

Sent to:

Qatar Football Association
General Secretariat
(Email: info@qfa.qa)



Zurich, 27 January 2020

Decision Ref. 190552 TMS

Notification of the grounds of the decision

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the FIFA Disciplinary Committee on 20 September 2019.

The Qatar Football Association is kindly requested to forward this decision to its affiliated club concerned.

We would appreciate your taking due note of this decision.

Yours faithfully,

FIFA

A handwritten signature in black ink, appearing to be "C. Schneider", written in a cursive style.

Carlos Schneider
Head of the FIFA Disciplinary Department

Cc: - Al Duhail SC
c/o Mr Konstantinos Antoniou
(Email: ka@mcasportslaw.com).

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:

Al Duhail SC, Qatar

(Decision 190552 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 29 January 2019, the club Al Duhail SC entered a transfer instruction (transfer No. 223702) in the Transfer Matching System (hereinafter TMS), to engage permanently the Player from the club Juventus FC, by means of which the club Al Duhail SC 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 Al Duhail SC 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 28 August 2019, the club Al Duhail SC 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 Al Duhail SC. 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.

- As to the facts, the club Al Duhail SC confirms having shown to the club Juventus FC its intention to buy the Player, with an estimated value on the market between EUR 13,000,000 and 15,000,000. On 28 January 2019, the clubs Al Duhail SC and Juventus FC negotiated and signed a Transfer Agreement for the transfer of the Player for a fee of EUR 8,000,000 plus bonuses.
- Further, the club Al Duhail SC states that in light of the sporting and financial considerations, the club Juventus FC *"included the provision of clause 8 -Al Duhail representations and warranties"* as a mere tool which could eventually trigger an additional transfer fee.
- As to the TMS compliance department's role in the proceedings, the club Al Duhail SC considers that the TMS Transfer Report contains comments with a pre-judgment character. By using words/phrases as *"would seem to prevent"* or *"would seem to grant"*, the FIFA TMS Compliance Department undertakes to take determinations, thereby tainting the present proceedings.
- As to Art. 18bis par.1 and Art. 4.3 of Annexe 3 of the RSTP, the club Al Duhail SC believes that the term *"influence"*, in the present matter, must be interpreted in a restricted way. *"In fact, any other approach to the term "influence" would not only violate the general legal doctrine of contractual freedom between the parties, but also would be counter-productive for football"*. As a result, the club Al Duhail SC is convinced that there is no Third-Party Influence in the matter at stake and, the club therefore entered the correct information into the TMS system when it was asked to report the existence of a contract with a potential Third-Party Influence.
- With regard to the clause 8 of the Transfer Agreement, the club Al Duhail SC states that:
 - the club Juventus FC does not acquire the ability to influence and/or otherwise intervene in any transfer-related matter of the club Al Duhail SC. Actually, by doing so, Juventus FC is protecting its sporting and financial interest with regard to the Player.
 - with the conclusion of the Transfer Agreement, the club Juventus FC, without any doubts, *"lost any and all means for interfering in any decision of a future, potential transfer of the Player from Al Duhail to another club"*.
 - the additional payment pursuant to clause 8 of the Transfer Contract is *"merely the result of the negotiation power, which Juventus, prior to the conclusion of the Transfer Agreement, still had on the basis of its employment relationship with the Player"*.
 - by establishing said clause, the club Al Duhail SC was indeed benefiting from the reduction of the Player's market value to the amount agreed as transfer fee. Only in the event of a future sale to the referenced clubs, the club Al Duhail SC would have been immersed on the payment of an additional transfer fee.

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 Al Duhail SC 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 another club the possibility to influence its 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 Al Duhail SC

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 the club Al Duhail SC 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 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. In this respect, 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 Al Duhail SC considers that *"the intention of the parties, i.e. of Juventus, Duhail and the Player, [is] to protect through clause 8 lit (d) of the Transfer Agreement [the] legitimate and sporting interest of Juventus"*.
18. In this regard, the Committee wishes to highlight that, regardless of the intention of the clubs when redacting said clause, the mere act for Al Duhail SC of granting another club (Juventus FC) the possibility to influence its 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 Al Duhail SC granted the club Juventus FC the possibility to influence on its 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 Al Duhail SC granted another club, namely the club Juventus FC, the possibility to influence on its independence and policies in its employment and transfer-related matters. The Committee therefore finds the club Al-Duhail SC to be 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. 223702) that Al Duhail SC 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 enabled Juventus SC to acquire the ability to influence on 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 Al Duhail SC failed to disclose full and correct information in TMS. As a consequence, the Committee holds that the club Al Duhail SC 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 Al Duhail SC, 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 allowed the club Juventus FC to acquire 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 Al Duhail SC 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 Al Duhail SC 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 Al Duhail SC in relation to the infraction.
29. 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. The Committee therefore deems that the violation of art. 18bis par. 1 of the RSTP should be mitigated by this fact in so far as Al Duhail SC is concerned.

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 influenced club's behaviour is less reprehensible than the one of the influencer. In the matter at hand, the Committee notes that the club Al Duhail SC is influenced by the club Juventus FC as it was only in latter'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 Al Duhail SC is in deep influenced by the club Juventus FC and forced to act in accordance what it was agreed to, while keeping in mind the deterrent effect that the sanction must have on reprehensible behaviour, the Committee considers a fine of CHF 20,000 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 Al Duhail SC future conduct. In particular, the club Al Duhail SC 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 Al Duhail SC.

III. Therefore decided

35. The FIFA Disciplinary Committee found the club Al Duhail SC 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 Al Duhail SC is ordered to pay a fine to the amount of CHF 20,000. 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 Al Duhail SC is warned on its future conduct. The club Al Duhail SC 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 Al Duhail SC.

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).