

Decision

of the

FIFA Disciplinary Committee

Mr. Anin Yeboah [GHA], Chairman;
Mr Thomas Hollerer [AUT], Member
Mr Yasser Al-Misehal [KSA], Member;

on 20 September 2019,

to discuss the case of:

Juventus FC, Italy

(Decision 190539 TMS)

regarding:

Third-party influence and failure to enter correct information in the Transfer Matching System (TMS)

(Art. 18bis par. 1 and art. 4 par. 3 of Annexe 3 of the Regulations on the Status and Transfer of Players (2018 Ed.))

I. Inferred from the file

1. On 28 January 2019, the Italian club, Juventus FC, and the Qatari club, Al-Duhail SC, concluded an agreement for the transfer of the player Mehdi Amine El Moutaqui Benatia (hereinafter the Player). In particular, the aforementioned clubs agreed upon, *inter alia*, the following provision (cf. clause 8.1 lit. (d) of the transfer agreement):

"8. Al Duhail's representations and warranties.

Al Duhail hereby represents and warrants to Juventus that:

(...)

(d) until 30 June 2021 the Player will not be registered with one of the top Italian Clubs playing in Serie A (i.e. SSC Napoli, AC Milan, FC Internazionale, AS Roma, SS Lazio) and with the French club PSG.

In case of breach of the representation and warranty under (d) above, Al Duhail shall pay to Juventus a net amount of Euro 5,000,000 immediately upon the registration of the Player with one of the above Clubs mentioned under (d)."

2. On the same date, the club Juventus FC entered a transfer instruction (transfer No. 223691) in the Transfer Matching System (hereinafter TMS), to release permanently the Player to the club Al-Duhail SC, by means of which the club Juventus FC uploaded a copy of the aforementioned agreement and declared that it had not entered into a contract which enabled a counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.
3. On 14 August 2019, following the investigation conducted by FIFA's TMS Global Transfers & Compliance Department¹, the Secretariat to the FIFA Disciplinary Committee (hereinafter *the Secretariat*) opened disciplinary proceedings against the club Juventus FC for a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players (RTSP), 2018 edition, and art. 4 par. 3 of Annexe 3 of the RSTP.
4. On 26 August 2019, the club Juventus FC provided its position which can be summarized as follows²:

¹ All documents included in the proceedings conducted by FIFA's TMS Global Transfers & Compliance Department were duly analysed and considered by the FIFA Disciplinary Committee in its discussion and deliberations.

² The summary does not purport to include every single contention put forth by the club Juventus FC. 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.

- The club Juventus FC states having been forced to accept the proposal made by Al Duhail after the Player, considered by the club Juventus FC to be a well-established first team member, informed the Italian club of his intentions of departure and his subsequent rejection of a new employment contract with the club.
- After having been coerced, the club Juventus FC signed the “second offer”, i.e. the Transfer Agreement, for the “*permanent transfer of the Player’s registration, for a transfer fee that did not grant Juventus [FC] any capital gain (...)*”.
- With such short notice for the transfer of the Player out of the club, Juventus FC reviews the whole situation as a big loss for the club (*damages caused to Juventus FC by the Player’s decision to release himself from his playing contract before its expiration are undoubted*), adding the fact that the Player in question could not be replaced properly during the winter transfer window.
- As to the apparent breach of Art. 18bis of the RSTP, Juventus FC considers:
 - the provision to be extremely broad.
 - an inclusive interpretation of the article, as from the wording of the header “*Third-party influence on clubs. Specifically, under FIFA Regulations “Third Party” is defined as “a party other than the player being transferred, the two clubs transferring a player from one to the other, or any previous club, with which the player has been registered”*”.
 - with respect to the concept of “influence” used in the article’s wording, Juventus FC considers it to be an abstract concept more “*associated with corrupt or speculative behaviour, match manipulation and conflict of interest*”.
 - the aim of the relevant article, is addressed to “*entities alien to football, or any Third-party (as defined in the Regulations), to ensure the integrity of the competition, to avoid conflict of interest and to increase transparency in the transfer negotiations/transactions*”.
- As to the clause 8 of the Transfer Agreement, the club Juventus FC is to the idea that said article was proposed by the club Al Duhail SC and agreed upon the clubs, with the sole intention to “*avoid any possible misunderstanding and/or disagreement between all the parties about the “nature” of the transfer itself, and particularly to make clear that the transfer of the Player to Al Duhail was a “real and genuine” transfer and then not a transfer “bridge” to another club*”.

- Furthermore, the club Juventus FC confirms that *“clause 8 lit (d) of the Transfer Agreement has been inserted because Juventus has been “forced” and “influenced” by the Player and Al Duhail to accept the transfer”*.
- Moreover, the club Juventus FC states that the relevant clause:
 - does not aim at securing a profit to the club Juventus FC nor to grant to Juventus FC any ability to affect the behaviour of the club Al Duhail SC.
 - has a term of effectiveness of only two and a half sporting seasons.
 - concerns only a few Italian clubs, directly competitors of Juventus FC, and the French club PSG.
 - it refers exclusively to the contractual relationship between the clubs Juventus FC and Al Duhail SC.
 - it does not limit the ability of the club Al Duhail SC to decide whether to transfer or not the Player to any club in the world.
 - it does not request a previous consent from the club Juventus FC, nor deprives Al Duhail SC from the possibility to determine the future of its players.
 - there is no speculative nor corrupt intention behind the stipulation agreed by the club Juventus FC.
- As to the breach of art. 4 par. 3 of Annexe 3 of the RSTP, the club Juventus FC is convinced that it could not have entered any further information into the TMS when declaring on Third-party influence since there is no Third Party nor any purpose or will to influence or restrict the club Al Duhail SC’s autonomy and independence in its employment and transfer related matters. In this respect, the club Juventus FC contests the opening of disciplinary proceedings on grounds of art. 4 par. 3. of Annexe 3 of the RSTP, considering not having been informed of said apparent infringement on an earlier stage at TMS.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

5. First and foremost, the FIFA Disciplinary Committee (hereinafter the *Committee*) notes that at no point during the present proceedings did the club Juventus FC challenge the jurisdiction of the Committee or the applicability of the FDC.
6. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, in application of art. 53 of the FDC, as read together with arts. 25 par. 3, 18bis par. 2 of the RSTP and art. 9.2 of Annexe 3 of the RSTP, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B) Analysis of the applicable articles

1. Article 18bis para. 1 of the RSTP

7. First of all, the Committee points out that article 18bis par. 1 of the RSTP establishes a prohibition on so-called "third party influence". As a matter of fact, it explicitly provides that *"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams"*.
8. Consequently, the Committee emphasises that this provision is addressed to clubs, which are undoubtedly responsible to ensure that they cannot influence/be influenced by any counter club (or a third party).
9. In other words, this prohibition aims at avoiding that a club concludes any type of contract granting it the possibility of influencing a club's independence in employment and transfer-related matters, its policies or the performance of its teams. In particular, there should be no influence on the club's ability to independently determine the conditions and policies concerning purely sporting issues such as the composition and performance of its teams. This provision applies to the influencing club as well as to the influenced club (*vice versa*).

2. Analysis of article 4 para. 3 of Annexe 3 of the RSTP

10. Annexe 3 of the RSTP analyses in a very detailed manner the procedure related to international transfers of professional players through TMS.

11. In particular, art. 4 par. 3 of the Regulations imposes the obligation on clubs to upload various types of information within the framework of an international transfer of a professional player. More specifically:

"Clubs must provide the following compulsory data when creating instructions, as applicable:

- [...].
- *Declaration on third-party payments and influence.*
- [...]"

12. In other words, should there be any influence from a counter club and/or third party on a club (as per art. 18bis of the Regulations), the club concerned must indicate it in TMS when entering the relevant transfer instruction.

C) Analysis of the violations of the RSTP by the club Juventus FC

13. Having established the above, the Committee subsequently analyses the evidence at its disposal (in particular the transfer agreement in question and the documents uploaded into the TMS, as well as the documents gathered during the investigation conducted by the FIFA TMS and within the frame of the present disciplinary proceedings) in light of the aforementioned provisions.

14. For the sake of good order, the Committee notes that, on one hand, it is undisputed that the transfer agreement was concluded between the clubs Juventus FC and Al Duhail SC and, on the other hand, that Juventus FC has not questioned or disputed neither the existence, nor the content and validity of the contract at any time.

1. Analysis of the transfer agreement in connection with art. 18bis of the RSTP

15. Having determined the above, the Committee proceeds to analyse the content of the relevant clause of the agreement which reads as follows:

"8. Al Duhail's representations and warranties

Al Duhail hereby represents and warrants to Juventus that:

(...)

(d) until 30 June 2021 the Player will not be registered with one of the top Italian Clubs playing in Serie A (i.e. SSC Napoli, AC Milan, FC Internazionale, AS Roma, SS Lazio) and with the French club PSG.

In case of breach of the representation and warranty under (d) above, Al Duhail shall pay to Juventus a net amount of Euro 5,000,000 immediately upon the registration of the Player with one of the above Clubs mentioned under (d)."

16. It appears to be clear from the reading of said clause that the club Al Duhail SC would have to pay to the club Juventus FC a net amount of EUR 5,000,000 should it decide to transfer the Player to the one of the following clubs: SSC Napoli, AC Milan, FC Internazionale, AS Roma, SS Lazio and PSG. Therefore, it is evident that in a scenario in which the club Al Duhail SC receives two similar and/or identical offers for the transfer of the Player, it would be more inclined to accept the one not coming from the aforementioned clubs, this, in order to make the most profitable operation from a purely financial point of view. As such, the Committee is of the firm opinion that, through this clause, Juventus FC is limiting the freedom of the club Al Duhail SC in employment and transfer-related matters.
17. In this context, it comes to the attention of the Committee that the club Juventus FC considers this clause to be a way of ensuring the legitimate transfer of the player in question and *"not a transfer bridge to another club"*. As a matter of fact, the club Juventus FC states that said clause was proposed and included by the club Al Duhail SC as a mere guarantee, agreed upon with the club Juventus FC, just after the latter was *"forced and influenced"* by both the club Al Duhail SC and the player to accept the transfer.
18. In this regard, the Committee wishes to highlight that, regardless of the intention of the club(s) when redacting said clause, the mere act of granting Juventus FC the possibility to influence over the club Al Duhail SC decision-making process on its transfer and employment matters is prohibited.
19. In continuation, the Committee wishes to further clarify that a club is guilty of the prohibited conduct whenever the contract in question effectively offers the possibility to one of the parties to exert any kind of influence on the counter club in relation to employment or transfer-related matters, regardless of; i) whether or not of this influence materializes; ii) the duration of effectiveness, *in casu* from 28 January 2019 until 30 June 2021; and iii) the economic compensation obtained from it.
20. In this respect, the Committee considers that clubs, in order to be considered truly independent, shall be free to negotiate their players within the legal framework and without any kind of restriction of the counter club. As a result, the Committee considers that, by the existence of this clause, the club Juventus FC exerted an influence on the club Al Duhail SC's employment and transfer-related matters, thus affecting its independence.
21. For the reasons set out above, the Committee considers that, by entering into this agreement, the club Juventus FC acquired the possibility to exert influence on the independence and policies of another club, namely the club Al Duhail SC, in its

employment and transfer-related matters. As a result, the Committee finds the club Juventus FC liable for the breach of article 18bis par. 1 of the RSTP in relation to the agreement.

2. Analysis of the facts: article 4 para.3 of Annexe 3 of the RSTP

22. The Committee further notes that in the relevant transfer instruction (TMS Ref. No. 223691) the club Juventus FC apparently declared not having entered into a contract enabling a "*third-party influence*".
23. Keeping in mind that, as demonstrated above, the transfer agreement signed between the clubs Juventus FC and Al Duhail SC, enabled the club Juventus SC to acquire the ability to influence the club Al Duhail SC "*in employment and transfer-related matters its independence, its policies or the performance of its teams*", the Committee considers that by declaring in TMS that there was no third-party influence, the club Juventus FC failed to disclose full and correct information in TMS. As a consequence, the Committee holds that the club Juventus FC is to be found guilty of having violated art. 4 par. 3 of Annexe 3 of the RSTP.

3. Summary

24. In view of the foregoing, the Committee concludes that the club Juventus FC, by the conduct described above, violated the following provisions of the RSTP, 2018 Ed.:
- Art. 18bis par. 1, for entering into a contract (*i.e.* the transfer agreement) by which it acquired the ability to influence on the club Al Duhail SC's employment and transfer-related matters;
 - Art. 4 par. 3 of the Annexe 3, for failing to enter correct information in TMS.

25. Therefore, the Committee considers that the club Juventus FC is to be sanctioned for the aforementioned violations.

D) Determination of the sanction

26. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that the club Juventus FC is a legal person, and as such can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
27. For the sake of good order, the Committee underlines that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 par. 1 of the FDC).
28. On this subject, the Committee notes the clean record of the club Juventus FC in relation to the infraction.

29. Nonetheless, the Committee deems that the violation of art. 18bis par. 1 of the RSTP should however be aggravated by the fact that the relevant clause did foresee a financial consequence should the counter club fail to perform accordingly. In this respect, the Committee is of the opinion that the relationship between the two clubs in relation to the scope and effects of the relevant clause of the Agreement needs to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clause mainly lies on the club Al Duhail SC, while the club Juventus FC is undoubtedly benefitting from it.
30. In these circumstances, the Committee deems that it is necessary to distinguish between the influencing club's and the influenced club's responsibility in relation to art. 18bis of the RSTP. In this sense, the Committee considers that the influencer's behaviour is more reprehensible than the one of the influenced. In the matter at hand, the Committee notes that the club Juventus FC is the influencing club as it was only in Juventus FC's interest to impose such clause.
31. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction.
32. In this regard, according to the provisions of art. 6 par. 4 of the FDC, the Committee notes that it may not be lower than CHF 300 and higher than CHF 1,000,000.
33. After having considered the specific circumstances of the case particularly that the club Juventus FC is in deep the beneficiary, while keeping in mind the deterrent effect that the sanction must have on reprehensible behaviour, the Committee considers a fine of CHF 40,000 to be adequate and proportionate to the offence.
34. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to the club Juventus FC future conduct. In particular, the club Juventus FC is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular, the FDC as well as the Regulations and its provisions related to third party influence) are strictly complied with. Should such infringements occur again in the future, the Committee would be left with no other option than to impose harsher sanctions on the club Juventus FC.

III. Therefore decided

35. The FIFA Disciplinary Committee found the club Juventus FC responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfer of Players (RSTP) related to third-party influence (art. 18bis par. 1) and failure to enter correct information in the Transfer Matching System (art. 4 par. 3 of Annexe 3).
36. The club Juventus FC is ordered to pay a fine to the amount of CHF 40,000. The fine is to be paid within thirty (30) days of notification of the present decision.
37. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the club Juventus FC is warned on its future conduct. The club Juventus FC is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular, the RSTP and its provisions related to third-party influence are strictly complied with. Should such infringements occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club Juventus FC.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin Yeboah
Chairman of the FIFA Disciplinary Committee

Note relating to the payment of the fine

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 number above mentioned.

Note relating to the legal action:

This decision can be contested before the FIFA Appeal Committee (art. 57 of the FDC, 2019 edition). 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, 2019 edition). 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, 2019 edition).