

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

Mr Lord Veehala [TGA]

via telephone conference
on 19 March 2019,

to discuss the case of:

Club Dnipro Dnipropetrovsk, Ukraine

(Decision 190161 PST UKR ZH)

regarding:

failure to comply with a decision passed by the Dispute Resolution Chamber judge on 7 April 2016 regarding solidarity contribution in connection with the transfer of the player Bruno Gama between the club GD Bairro da Misericórdia, Portugal and the club Dnipro Dnipropetrovsk, Ukraine

(Art. 64 of the FIFA Disciplinary Code)

I. inferred from the file

1. On 7 April 2016, the Dispute Resolution Chamber judge decided that the club Dnipro Dnipropetrovsk (hereinafter also referred to as the Debtor) had to pay to the club GD Bairro da Misericórdia (hereinafter also referred to as the Creditor) the amount of EUR 4,763 as well as 5% interest *p.a.* as of 30 September 2013 until the date of the effective payment.
2. The findings of the decision were duly communicated, amongst others, to the parties on 19 April 2016. The grounds of the decision passed by the Dispute Resolution Chamber judge on 7 April 2016 were requested by the Debtor and communicated, amongst others, to the Creditor via fax on 10 August 2016 and via DHL sent on 11 August 2016 and delivered on 15 August 2016 to the Debtor. No appeal was lodged before the Court of Arbitration for Sport (CAS), consequently the decision became final and binding.
3. As the aforementioned amount was not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Debtor on 5 March 2019.
4. Additionally, the secretariat to the FIFA Disciplinary Committee invited the Debtor to provide its position by 11 March 2019 at the latest and informed the parties that the case would be submitted on 19 March 2019 to a member of the FIFA Disciplinary Committee who would take a decision based on the documents in its possession. Moreover, the Debtor was informed that the case would not be submitted to a member of the FIFA Disciplinary Committee, should the Creditor confirm settlement of the debt.
5. After having opened disciplinary proceedings, the Debtor did not present any position.

II. and considered

1. According to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as *the Committee*) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter also referred to as *the FDC*) on member associations, clubs, officials, players, intermediaries and licensed match agents.
2. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (art. 64 par. 1 of the FDC):

- a) will be fined for failing to comply with a decision;
- b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;
- c) if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 64 par. 2 of the FDC).

3. Moreover, in line with art. 78 par. 2 of the FDC, cases involving matters under art. 64 of the FDC may be decided by one member of the Disciplinary Committee alone (hereinafter also referred to as *member of the Committee*).
4. The member of the Committee emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.
5. Having said that, the member of the Committee notes that the findings of the decision passed by the Dispute Resolution Chamber judge on 7 April 2016 had been duly communicated on 19 April 2016, amongst others to the parties, and that the grounds had been requested by the Debtor and duly communicated on 10 August 2016 via fax to the Creditor and on 15 August 2016 via DHL to the Debtor. The member of the Committee also notes that no appeal against the decision passed by the Dispute Resolution Chamber judge was lodged before the Court of Arbitration for Sport (CAS). Therefore, the decision became final and binding.
6. In view of what has been explained under paragraph II./4. above, the member of the Committee is not allowed to analyse the case decided by the Dispute Resolution Chamber judge as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision rendered by the Dispute Resolution Chamber judge.
7. As the Debtor did not fully comply with the decision passed by the Dispute Resolution Chamber judge on 7 April 2016 and is consequently withholding money from the Creditor, it is considered guilty under the terms of art. 64 of the FDC.
8. The fine to be imposed under the above-referenced art. 64 par. 1 a) of the FDC in combination with art. 15 par. 2 of the FDC shall range between CHF 300 and CHF 1,000,000. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed

to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the member of the Committee regards a fine amounting to CHF 1,000 as appropriate. This amount complies with the Committee's established practice.

9. In application of art. 64 par. 1 b) of the FDC, the member of the Committee considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.
10. In accordance with art. 64 par. 1 c) of the FDC and with the Circular n° 1628, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, points will be deducted, a transfer ban may also be pronounced or demotion to a lower division may be ordered.
11. A deduction of points from the Debtor's first team in the national league will be automatically implemented by the Football Federation of Ukraine in case of non-payment within the stipulated deadline. Thus, once the deadline has expired, the points will be deducted automatically by the Football Federation of Ukraine without a further formal decision having to be taken nor any order having to be issued by the Committee or its secretariat.
12. With regard to the amount of points to be deducted, art. 64 par. 3 of the FDC is applicable, whereby the number of points deducted must be proportionate to the amount owed. In the light of the foregoing criteria, regarding the amount of the fine to be imposed and in keeping with the Committee's well-established practice, a deduction of three (3) points is considered appropriate.
13. The Football Federation of Ukraine is hereby reminded of its obligation to automatically implement the abovementioned point deduction upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Football Federation of Ukraine is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits. Should the Football Federation of Ukraine fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof of point deduction, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

III. has therefore decided

1. The club Dnipro Dnipropetrovsk (hereinafter, the Debtor) is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply

with the decision passed by the Dispute Resolution Chamber judge on 7 April 2016 according to which it was ordered to pay to the club GD Bairro da Misericórdia (hereinafter, the Creditor) the amount of EUR 4,763 plus 5% interest *p.a.* as of 30 September 2013 until the date of effective payment.

2. The Debtor is ordered to pay a fine to the amount of CHF 1,000. 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. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. **190161 dth**.
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 Football Federation of Ukraine by this deadline three (3) points will be deducted automatically by the Football Federation of Ukraine 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 Football Federation of Ukraine is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits.

5. If the Debtor still fails to pay the amount due to the Creditor even after the deduction of points in accordance with point 4 above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor's first team to the next lower division.
6. As a member of FIFA, the Football Federation of Ukraine 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 Football Federation of Ukraine 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 Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Football Federation of Ukraine of every payment made and to provide the relevant proof of payment.
8. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Football Federation of Ukraine of every payment received.

Sent to: - Club Dnipro Dnipropetrovsk;
- Club GD Bairro da Misericórdia
c/o Schweele Law Office;
- Football Federation of Ukraine;
- Portuguese Football Association.

LEGAL ACTION

According to art. 64 par. 5 of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

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

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FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Deborah Thuer
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