% p.a. on the amount of USD 15,000 as of 8 August 2017;
 - c. 5% p.a. on the amount of USD 15,000 as of 8 September 2017;
 - d. 5% p.a. on the amount of USD 15,000 as of 8 October 2017;
 - e. 5% p.a. on the amount of USD 15,000 as of 8 November 2017;
 - f. 5% p.a. on the amount of USD 15,000 as of 8 December 2017;
2. The [Club] is ordered to pay a fine to the amount of CHF 10,000. The fine is to be paid within 30 days of notification of the present decision. Payment can be made either in Swiss Francs (CHF) to account no [...] or in US Dollars (USD) to account no. [...].
 3. The [Club] is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the [Player].
 4. If payment is not made to the [Player] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [FAM] by this deadline, six (6) points will be deducted automatically by the [FAM] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.

In this respect, and for the sake of clarity, the [FAM] is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits.

5. If the [Club] still fails to pay the amount due to the [Player] even after the deduction of points in accordance with point 4 above, the FIFA Disciplinary Committee, upon request of the [Player], will decide on a possible relegation of the [Club's] first team to the next lower division.
6. As a member of FIFA, the [FAM] is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course. If the [FAM] 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.
7. The [Club] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [FAM] of every payment made and to provide the relevant proof of payment.
8. The [Player] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [FAM] of every payment received."

12. On 25 March 2019, the operative part of the FIFA DC Decision was communicated to the Club.
13. On 26 March 2019, the Player informed the Club of the actual amount due including interest, corresponding to USD 96,770.57.
14. On 23 April 2019, the FAM provided FIFA with proof of payment to the Player in the amount of USD 92,597.72.
15. On 24 April 2019, FIFA requested the Player to confirm by 30 April 2019 at the latest, whether all outstanding amounts due by the Club had been executed in compliance with the FIFA DC Decision.
16. On 29 April 2019, the Player informed both the Club and FIFA that *“the outstanding amounts due has not been entirely executed, reason why, considering the payment performed by the [Club], the [Club] shall be ordered to pay to the Player the outstanding amount of USD 4,444.11 [...], plus 5% [...] interest per year on the said amount as from 18 April 2019 until the effective payment”*.
17. On 6 May 2019, the Club sent a letter to the Player with *“apologies on late payment and shortage amount of USD 4,444.11 plus 5% interest [...]”*, requesting the Player to withdraw this part of his claim.
18. On 27 June 2019, the Player informed FIFA that the Club still not entirely complied with the FIFA DC Decision, asking FIFA to continue with the disciplinary proceedings.
19. On 28 June 2019, FIFA informed the Club and the FAM that as the Club failed to comply in full with his financial obligations towards the Player within 30 days from notification of the Appealed Decision, the FAM is obliged to deduct 6 points automatically *“without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat”*. Furthermore, FIFA requested the FAM to provide it with proof of the points deduction by no later than 3 July 2019.
20. On 1 July 2019, the Player informed FIFA that as the Club is trying to perform the payment of the balance due to the Player, and *“since the [Player] is only interested to receive its credits, he will not raise any objection towards the suspension of the sanction’s application by FIFA for a few more days”*.
21. On 2 July 2019, the FAM asked FIFA for assistance in the light of the Player’s letter dated 1 July 2019, *“regarding the extension of time to suspend the application of the sanction by FIFA”*.
22. On 10 July 2019, the Player informed FIFA that he received the due remaining amounts from the Club, asking FIFA to consider this case closed, reiterating that *“the Player will not raise any objection towards the lifting of the sanction applied by FIFA, since the [Player] was only interested to receive its credits”*.
23. On 17 July 2019, FIFA’s Deputy Secretary to the Disciplinary Committee informed the Club and the FAM that the Club had fulfilled its financial duties towards the Player, in

compliance with the FIFA DRC Decision, “*on 10 July 2019 only, i.e. after the expiry of the [...] deadline*”, adding that as the Club did not pay the Player in full within 30 days from notification of the Appealed Decision, the FAM is obliged to deduct 6 points automatically “*without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat*”. Furthermore, FIFA requested the FAM to provide it with proof of the points deduction by no later than 22 July 2019 (the “FIFA DC Letter”).

24. On 21 July 2019, the FAM issued a media release in which it confirmed the deduction of six points from the Club’s first team.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 7 August 2019, the Club lodged an appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2019) (the “CAS Code”), challenging the FIFA DC Letter, naming FIFA as the sole respondent. In this Statement of Appeal, the Club requested that the present case be submitted to a sole arbitrator. The Respondent remained silent on the issue of the number of arbitrators. Further, the Club designated the Statement of Appeal as its Appeal Brief in accordance with Article R51 of the CAS Code, and applied for a stay “*of the execution of the decision for the deduction of 6 points*”.
26. On 15 August 2019, FIFA considered the Club’s application for a stay moot.
27. On 16 August 2019, the Club maintained its application for a stay of the execution of the Appealed Decision.
28. On 22 August 2019, FIFA filed its answer to the Club’s request for a stay with an additional request for the bifurcation of the proceedings, objecting to the admissibility of the appeal.
29. On 23 August 2019, the Division President decided to submit this matter to a sole arbitrator, in accordance with Article R50 of the Code.
30. On the same day, the Club agreed to the bifurcation of the proceedings.
31. On 12 September 2019, the President of the CAS Appeals Arbitration Division rejected the Appellant’s request for a stay of the execution of the Appealed Decision.
32. On 25 September 2019, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Parties were informed that the arbitral tribunal appointed to decide the present matter was constituted as follows:
 - Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator.
33. On 30 September 2019, further to an enquiry from the CAS Court Office in this regard, the Club indicated its preference for the Sole Arbitrator to decide on the bifurcated

matter based solely on the Parties' written submissions without holding a hearing. FIFA did not submit its position on this issue.

34. On 3 October 2019, the Club filed its written submission on the admissibility of the appeal.
35. On 10 October 2019, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to rule on the admissibility of the appeal based solely on the Parties' written submissions, without the need to hold a hearing.
36. On 22 and 25 November 2019 respectively, the Club and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office. By signing the Order of Procedure, the Parties, *inter alia*, expressly confirmed that the appeal was filed against the FIFA DC Letter, that the Sole Arbitrator would rule on the admissibility of the appeal without the need to hold a hearing, and that their right to be heard had been respected.

IV. REQUESTS FOR RELIEF

37. In its Appeal Brief, the Club submitted the following requests for relief:

"1. To declare that CAS has jurisdiction on the matter and to rule de novo on the case without referring it back to FIFA.

2. To annul the decision of FIFA to deduct 6 points from the total of the Appellant because the FIFA Disciplinary Committee did not have jurisdiction to sanction the Appellant due to lack of FIFA DRC jurisdiction in the initial employment-related dispute.

Or alternatively if request No 2 is dismissed

3. To acquit the Appellant of any alleged wrongdoing or violations of FIFA Regulations.

Or alternatively if request No 3 is dismissed

4. To annul the decision of FIFA to deduct 6 points from the total of the Appellant, because this decision violates the principle of proportionality and serves no legitimate aim.

Or alternatively

5. To annul the decision of FIFA to deduct 6 points from the total of the Appellant, because this decision violates the principle of ne bis in idem and non ultra petita.

Only in case CAS decides that the Appellant is guilty of any violation:

6. To declare that the fine of 10,000 CHF, imposed by FIFA is the only proportionate punishment for the alleged late compliance with the FIFA DRC Decision.

Only in case CAS decides that deduction of points is justified against the Appellant:

7. *To deduct the points from the future total of the Appellant in the next season 2020, while allowing the Appellant to retain the promotion to the Malaysian Super League, which the Appellant earned in 2019.*

In any event

8. *To order the Respondent to bear all the costs incurred with the present procedure.*
9. *To order the Respondent to cover all legal and other expenses of the Appellant related to the present procedure, in an amount to be determined at the discretion of the CAS Panel.”*

38. In its Answer to the Club’s request for a stay with an additional request for the bifurcation of the proceedings, FIFA submitted the following requests for relief:

- “1 *The Respondent requests the bifurcation of the present proceedings so that the Sole Arbitrator can decide in a preliminary award on the admissibility of the present Appeal;*
- 2 *To reject the Appellant’s application for provisional and conservatory measures and, in particular, the request for a stay of execution of the correspondence sent by the secretariat to the FIFA Disciplinary Committee.*
- 3 *To order the Appellant to cover all legal expenses of the Respondent related to the present procedure.”*

V. JURISDICTION

39. 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 it prior to the appeal, in accordance with the statutes or regulations of that body.”.

40. As noted by MAVROMATI/REEB (The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, 2015, at 383), “[i]f the ‘decision’ challenged before CAS is not a decision in the meaning of Article R47, CAS would have jurisdiction but the appeal would be dismissed”. Notwithstanding the issue of whether the FIFA DC Letter constitutes an appealable “decision” (considered further below), the jurisdiction of the CAS was not disputed, and derives from Article 58.1 of the FIFA Statutes (2018 edition) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed

by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

41. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.
42. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

A. FIFA’s Submissions on admissibility

43. The FIFA DC Letter is clearly not a “*decision*” by FIFA, since it was an informative correspondence sent by the secretariat to the FIFA DC (which is not a FIFA judicial body entitled to pass decisions) in the context of its administrative functions, and that it in no way modified the Club’s legal situation. Moreover, the FIFA DC Letter was solely sent as a reply to the correspondence sent by the FAM on 2 July 2019 seeking advice of FIFA, and was in fact the second letter sent to the FAM by the secretariat to the FIFA DC FIFA by means of which the latter reminded the FAM, for the second time, of its obligation to automatically deduct points from the Club’s first team in the domestic championship.
44. By means of the FIFA DC Decision, the Club “*was ordered to pay USD 90,000 as outstanding remuneration within 30 days of the decision plus 5% interest p.a. until the date of effective payment. In particular, said decision provided that the [Club] was “granted a final deadline of 30 days as from the notification of the present decision in which to settle its debt to the [Player]” and that “if payment is not made to the [Player] and proof of such payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [FAM] by this deadline, six points will be deducted automatically by the [FAM] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*”
45. FIFA refers to the note relating to the terms of the FIFA DC Decision, which provides that failure to request the grounds “*will result in the decision becoming final and binding and the party being deemed to have waived its right to file an appeal*”. As such, if the Club disagreed with the automatic deduction of points provided by the FIFA DC Decision, it should have requested the grounds of the FIFA DC Decision and file an appeal at CAS, which it never did. Therefore, the FIFA DC Decision became final and binding, and the Club was deemed to have waived its right to appeal.
46. Alternatively, FIFA argued that “*if the Club considered the actual implementation of the point deduction by the [FAM], it should have filed an appeal against the latter and not FIFA*”.
47. For all the reasons stated above, FIFA is of the opinion that the present appeal is inadmissible because it was filed late, or wrongly directed to FIFA.

B. The Club's Submissions on admissibility

48. The Club argued that the FIFA DC Letter could be appealed to the CAS due to the following provisions:
- Article R47 of the CAS Code, which states: *“An appeal against the 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 it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”*.
 - Article 58 of the FIFA Statutes 2018, which states: *“1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question. 2. Recourse may only be made to CAS after all other internal channels have been exhausted”*.
 - Article 64 (5) of the FIFA Disciplinary Code (“FDC”) 2017, which states: *“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”*.
49. The Club maintained that *“[t]here are no further internal legal remedies before FIFA available for the [Club], therefore he [sic] has exhausted all remedies prior to submitting the present appeal before CAS. The finality of the [FIFA DC Decision] to impose 6-point deduction is confirmed by the fact that FIFA threatened FAM with disciplinary sanction if the decision is not implemented by 22 July 2019. The decision was implemented by FAM on 21 July 2019 [...]. From this date, the 21-day time limit for appeal begins”*.
50. Moreover, the Club argued that the FIFA DC Decision *“was not final, because the [FIFA] constantly changed the terms of this decision in its subsequent correspondence sent to the [Club]. The time limits within the [FIFA DC Decision] was changed on numerous occasions, before it was finally ruled that despite the [Club] paying the entire debt to the [Player], the FIFA Disciplinary Committee decided on 17 July 2019 to deduct 6 points from the total of the [Club] in the Malaysian Premier League. The [Club] would not have had any legal interest to prematurely appeal against the [FIFA DC Decision], because this decision was not final, the time limits contained within it was changed on 28 June 2019 [...] and later on 17 July 2019. The final terms of the decision was communicated to the [Club] on 17 July 2019 [...]. Requesting grounds of a non-financial decision [the FIFA DC Decision] is pointless. Likewise, it is pointless to submit an appeal against a sanction, which is uncertain to be imposed and dependent on the outcome of the disciplinary procedure and the actions of the parties. This procedure was still pending from 18 March 2019 until 17 July 2019 when it was concluded by FIFA. The [FIFA DC Decision] did not directly impose the point-deduction to the [Club]. Several other letters were exchanged between the parties*

before FIFA finalized its decision on 17 July 2019 and supplemented it with additional legal arguments”.

51. In addition, the Club stresses that the “*sanction was imposed on 17 July 2019, because FIFA erroneously decided on 17 July, that the [Club] made the full payment, albeit outside of the allowed time limit. [The FIFA DC Letter] supersedes the previous decisions of FIFA. This is the final decision on the matter and as such is subject to appeal before FIFA [sic]*”.
52. Article 64(5) of the FDC “*does not mention any additional prerequisites for submitting an appeal. Namely, this article does not require a request for grounds to be made prior to submitting the appeal to CAS. It gives the [Club] the right to submit an appeal directly with CAS*”.
53. The Club refers to CAS case law, pointing out that “*the grounds for the decision should not be considered a pre-requisite for an appeal*”, and that therefore, it had no obligation to request the grounds “*of the decision under appeal. This decision in any event was not finalized until 17 July 2019, because of the numerous changes made by [FIFA] to its content and terms during that period. The FAM implemented the decision on 21 July 2019. The Statement of Appeal was sent by the [Club] via DHL courier to CAS on 07 August 2019. Regardless of whether the time limit for appeal started from the day after 17 July 2019 or 21 July 2019, the appeal was still submitted within the 21-day time limit (Art. 58 FIFA Statutes 2018) and therefore the present appeal is admissible and CAS has jurisdiction to rule on it regardless of the decision containing grounds or not.*”

C. The Sole Arbitrator’s decision on admissibility

54. An appeal arbitration procedure on the basis of Article R47 of the CAS Code is only available for disputes whose subject matter concerns an appeal against a “decision”. This follows from Article R47 of the CAS Code, which 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 it prior to the appeal, in accordance with the statutes or regulations of that body.”
55. The Sole Arbitrator observes that the applicable FIFA regulations, in particular the FIFA Statutes, the FIFA Regulations on the Status and Transfer of Players and the FIFA Disciplinary Code, do not provide any definition for the term “decision”.
56. Nevertheless, there is rich CAS jurisprudence in relation to what constitutes a “decision” within the meaning of Article R47 of the CAS Code (see *inter alia*, CAS 2004/A/659; CAS 2004/A/748; CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2014/A/3744 & 3766; CAS 2015/A/4266; CAS 2018/A/5933). Accordingly, the characteristic features of a decision may be described as follows:

➤ the term “decision” must be construed in a broad sense;

- the form of the communication in question is irrelevant for its qualification;
- a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effects;
- an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an “*animus decidendi*”, i.e. an intention of a body of the association to decide on the matter.

57. In the matter at hand, the Sole Arbitrator observes that the FIFA DC Decision contains the following two notes:

“Note relating to the terms of the decision:

*The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. Any request for the grounds of the decision must be sent in writing to the secretariat to the FIFA Disciplinary Committee, within ten days of receipt of notification of the terms of the decision (art. 116 par. 1 of the FIFA Disciplinary Code). **Failure to do so will result in the decision becoming final and binding and the party being deemed to have waived its right to file an appeal** (emphasis added by the Sole Arbitrator).*

Note relating to the legal action:

If the party requests the grounds of the decision, the motivated decision will be communicated in full, written form. The time limit to lodge an appeal before the [CAS] begins upon receipt of this motivated decision (art. 116 par. 2 of the FIFA Disciplinary Code).”

58. The Sole Arbitrator has no hesitation to conclude that the FIFA DC Decision is final and binding, as the Club did not appeal it to the CAS when it was issued, nor even asked for the grounds in accordance with Article 116 of the FIFA DC.

59. Furthermore, the FIFA DC Decision clearly stated that (emphasis added):

“(…) *six (6) points will be deducted automatically by the [FAM] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*”

60. In continuation, the Sole Arbitrator turns his attention to the FIFA DC Letter which reads as follows – as relevant:

“[T]he [Player] informed that all financial duties had been fulfilled [...].

Notwithstanding the above, [...], we would like to refer the [Club] and the [FAM] to the point 4. of the [FIFA DC Decision], [...] notified on 25 March 2019.

Following the wording of said article, if payment is not made to the [Player] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [FAM] within 30 days as from notification

of the decision, six (6) points will be deducted automatically by the [FAM] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.

In this regard, we understand from the correspondence from the [Player], that the amounts due to the latter have been paid and settled on 10 July 2019 only, i.e. after expiry of the aforementioned deadline.

In this respect, up to date, it appears that we have not been provided with evidence of the automatic implementation of the points deduction that the [FAM] was ordered to carry out in compliance with point 4 of the above-mentioned decision nor with any proof of the initiation by the [FAM] of any internal procedure that may be required to ensure a timely implementation of the sanction (as explained in the FIFA Circular No 1628).

*Consequently, we request the [FAM] to **immediately** – and by no later than **22 July 2019** – provide our services with the **proof of the points deduction**; in particular the standings of the relevant division on which it can be seen that six (6) points have been deducted from the first team of the [Club] in the domestic league championship.*

Please let us remind you that in case the [FAM] should fail to do so within the stipulated deadline, disciplinary proceedings will be opened against the latter in order for the [FIFA DC] to pronounce an appropriate sanction against the [FAM] which can lead to expulsion from all FIFA competitions. [...].”

61. In view of the CAS jurisprudence cited above regarding the characteristics of a “decision”, the Sole Arbitrator does not consider the FIFA DC Letter to be a “decision”. The FIFA DC Letter was a (second) reminder to the FAM, reminding FAM to execute the points deduction in accordance with the findings of the FIFA DC Decision. There was no “*animus decidendi*” (i.e. an intention to decide on the matter) in the FIFA DC Letter, nor did this letter change or amend the content or terms of the final and binding FIFA DC Decision, as argued by the Club.
62. The Sole Arbitrator endorses the following reasoning of another CAS panel:

“[D]ebtors cannot simply appeal the execution of a points deduction (or transfer ban, relegation or any other applicable sanction) which is automatically applicable pursuant to a final and binding decision every time that sanction becomes enforceable, as this would be contrary to the system of enforcement of decisions implemented by FIFA to ensure that decisions are being complied with by the debtors.

The Panel notes that it is the case with any disciplinary regime that a failure to comply with the sanctions imposed has to contain a mechanism for increasing those sanctions to bring about compliance. This is built into the FDC with greater sanctions only being engaged after failure to settle payment in the first instance. The legality and validity of the sanctions set out in Article

64 of the FDC have been considered and confirmed by the SFT (Decision of the SFT 4P.240/2006 dated 5 January 2007). The decision regarding which sanctions are applicable, and when (in the case of persistent failure to pay) is made by the FIFA DC at the time of issuing its decision. In the case at hand, this decision was made in the FIFA DC Decision. The enforcement of the increased sanctions do not constitute further “decisions” by the FIFA DC each and every time.

Moreover, the Panel notes that FIFA Circular 1628 (dated 9 May 2018 and which came into force on 23 May 2018 for all FIFA DC cases) stated as follows in relation to the procedure that must be followed by the FIFA DC with respect to points deductions (emphasis added by the Panel): “The member association concerned will be required to automatically implement such sanction as of the first day following the expiry of the granted deadline, unless the debtor provides evidence to both the secretariat to the FIFA Disciplinary Committee and the member association concerned that the amount due has been paid (i.e. proof of payment) before the expiration of the final deadline. In such case, the receipt of payment shall be confirmed by the creditor.

It will not be possible to avoid the implementation of the point deduction (or to lift it, once implemented) even if the debtor complies with the decision after the expiration of the final deadline.” (see CAS 2018/A/5933, para. 68-70 as published on the CAS website).

63. In summary, for all the reasons stated above, the Sole Arbitrator concluded that the FIFA DC Letter was not a “decision” that could be appealed, and therefore the Club’s appeal is inadmissible.

VII. COSTS

64. Article R64.4 CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid

by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

65. Article R64.5 CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

66. Having taken into account the outcome of the arbitration, in particular that the Club’s appeal was declared inadmissible, the Sole Arbitrator considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne in full by the Club.

67. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, in particular that FIFA was not represented by external counsel, the Sole Arbitrator rules that each party shall bear its own legal fees and other expenses incurred in connection with the present arbitration proceedings.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 August 2019 by the Football Association of Penang against FIFA's letter to the Football Association of Malaysia and the Football Association of Penang dated 17 July 2019 is inadmissible.
2. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne in full by Football Association of Penang.
3. Both Parties shall bear their own legal fees and other expenses incurred in connection with the present arbitration proceedings.
4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 December 2019

THE COURT OF ARBITRATION FOR SPORT

Manfred Nan
Sole Arbitrator