



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6515 Club Kayserispor Kulübü Derneği v. Douglas Ferreira & FIFA

AWARD ON COSTS

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom
Arbitrators: Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal
Mr Kepa Larumbe, Attorney-at-Law, Madrid, Spain

in the arbitration between

CLUB KAYSERISPOR KULÜBÜ DERNEĞİ, Kayseri, Turkey
Represented by Mr Ayhan Çopuroğlu, Attorney-at-Law, Istanbul, Turkey

as Appellant

and

DOUGLAS FERREIRA, Dois Vizinhos, Brazil
Represented by Mr Luis Cassiano Neves and Mr Bernardo Palmeiro, Attorneys-at-Law, 14
Sports Law, Porto, Portugal

as First Respondent

and

FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA), Zurich,
Switzerland
Represented by Mr Alexander Jacobs, Legal Counsel, Zurich, Switzerland

as Second Respondent

I. PARTIES

1. Club Kayserispor Kulübü Derneği (the “Club” or the “Appellant”) is a football club with its registered office in Kayseri, Turkey. The Club is currently competing in the Turkish Süper Lig, the highest division in the Turkish football league system. It is a member of the Turkish Football Federation (the “TFF”), which in turn is affiliated to the Fédération Internationale de Football Association.
2. Mr Douglas Ferreira (the “Player” or the “First Respondent”) is a Brazilian citizen and professional football player, born in Dois Vizinhos, Brazil on 18 May 1986. He currently does not play for any professional football club.
3. Fédération Internationale de Football Association (“FIFA” or the “Second Respondent”) is the governing body of world football, with its headquarters in Zurich, Switzerland, and is a legal entity registered under Swiss law.

II. FACTUAL BACKGROUND

4. In summary, this matter was an appeal of a decision rendered by the FIFA Disciplinary Committee (the “FIFA DC”) in which the Club was sanctioned for the non-compliance of a final and binding arbitral award issued by the Court of Arbitration for Sport (the “CAS”).
5. On 17 January 2020, the Club wrote to the CAS Court Office confirming that it withdrew its appeal. As such, the Panel will rule only on the issue of costs in this award and will not consider the merits of the parties’ dispute.

A. Proceedings before the FIFA Dispute Resolution Chamber

6. On 29 March 2018, the FIFA Dispute Resolution Chamber (the “DRC”) decided that the Club had to pay to the Player EUR 139,765 as outstanding remuneration and EUR 1,608,000 as compensation for breach of contract within 30 days as from the date of notification of the decision plus interest at the rate of 5% from 25 April 2017 and 8 May 2017 respectively until the date of effective payment (the “DRC Decision”).
7. On 6 November 2018, the Club appealed the DRC Decision before the CAS. During the hearing before CAS on 14 February 2019, the Parties reached a settlement agreement, which resulted in a Consent Award dated 25 March 2019 replacing the DRC Decision (the “Consent Award”).

B. Proceedings before the FIFA DC

8. On 16 April 2019, the Player informed the DRC that the Club had failed to execute the payment of the first instalment and requested the matter to be forwarded to the FIFA DC in order to enforce the Consent Award.
9. On 15 August 2019, the FIFA DC rendered its decision as follows (the “Appealed Decision”):

- “1. *The club Kayserispor Kulübü Derneği (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Court of Arbitration for Sport on 25 March 2019, according to which it was ordered to pay to the player Douglas Ferreira (hereinafter, the Creditor):*
- EUR 1,310,000 as agreed by the parties in a settlement agreement submitted to the Court of Arbitration for Sport and ratified by the Panel.*
2. *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.*
3. *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.*
4. *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 Turkish Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Turkish 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.*
5. *As a member of FIFA, the Turkish 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 Turkish 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.*
6. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment made and to provide the relevant proof of payment.*
7. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment received.”*
10. On 20 September 2019, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 11 October 2019, in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the Club filed a Statement of Appeal with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Club nominated Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal, as an arbitrator.
12. On 21 October 2019, in accordance with Article R51 of the CAS Code, the Club filed its Appeal Brief with the CAS.
13. On 28 October 2019, in accordance with Article R53 of the CAS Code, the Respondents jointly nominated Mr Kepa Larumbe, Attorney-at-Law, Madrid, Spain, as an arbitrator.
14. On 6 December 2019, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, England
Arbitrators: Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal
Mr Kepa Larumbe, Attorney-at-Law, Madrid, Spain
15. On 20 December 2019, in accordance with Article R55 of the CAS Code, the Player filed his Answer to the Club’s Appeal.
16. On 27 December 2019, in accordance with Article R55 of the CAS Code, FIFA filed its Answer to the Club’s Appeal.
17. On 17 January 2020, the Club wrote to the CAS Court Office stating as follows:

“I... hereby present the payment receipts for the unpaid balance which is the subject of the legal conflict in front of CAS.

...

Following amounts were paid by [the Club] to the respective accounts; €1.117.000,00 to the bank account under the name of [the Player] and €193.000,00 to the bank account under the name of 14 Consulting LDA on 15/01/2020. [...]

I hereby request the panel to drop the case against [the Club] due to devoidness (sic!) of the essence of the case and refund of the costs to the previously provided bank account of [the Club].”
18. On 24 January 2020, the CAS Court Office wrote to the Parties as follows:

“I ... on behalf of the Panel, invite the Respondents by 31 January 2020:

 - *The [Player] to confirm that he received the payments as alleged [by the Club];*
 - *[FIFA] to comment on the [Club’s] email and, in particular, to provide its position on the impact of the [Club’s] payment on the imposed disciplinary sanctions.”*

19. On 30 January 2020, FIFA wrote to the CAS Court Office, stating *inter alia*:
- “Firstly, and regardless of payment of the total outstanding amount to the [Player], the [Club] remains liable for the payment of the fine of CHF 30,000 cf. par. III.2 of the Appealed Decision. Such sanction remains unaffected by the Appellant’s payment to [the Player] of the total outstanding amount.*
- Secondly, and should the [Player] confirm receipt of the total outstanding amount, pursuant to par. III.4 of the Appealed Decision, the automatic transfer ban would not come into force (currently suspended pending the outcome of the present proceedings)...”*
20. On 31 January 2020, the Player wrote to the CAS Court Office stating *inter alia*:
- “The [Player]... would like to inform you that the total amount due was not paid.*
- Instead of receiving the amount of EUR 1.310.000, the [Player] received the amount of EUR 1.309.757,98. [...]*
- As EUR 242.02 remains outstanding, the [Player] considers that the total amount due was not paid. Not to mention that he contends that he is entitled to the payment of default interest over the amount of EUR 1.310.000 from 13 April 2019 until 16 January 2020, which have also not been paid, despite having been requested.”*
21. On 6 February 2020, the CAS Court Office wrote to the Parties and invited the Club, by 10 February 2020, *“to inform the CAS Court Office about its intentions in this matter in light of the content of the Respondents’ respective letters...”*
22. On 18 February 2020, as the Club failed to respond to the above request by the given deadline, the CAS Court Office wrote to the Parties and provided a second deadline (21 February 2020) for the Club to provide its response.
23. On 25 February 2020, the CAS Court Office wrote to the Parties confirming that the Club had once again failed to provide its comments within the given deadline of 21 February 2020.
24. On 10 March 2020, the CAS Court Office wrote to the Parties stating as follows:
- “In spite of two possibilities given to the [Club], the latter failed to inform the CAS Court Office about its intentions in this matter in light of the content of the Respondents’ respective letters of 30 and 31 January 2020.*
- The Panel however notes from the [Club’s] email of 17 January 2020 that “I kindly request the panel to drop and dismiss the case due to voidness (sic!) of the case. Our official request is in the attachments among with the annexes and exhibits that show the details of payment.*
- Unless I hear otherwise from the Appellant by 13 March 2020, the Panel understands that the [Club] withdraws its appeal and, consequently, will shortly issue an award on costs. The Appealed Decision will then become final and binding.”*

25. On 6 April 2020, the Club wrote to the CAS Court Office stating *inter alia*:

“[The Club] has fulfilled financial obligations to the Player, which constituted the essence of the legal conflict. In accordance to the payment made by [the Club], I have previously submitted the receipts for the payment to CAS via procedures@tas-cas.org and as the case became devoid of essence, I filed a request for reimbursement of procedural costs.

Unfortunately no replies were given to my referment regarding the procedural costs, more is pity time for the hearing we have previously requested previously was not notified.

On the whole, I would like to repeat my request for closure of this case as it is devoid of essence, due to the new state of legal conflict I kindly request CAS to reimburse the procedural costs. A Bank Account shall be immediately provided upon your demand.”

26. On 7 April 2020, the CAS Court Office wrote to the parties stating *inter alia*:

“The [Club] is reminded that, in spite of two possibilities given, the latter never clearly informed the CAS Court Office about its intentions in this matter in light of the content of the Respondents’ respective letters of 30 and 31 January 2020.

Please note that an award on costs will be notified in due course.”

IV. JURISDICTION OF THE CAS

27. 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.”

28. The Club relied on Article 58 of the FIFA Statutes. Although the Panel issues this Award on Costs pursuant to Article R64 of the CAS Code, for completeness the Panel notes that the jurisdiction of CAS was not disputed by any of the parties.

V. COSTS

29. Article R64.1 of the CAS Code provides as follows (emphasis added):

*“Upon filing of the request/statement of appeal, the Claimant/Appellant shall pay a **non-refundable** Court Office fee of Swiss francs 1,000.-, without which the CAS shall not proceed. The Panel shall take such fee into account when assessing the final amount of costs.”*

30. Article R64.4 of the CAS Code provide 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. [...]”

31. Article R64.5 of the CAS Code reads 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.”

32. The Panel notes that after stating it was withdrawing its Appeal on 17 January 2020, the Club repeatedly requested the CAS Court Office to reimburse the procedural costs which it paid to the CAS. However, the Panel notes that Article R64.1 of the CAS Code clearly states that the procedural costs of CHF 1,000 are non-refundable. Accordingly, this fee will not be reimbursed to the Club and shall be retained by the CAS.

33. In light of the fact the Club filed an Appeal at the CAS, forced the Player and FIFA to file written submissions, and then subsequently withdrew its Appeal, pursuant to Article R64.5 of the CAS Code the Panel concludes that the costs of the arbitration as calculated by the CAS Court Office shall be entirely borne by the Club.

34. Furthermore, pursuant to Article R64.5 of the CAS Code, the Panel rules that the Club shall contribute to the Player’s legal costs and expenses incurred in connection with these proceedings in an amount of CHF 2,000 (two thousand Swiss francs). FIFA shall bear its own costs in relation to these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The procedure *CAS 2019/A/6515 Club Kayserispor Kulübü Derneği v. Douglas Ferreira & FIFA* is terminated and removed from the CAS roll.
2. The costs of the arbitration, to be determined by the CAS Court Office, shall be borne entirely by Club Kayserispor Kulübü Derneği.
3. Club Kayserispor Kulübü Derneği shall pay to Douglas Ferreira an amount of CHF 2,000 (two thousand Swiss Francs) as a contribution toward the costs the latter has sustained in connection with these arbitration proceedings.
4. Club Kayserispor Kulübü Derneği and FIFA shall both be responsible for their own legal fees and expenses incurred in connection with these arbitration proceedings.

Seat of arbitration: Lausanne, Switzerland

Date: 4 May 2020

THE COURT OF ARBITRATION FOR SPORT

Mark A. Hovell
President