

# Decision

of the

## FIFA Disciplinary Committee

Mr. Anin Yeboah [GHA], Chairman;  
Mr Alejandro Piera [PAR], Deputy Chairman;  
Mr Thomas Hollerer [AUT], Member

on 13 August 2019,

to discuss the case of:

Club Sao Paulo FC, Brazil

(Decision 190490 TMS)

---

*regarding:*

Conditioning the issuance of an International Transfer Certificate (ITC)  
(Article 9 par. 1 of the Regulations on the Status and Transfer of Players (Ed.  
2016))

---

## I. Inferred from the file

- **Background**

1. On 29 March 2017, Sao Paulo Futebol Clube (hereinafter, the Club) and the club Jorge Wilstermann concluded an agreement in relation to the transfer of the player Antonio Thomaz Santos de Barros (hereinafter, the Transfer agreement) from the latter to the Club.
2. According to clause 3.1. of the Transfer agreement, the Club and Jorge Wilstermann *"established that they will have to introduce the details of the present transfer in the TMS-FIFA system on today's date 29.03.2017 and from the moment [Wilstermann] has received a proof of payment, so that the ITC ["International Transfer Certificate"] may be requested by the Brazilian Football Association by 30.03.2017 at the latest so that the ATHLETE can be registered by SPFC [the Club] by 30.03.2017 at the latest"*<sup>1</sup>.

- **Proceedings before the FIFA TMS GmbH and the FIFA Disciplinary Committee**

3. On 5 March 2019, the TMS Global Transfer & Compliance department (hereinafter, the FIFA TMS) sent a correspondence to the Club informing it that it appeared that the Transfer agreement was in breach of article 9 par. 1 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the Regulations), according to which *"[...] The ITC shall be issued free of charge without any conditions or time limit [...]"*. As a result, the Club was invited to provide its position regarding the mentioned potential breach of the Regulations and informed that in case of not complying with the relevant request, sanctions could be imposed by the FIFA Disciplinary Committee.
4. On 19 March 2019, the Club provided its position with respect to the above-mentioned correspondence from FIFA TMS. In particular, the Club made, amongst others, the following comments<sup>2</sup>:
  - The Club was not in a position to discuss or negotiate the fine print of the Transfer Agreement because the deadline to register the relevant

---

<sup>1</sup> Free translation to English of the original text (Spanish and Portuguese), which is as follows (Spanish): *3.1 JW y SPFC establecen que deberán poner los datos de la presente transferencia en el sistema TMS-FIFA en la presente fecha 29.03.2017 y desde que haya recibido un comprobante de pago, para que el CTI ["Certificado de Transferencia Internacional"] pueda ser solicitado por la Confederación Brasileña de Fútbol en hasta 30.03.2017 para que el ATLETA pueda ser registrado por SPFC hasta 30.03.2017"*

<sup>2</sup> The summary does not purport to include every single contention put forth by the FIGC. However, the FIFA Disciplinary 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 those arguments in the following outline of its position and in the ensuing discussion on the merits.

player in the championship from Brazil was on 30 March 2017 (i.e. one day after signing the Transfer agreement) and the Brazilian transfer period was closing on 4 April 2017.

- The Club was competing with two other Brazilian clubs to acquire the player so it did not have time to discuss the terms of the Transfer agreement as it would risk losing the player to one of the other Brazilian clubs.
5. After receiving the position from the Club, the FIFA TMS informed the latter on 25 June 2019 that the case was going to be referred to the FIFA Disciplinary Committee for evaluation.
  6. Following the above-mentioned correspondence, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Club on 12 July 2019, for the apparent violation of article 9 par.1 of the Regulations. The Club was informed that the case would be submitted to the Disciplinary Committee on 29 July 2019 and was invited to present its position.
  7. By means of a correspondence dated 31 July 2019, the Club provided the secretariat to the FIFA Disciplinary Committee with the following arguments<sup>3</sup>:
    - The situation did not cause any damage to the parties involved since all of them concluded their part of the agreement as it was expected.
    - Even if there would be a potential breach of the Regulations, the Club did not act in "bad-faith or maliciousness".
    - The club apologized for any inconvenience it may have caused.

## II. and considered

### • Competence and general considerations

1. According to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also: the Committee) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter, the FDC) on member associations, clubs, officials, players intermediaries and licensed match agents.
2. Pursuant to art. 25 par. 3 of the Regulations, disciplinary proceedings for violation of the Regulations shall, unless otherwise stipulated in them, be in accordance with the FDC.

---

<sup>3</sup> The position provided by the Club before the FIFA TMS and before the FIFA Disciplinary Committee are, in general, the same. Therefore, only the arguments not mentioned before the FIFA TMS will be set out in this paragraph.

3. According to art. 53 of the FDC, the Disciplinary Committee is competent to sanction any breach of the FIFA regulations which does not come under the jurisdiction of another body.
4. To this regard, the Disciplinary Committee recalls that according to par. 1 of article 9 of the Regulations *"Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. **The ITC shall be issued free of charge without any conditions or time limit [...]"***
5. Furthermore, the Disciplinary Committee observes that the Club has not contested the existence, the contents nor the validity of the Transfer agreement.
6. The Disciplinary Committee moves on therefore to analyse the content of the Transfer agreement, namely, clause 3.1 (cf. point I/2 ut supra).
7. In this sense, the Disciplinary Committee considers that the aforementioned clause in particular, and in the context of the Transfer agreement, does not condition the issuance of the International Transfer Certificate as set out by article 9 par.1 of the Regulations.
8. As a consequence of the above, the Disciplinary Committee judges that in the present case, the Club did not violate article 9 par. 1 of the Regulations.

### **III. Has therefore decided**

All charges against the club Sao Paulo FC are dismissed.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Anin Yeboah  
Chairman of the FIFA Disciplinary Committee

\*\*\*\*\*

## LEGAL ACTION

This decision can be contested before the FIFA Appeal Committee (art. 57 of the FDC - Ed. 2019). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. Reasons for the appeal must then be given in writing within a further time limit of five (5) days, commencing upon expiry of the first time limit of three (3) days (art. 56 par.2 of the FDC – Ed. 2019). The appeal fee of CHF 1,000 shall be transferred to the aforementioned bank account on the date of the expiry of the time limit of five days for submitting the reasons for appeal at the latest (art. 56 par. 6 of the FDC – Ed. 2019).