

Decision

of the

FIFA Disciplinary Committee

Mr Anin Yeboah [GHA], Chairman;
Mr Yasser Almisehal [KSA], Member;
Mr Thomas Hollerer [AUT], Member;

on 20 September 2019

to discuss the case of:

Club Rangers FC, Scotland

(Decision 190616 TMS)

regarding:

Third-party influence and failure to enter correct information in TMS
(Art. 18bis par. 1 of the RSTP (2016 ed.) and art. 4 par. 2 of Annexe 3 of the
RSTP)

I. inferred from the file

1. On 31 August 2017, the club Rangers FC (hereinafter "*the Club*" or "*Rangers*") entered a transfer instruction (TMS ref. 179284) in the Transfer Matching System (hereinafter "*TMS*") to release permanently the player Billy Clifford Gilmour (hereinafter "*the Player*") to the English club Chelsea FC (hereinafter "*Chelsea*") for a fixed transfer fee amounting to GBP 550,000.
2. The transfer agreement concluded between Rangers and Chelsea on 4 May 2017 (hereinafter "*the agreement*"), duly uploaded into TMS in the aforementioned transfer instruction, contained the following clauses:

"6.1 Rangers hereby warrants to Chelsea that: (...)

(c) it shall continue to retain the Player's registration until Chelsea requires that the Player's registration be transferred to it on a permanent basis, and will not transfer the Player's registration to any other club on a temporary basis without Chelsea's prior written consent;

(d) prior to the registration of the Player with Chelsea it shall release the Player to Chelsea for such periods of training and development or participation in friendly matches or tours as Chelsea shall require subject to the applicable rules and requirements of FIFA, the SFA, SPFL, The FA and the PL;

(...)

(f) neither it, nor any of its advisors, agents or intermediaries shall, either directly or indirectly, solicit, accept or engage in any discussion or negotiation in relation to any offer from any other club for the temporary or permanent transfer of the Player's registration without Chelsea's express prior written consent; (...)"

3. Additionally, in the transfer instruction TMS 179284, the Club indicated 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.
4. On 19 August 2019, following investigations conducted by FIFA's TMS Global Transfers & Compliance Department¹, disciplinary proceedings were opened

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.

against Rangers with respect to a potential breach of art. 18bis of the Regulations on the Status and Transfer of Players, 2016 edition (hereinafter: *the RSTP or the Regulations*) and art. 4 par. 2 of Annexe 3 of the RSTP.

5. After having opened the disciplinary proceedings, Rangers did not provide the secretariat to the FIFA Disciplinary Department with any further position.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

1. In accordance with 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 (FDC) on member associations, clubs, officials, players, intermediaries and licensed match agents.
2. In application of art. 53 of the FDC, the Committee is competent to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.
3. In this respect, art. 25 par. 3 of the Regulations stipulates that disciplinary proceedings for violation of the Regulations shall be conducted in accordance with the FIFA Disciplinary Code.
4. In particular, art. 18bis par. 2 of the Regulations provides that the Committee may impose disciplinary measures on clubs that do not observe the obligations set out in article 18bis.
5. Art. 9 par. 2 of Annexe 3 of the Regulations further stipulates that sanctions may also be imposed on any association or club found to have entered untrue or false data into the system or for having misused TMS for illegitimate purposes.
6. This having been established, the Committee notes that the Club at no point challenged the jurisdiction of the Committee or the applicability of the FDC.
7. As a result of the foregoing considerations, the Committee deems that 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 of the RSTP

8. The Committee firstly points out that article 18bis par. 1 of the RSTP establishes a prohibition that is addressed to clubs only, as 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.”*. Consequently, the Committee emphasises that clubs are undoubtedly responsible to ensure that they cannot be influenced by any counter club (or a third party).
9. In other words, this prohibition consists of avoiding that a club concludes any type of contract that grants anyone the possibility of influencing 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.

2. Analysis of article 4.2 of Annexe 3 of the RSTP

10. Annexe 3 of the RSTP analyzes in a very detailed manner the Transfer Matching System, a web-based data information system that was developed to ensure that football authorities have more details available to them on international player transfers in order to increase the transparency of individual transactions, improve the credibility and standing of the entire transfer system.
11. In this sense, it is essential that clubs are aware of their responsibility and the importance of inserting correct information supported by the relevant documents in a responsible manner and at regular intervals.
12. In order to achieve the above, Annexe 3 of the Regulations describes in detail all the specific steps that users of the system must follow, as well as the obligations that must be met in order not to commit any violation and incur possible sanctions.
13. In this regard, article 4 par. 2 of the Regulations, addressed to any club, imposes the obligation on clubs to upload various types of information within the framework of an international transfer:

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

- [...]
- Declaration on third-party payments and influence
- [...]”.

14. In other words, should there be any third party influence on the club (as per art. 18bis of the Regulations), the club must indicate it in TMS when entering the relevant transfer instruction.

C) Analysis of the violations of the RSTP by Rangers

15. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular the transfer agreement in question as well as the documents uploaded into the TMS and the ones gathered during the investigation conducted by the FIFA TMS.

16. Firstly, the Committee notes that it is undisputed that Rangers and Chelsea concluded a transfer agreement on 4 May 2017.

17. Therefore, it is clear that the club has not questioned or disputed neither the existence, nor the content or validity of the contract at any time.

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

18. As a preliminary remark, the Committee wishes to emphasise that Chelsea is to be considered as a counter club in accordance with the wording of art. 18bis of the Regulations.

19. Consequently, and having determined the above, the Committee proceeds to analyse the content of the relevant clauses of the agreement which read as follows:

Clause 6.1 (c)

“The transferor hereby represents and warrants to Chelsea that: (...) (c) it shall continue to retain the Player’s registration until Chelsea requires that the Player’s registration be transferred to it on a permanent basis, and will not transfer the Player’s registration to any other club on a temporary basis without Chelsea’s prior written consent.”

Clause 6.1 (d)

"The transferor hereby represents and warrants to Chelsea that: (...) (d) prior to the registration of the Player with Chelsea it shall release the Player to Chelsea for such periods of training and development or participation in friendly matches or tours as Chelsea shall require subject to the applicable rules and requirements of FIFA, the SFA, SPFL, The FA and the PL."

Clause 6.1 (f)

"The transferor hereby represents and warrants to Chelsea that: (...) (f) neither it, nor any of its advisors, agents or intermediaries shall, either directly or indirectly, solicit, accept or engage in any discussion or negotiation in relation to any offer from any other club for the temporary or permanent transfer of the Player's registration without Chelsea's express prior written consent.(...)"

20. In this respect, the Committee wishes to point out that clause 6.1 (c) clearly limits the freedom of Rangers in transfer-related matters. In particular, the Club is prevented from loaning the respective player to another club without Chelsea's prior and written consent. In fact, clause 6.1 (f) prevented Rangers from even engaging in discussions or negotiations for possible temporary or permanent transfers of the respective player without Chelsea's prior and written consent.
21. In this context, the Committee noted that the Club argued that these clauses were without effect as the player was an amateur, *i.e.* not under contract with the Club, and as such, could leave freely. At first sight, the Committee concurred with such line of argumentation, in the sense that, in principle, only professional players could be loaned to another club (cf. art. 10 of the RSTP).
22. However, the Committee wishes to qualify this point by recalling that, should it not have signed this agreement with Chelsea, it could have concluded an employment contract with the player covering the period up to the transfer to Chelsea (in August 2017), and then loan the player to a third club during this period – and this, without jeopardizing the said upcoming transfer to Chelsea –. In sum, Rangers could have faced the situation where it was interested in transferring the respective player on loan – e.g. to allow the player to have more possibilities to play and develop before being transferred to Chelsea, or even to monetize its prior investment in the player – and yet being prevented from doing so independently, as a result of the agreement concluded with Chelsea.

23. In this respect, the Committee considers that clubs, in order to be considered truly independent, shall be free to negotiate and loan their players with no need to obtain the prior approval from another club. As a result, the Committee considers that, by the existence of these clauses, Rangers was influenced in its employment and transfer-related matters, thus affecting its independence.
24. Furthermore, it appears to be clear that, in accordance with clause 6.1 (d), Rangers had to release the player to Chelsea upon request of the latter. The Committee considers that such clause clearly limits the independence of Rangers concerning the composition and performance of its team which could even entail an adverse effect – e.g. when Chelsea unilaterally decides to request the release of the player, such player may have other matches with Rangers in which the player cannot participate due to his departure to Chelsea at the given time. An independent club cannot be the subject of such limitations with respect to its teams.
25. The Committee considers that these clauses clearly grant Chelsea the ability to influence in employment and transfer-related matters Rangers' independence, its policies and the performance of its teams.
26. For the sake of clarity, the Committee wishes to emphasize that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles a club to be influenced by another club in such matters and/or capacities, regardless of whether or not this influence actually materializes.
27. Following an analysis of the aforementioned clauses, the Committee considers that Rangers entered into this agreement enabling Chelsea to influence the independence and policies of Rangers in employment and transfer-related matters as well as the performance of its team and is therefore liable for a breach of article 18bis par. 1 of the RSTP in relation to the agreement.

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

28. The Committee further noted that in the relevant transfer instruction (TMS ref. 179284) Rangers declared that it did not enter into a contract enabling a "*third-party influence*".
29. The Committee considers, as demonstrated above, that the transfer agreement signed between Rangers and Chelsea, clearly allowed Chelsea to acquire the ability to influence Rangers *in employment and transfer-related matters its independence, its policies or the performance of its teams*.

30. Therefore, by declaring in TMS that there was no third-party influence the Club failed to disclose full and correct information in TMS, thus in violation of art. 4 par. 2 of Annexe 3 of the RSTP.

3. Summary

31. In view of the foregoing, the Committee concludes that the Club, by its conduct as described above, violated the following provisions of the RSTP:

- Art. 18bis of the Regulations, 2016 edition, for entering into a contract (i.e. the transfer agreement) enabling a third-party to influence the Club;
- Art. 4 par. 2 of Annexe 3 of the Regulations, 2016 edition; for failing to enter correct information in TMS.

32. Therefore, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

D) Determination of the sanction

33. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that Rangers is a legal person. According to art. 6 par. 1 of the FDC, both natural and legal persons are punishable by the following sanctions: warning, reprimand, fine, return of awards and/or withdrawal of a title. In addition, according to art. 6 par. 3 of the FDC, the sanctions applicable only to legal persons include transfer bans, playing matches without spectators and/or with a limited number of spectators and/or on neutral territory, bans on playing in a particular stadium, the annulment of the result of a match, the deduction of points, relegation to a lower division, expulsion from a competition in progress or from future competitions, forfeits, replaying a match and/or implementation of a prevention plan. Consequently, the FIFA Disciplinary Committee may impose the sanctions provided for under art. 6 of the FDC.

34. For the sake of good order, the Committee underlined 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).

35. In this context, the Committee recalled that, as established above, Rangers is guilty of having violated several provisions of the RSTP, namely art. 18bis and art. 4 par. 2 of Annexe 3 (2016 ed.).

36. Having said that, the Committee deemed that the violation of art. 18bis of the RSTP should however be mitigated by (1) the fact that the relevant clauses did not foresee any financial consequence in case of non-compliance with said clause, (2) the fact that said clause was limited in time for a short period (*i.e.* between the conclusion of the agreement and the formal transfer of the player to Chelsea) and (3) the fact that it had really limited effects. In addition, the Committee was of the opinion that the financial relationship between the two clubs also needed to be taken into account. As a matter of fact, the Committee held that Rangers was to be considered the “weak” party and that said clause was most likely not imposed by it during the relevant negotiations, but rather to it.
37. Finally, the Committee notes that Rangers does not have any precedents.
38. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction.
39. With regard to the fine, 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 greater than CHF 1,000,000.
40. Taking into account all the circumstances of the case, the Committee considers a fine of CHF 10,000 to be adequate and proportionate to the offence.
41. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Rangers’ conduct. In particular, Rangers 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.

III. Therefore decided

1. The FIFA Disciplinary Committee found the club Rangers FC responsible for the infringement of the relevant provisions of the RSTP related to third-party influence (art. 18bis par. 1) and to the obligations of clubs (art. 4 par. 2 of Annexe 3).
2. The FIFA Disciplinary Committee orders the club Rangers FC to pay a fine to the amount of CHF 10,000.

3. In application of art. 6 par. 1 a) of the FIFA Disciplinary Code, the club Rangers FC is warned on its future conduct.
4. The above fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin Yeboah
Chairman of the FIFA Disciplinary Committee

Note relating to the legal action:

This decision cannot be appealed against before the FIFA Appeal Committee (art. 57 par. 1 of the FDC).