

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

Mrs. Jo Setright [AUS]

via telephone conference and email

on 20 May 2019,

to discuss the case of:

KS Luftetari, Albania

(Decision 190279 PST ALB ZH)

regarding:

failure to comply with the decision passed by the Dispute Resolution Chamber on 10 August 2018, regarding an employment-related dispute arisen between the player Fabricio Damián Nuñez Lozano, Uruguay and the club KS Luftetari, Albania,

(Art. 64 of the FIFA Disciplinary Code)

I. inferred from the file

1. On 10 August 2018, the Dispute Resolution Chamber decided that the club KS Luftetari (hereinafter also referred to as the Debtor) had to pay to Mr. Fabricio Damián Nuñez Lozano (hereinafter also referred to as the Creditor) the following amounts:
 - EUR 8,387 as outstanding remuneration, plus interest in the amount of EUR 130,12.
 - EUR 15,000 as compensation for breach of contract within 30 days of notification of the mentioned decision, plus 5% interest as from expiry of the above-mentioned deadline and until the date of effective payment.
2. The findings of the decision of the Dispute Resolution Chamber were duly communicated to the parties, amongst others, on 17 August 2018. Since none of the parties requested the grounds of the said decision, it became final and binding.
3. As the aforementioned amounts (point 1 *ut supra*) were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Debtor on 30 March 2019.
4. Additionally, the secretariat to the FIFA Disciplinary Committee invited the Debtor to provide its position by 6 May 2019 at the latest and informed the Debtor that should it fail to submit a statement by the specified deadline, the case would be submitted to a member of the FIFA Disciplinary Committee on 13 May 2019, who would take a decision based on the documents in his/her possession. Furthermore, the Debtor was informed that should it pay the outstanding amounts due to the Creditor by the stipulated deadline, then, upon confirmation of the Creditor that the amounts have been received, the disciplinary proceedings would be closed.
5. On 6 May 2019, the Debtor sent a correspondence to the secretariat to the FIFA Disciplinary Committee by means of which it requested an extension of the deadline to provide its position.
6. On 7 May 2019, the parties were informed that, following the Debtor's request, the latter had until 13 May 2019 to provide its position and/or to pay the outstanding amounts. In addition, the secretariat to the FIFA Disciplinary Committee advised the parties that the case would no longer be submitted

to a member of the FIFA Disciplinary Committee on 13 May 2019 but instead, on 17 May 2019.

7. By means of a correspondence dated 14 May 2019, the Debtor informed the secretariat to the FIFA Disciplinary Committee that it had contacted the Creditor in order to reach an agreement regarding a payment plan and hence, requested for the case not to be submitted to the Disciplinary Committee before the end of May 2019.
8. The secretariat to the FIFA Disciplinary Committee forwarded, on 15 May 2019, the above-mentioned correspondence from the Debtor (cf. point 7 ut supra) to the Creditor and requested him to confirm whether a payment plan had been concluded with the Debtor. In addition, the parties were informed that should the Creditor not confirm the conclusion of a payment plan or should the parties not provide a copy of a payment plan concluded and signed by them by 16 May 2019 at the latest, then, following the correspondence sent by the secretariat to the FIFA Disciplinary Committee on 7 May 2019 (cf. point 6 ut supra), the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation.
9. On 16 May 2019, the Debtor sent a correspondence informing that a payment plan had been agreed with the Creditor, which still had to be drafted and signed by the parties. The Debtor requested, once again, for the case not to be submitted to the Disciplinary Committee.

II. and considered

1. According to article 53 par. 2 of the FIFA Statutes, the Disciplinary 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 article 78 par. 2 of the FDC, cases involving matters under article 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 decision passed by the Dispute Resolution Chamber on 10 August 2018 had been duly communicated on 7 November 2018 and that no appeal against this decision had been lodged before the CAS. Therefore, the decision of the Dispute Resolution Chamber (DRC) 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 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.
7. As the Debtor did not comply with the decision passed by the Dispute Resolution Chamber and is, consequently, withholding money from the Creditor, it is considered guilty under the terms of article 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 article 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 5,000 as appropriate. This amount complies with the Committee's established practice.
9. In application of article 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 and FIFA.
10. In accordance with article 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, a transfer ban will be pronounced and demotion to a lower division may be ordered.

11. A ban from registering any new players, either nationally or internationally, will be automatically imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline.
12. In this sense, in view of the amount of the outstanding debt, the member of the Committee considers a transfer ban for one (1) entire registration period to be proportionate. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Football Association of Albania 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. In addition, the member of the Committee decided that the initial transfer ban imposed on the Debtor would be automatically extended for one (1) additional period, should the Debtor still not pay the outstanding amounts due to the Creditor after having completely served the initial ban.
13. The Football Association of Albania is hereby reminded of its obligation to automatically implement the abovementioned transfer ban 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 Association of Albania is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits. Should the Football Association of Albania 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

10. The club KS Luftetari is found to have infringed article 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 10 August 2018, according to which it was ordered to pay:

To Mr. Fabricio Damián Nuñez Lozano:

- EUR 8,387 as outstanding remuneration, plus interest in the amount of EUR 130,12
- EUR 15,000 as compensation for breach of contract within 30 days of notification of the mentioned decision, plus 5% interest as from expiry

of the above-mentioned deadline and until the date of effective payment.

11. The Debtor is ordered to pay a fine to the amount of CHF 5,000. 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. **190279 spi**.
12. 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.
13. 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 Association of Albania by this deadline, a ban from registering new players, either nationally or internationally, for one (1) entire registration period will be imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Football Association of Albania 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 from the next registration period following the complete serving of the transfer ban or upon the payment to the Creditor of the total outstanding amount, if this occurs before the full serving of the transfer ban. 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.

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

14. If the Debtor still fails to pay the amount due to the Creditor even after the complete serving of the transfer ban in accordance with point 4 above, the Creditor may demand in writing, for the transfer ban to be extended for one (1) additional entire and consecutive registration period. Once the Creditor has

filed this request, the transfer ban will be automatically extended at national and international level by the Football Association of Albania and FIFA, respectively, without a further formal decision having to be taken by the FIFA Disciplinary Committee.

15. If the Debtor still fails to pay the amount due to the Creditor even after the complete serving of the extended transfer ban in accordance with point 5. 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.
16. As a member of FIFA, the Football Association of Albania 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 Football Association of Albania 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.
17. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Football Association of Albania of every payment made and to provide the relevant proof of payment.
18. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Football Association of Albania of every payment received.

Sent to: - KS Luftetari
c/o Mr. Konstantinos N. Zemberis;
- Mr. Fabricio Damián Nuñez Lozano
c/o Mr. Santiago San Torcuato;
- Football Association of Albania.

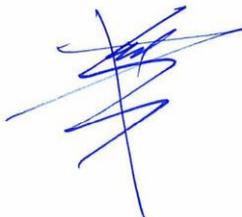
LEGAL ACTION

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



Stefan Privee
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