

Decision
of the
FIFA Disciplinary Committee

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

on 17 October 2019

to discuss the case of:

Club Manchester City FC, England

(Decision 190681 TMS)

regarding:

Third-party influence and failure to enter correct information in TMS
(Art. 18bis par. 1 of the RSTP and art. 4 par. 3 of Annexe 3 of the RSTP [ed.
2018])

I. Inferred from the file

1. On 6 January 2019, club Manchester City FC (hereinafter “the Club” or “MCFC”) and the Spanish club Real Madrid CF (hereinafter “Real Madrid”) concluded a transfer agreement (hereinafter “the Agreement”) for the transfer of the player Brahim Abdelkader Diaz (hereinafter “the Player”). In particular, the agreement contained the following clause 5.2:

“In the event that REAL MADRID transfers the registration of the Player to a third party club (a “Third Party Club”) on a permanent basis (a “Further Transfer”) then REAL MADRID shall pay to MCFC an amount (the “Sell-on Fee”) equal to 15% of the amount by which the consideration received by REAL MADRID as a result of such Further Transfer (net of taxes) exceeds the amounts received by MCFC under this Agreement (net of taxes) (the “Profit”) save that, in the event that the relevant Third Party Club is a club in the region of Greater Manchester, the relevant Sell-on Fee shall be 40% of the Profit”

2. On 7 January 2019, the MCFC entered a transfer instruction (TMS ref. 218602) in the Transfer Matching System (hereinafter “TMS”) to release permanently the Player to Real Madrid CF.
3. In the context of the aforementioned transfer instruction, the Club indicated in particular 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 23 September 2019, following investigations conducted by FIFA’s TMS Global Transfers & Compliance Department¹, disciplinary proceedings were opened against MCFC with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players, 2018 edition (hereinafter: *the RSTP* or *the Regulations*) and art. 4 par. 3 of Annexe 3 of the RSTP.
5. On 4 October 2019, MCFC provided its position, which can be summarised as follows²:
 - MCFC was surprised to be subject of disciplinary proceedings as it believed it did not breach the RSTP and considered the clause to be a typical permitted sell-on clause, which does not infringe art. 18bis of the RSTP;

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. 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 clause would only apply if Real Madrid decided to transfer the Player in the future. Therefore, the clause may never have any effect as Real Madrid may never transfer the Player or the transfer fee payable may not exceed the sum which it paid to MCFC;
- Real Madrid could pass the increased cost of the higher sell-on fee onto the buying club in the “Greater Manchester” area who may be willing to pay more than other clubs in order to acquire a former player of a local rival;
- MCFC has no involvement in the future transfer of the Player and does not acquire any right that it could invoke to influence Real Madrid;
- Both The FA and the Premier League approved the clause and were satisfied there was no breach of any regulations;
- MCFC had a legitimate expectation that it was acting in full compliance with the RSTP;
- If FIFA deemed the clause to infringe art. 18bis of the RSTP, this would constitute a complete departure from its previous approach and would constitute a new and wider interpretation of the provisions, which would be unjust, unreasonable and unlawful;
- MCFC denies to have breached art. 18bis of the RSTP and therefore, was right to declare that there was no third-party influence;
- Even if FIFA decided that the clause breached art. 18bis of the RSTP, MCFC is not a “third party” for the purposes of the RSTP and so the declaration was correct either way.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the Committee notes that at no point during the present proceedings did the Club challenge the jurisdiction of the Disciplinary Committee (hereinafter also referred to as *the Committee*) or the applicability of the FDC.
2. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 53 of the FDC as read together with arts. 25 par. 3, 18bis par. 2 of the RSTP and art. 9 par. 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) Applicable regulations

3. In order to duly assess the matter, the Committee first wants to recall the content and the scope of the provisions at stake.

1. Article 18bis of the RSTP

4. The Committee firstly 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"*.
5. Consequently, the Committee emphasises that this provision is addressed to clubs, which are undoubtedly responsible to ensure that they do not influence the counter club (or a third party).
6. In other words, this prohibition aims at avoiding that a club concludes any type of contract influencing another 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. Article 4. par. 3 of Annexe 3 of the RSTP

7. Annexe 3 of the RSTP analyses in a very detailed manner the procedure related to international transfers of professional players through TMS.
8. 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 [...]"*.
9. 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 MCFC

10. 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) in light of the aforementioned provisions.

11. For the sake of good order, the Committee notes on the one hand that it is undisputed that MCFC and Real Madrid concluded the Agreement on 6 January 2019, and, on the other hand that the Club has not questioned or disputed neither the content nor the validity of the contract at any time.

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

12. Having determined the above, the Committee proceeds to analyse the content of the clause 5.2 of the Agreement which reads as follows:

"In the event that REAL MADRID transfers the registration of the Player to a third party club (a "Third Party Club") on a permanent basis (a "Further Transfer") then REAL MADRID shall pay to MCFC an amount (the "Sell-on Fee") equal to 15% of the amount by which the consideration received by REAL MADRID as a result of such Further Transfer (net of taxes) exceeds the amounts received by MCFC under this Agreement (net of taxes) (the "Profit") save that, in the event that the relevant Third Party Club is a club in the region of Greater Manchester, the relevant Sell-on Fee shall be 40% of the Profit."

13. In this respect, the Committee is of the firm opinion that this clause limits the freedom of Real Madrid in transfer-related matters. In fact, it appears to be clear that Real Madrid would have to pay MCFC a much higher sell-on fee (40% instead of 15%) should it decide to transfer the Player to a club *"in the region of Greater Manchester"*. Therefore, it is evident that in a scenario in which Real Madrid 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 a "Greater Manchester" club, this, in order to make the most profitable operation from a purely financial point of view.
14. In this context, the Committee notes that the Club argued that the clause would only apply if Real Madrid decided to transfer the Player in the future. Therefore, the clause may not have any effect as Real Madrid may never transfer the Player or the transfer fee payable may not exceed the sum which it paid to MCFC.
15. In this sense, the Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct (cf. para II.4 *supra*) whenever the contract in question enables or entitles a club to be influenced by another one (or by a third party), regardless of whether or not this influence actually materialises after the conclusion of the contract.

16. Furthermore, the Committee notes that the Club claimed it had no involvement in the future transfer of the Player and did not acquire any right that could have any influence on Real Madrid.
17. In this respect, the Committee underlines that clubs, in order to be considered truly independent, shall be free to transfer their players. In the case at hand, the Committee considers that, by the mere existence of this clause, Real Madrid is influenced in its employment and transfer-related matters as demonstrated above.
18. In sum, the Committee considers that this clause undoubtedly grants MCFC the ability to influence in employment and transfer-related matters Real Madrid's independence, its policies and the performance of its teams.
19. Following an analysis of the aforementioned clause, the Committee concludes that MCFC entered into this Agreement enabling it to influence the independence and policies of Real Madrid 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 in light of art. 4 par. 3 of Annexe 3 of the RSTP

20. The Committee further noted that in the relevant transfer instruction (TMS ref. 218602) MCFC declared that it did not enter into a contract enabling a "*third-party influence*".
21. Keeping in mind that, as demonstrated above, the Agreement signed between MCFC and Real Madrid, enabled MCFC to acquire the ability to influence Real Madrid "*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 failed to disclose full and correct information in TMS.
22. As a consequence, the Committee holds that the Club is to be found guilty of having violated art. 4 par. 3 of Annexe 3 of the RSTP.

3. Summary

23. 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, 2018 edition, for entering into a contract (*i.e.* the Agreement) enabling the Club to influence another club;
 - Art. 4 par. 3 of Annexe 3 of the Regulations, 2018 edition; for failing to enter correct information in TMS.

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

D) Determination of the sanction

25. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that MCFC is a legal person, and as such can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

26. 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).

27. In these circumstances, the Committee was of the opinion that the relationship between the two clubs in relation to the scope and effects of the relevant clause of the Agreement needed to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clause mainly lies on Real Madrid, while MCFC is undoubtedly benefitting from it.

28. In the same line, 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 MCFC is the influencing club as it was only in MCFC's interest to impose such clause.

29. Having said that, the Committee notes that MCFC does not have any precedents related to violations of art. 18bis of the RSTP.

30. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction.

31. 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.

32. Taking into account all the circumstances of the case, while keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour, the Committee considers a fine of CHF 30,000 to be adequate and proportionate to the offence.

33. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to MCFC's conduct. In particular, MCFC 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 Manchester City FC responsible for the infringement of the relevant provisions of the RSTP related to third-party influence (art. 18bis par. 1) and the failure to enter correct information in TMS (art. 4 par. 3 of Annexe 3).
2. The FIFA Disciplinary Committee orders the club Manchester City FC to pay a fine to the amount of CHF 30,000.
3. In application of art. 6 par. 1 a) of the FIFA Disciplinary Code, the club Manchester City 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 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. 4 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).