Decision of the FIFA Disciplinary Committee

Mr. PIERA Alejandro [PAR], Deputy Chairman
Mr. AL MISEHAL Yasser [KSA], Member
Mr. BERGSSON Gudni [ISL], Member

on 21 November 2019,

to discuss the case of:

Football Federation Australia Limited, Australia

(Decision 190709)

regarding:

Participation in organised football without valid registration

Article 5 par. 1 of the Regulations on the Status and Transfers of Players
I. inferred from the file

1. On 29 July 2019, the player Kristian Fardal Opseth (hereinafter: the Player) and the Australian club, Adelaide United FC (hereinafter: the Australian club or Adelaide) concluded an employment contract.

2. On 6 August 2019, the Australian club entered in the Transfer Matching System (TMS) the relevant transfer instruction to engage the Player, as a result of which, on 8 August 2019, the Football Federation Australia (hereinafter: the Australian FA) requested the Player’s International Transfer Certificate (ITC) from his former association, i.e. the Turkish Football Federation (hereinafter: the Turkish FA).

3. On 14 August 2019, the Player participated in a closed-door pre-season friendly match with the Australian club.

4. On 15 August 2019, the Turkish FA rejected the Player’s ITC request in TMS.

5. On 27 August 2019, the Player participated in a pre-season friendly match with the Club.

6. On 30 August 2019, the Single Judge of the Players’ Status Committee authorised the Australian FA to provisionally register the Player for its affiliated club, Adelaide.

7. On the same day, the Australian FA confirmed the provisional registration of the Player.

8. On 2 October 2019, following investigations conducted by the FIFA’s TMS Global Transfer Compliance Department (hereinafter: FIFA TMS)\(^1\), disciplinary proceedings were opened against the Australian FA with respect to the potential breach of art. 5 par. 1 of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations or the RSTP). The latter was given a six-day deadline to provide the Secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) with its position.

9. On 8 October 2019, the Australian FA provided the Secretariat with its position, which can be summarised as follows\(^2\):

   i. The Australian FA referred to its position submitted to FIFA TMS and recalled the following elements:

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\(^1\) 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 Australian FA. 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 regulatory framework which is applicable to Hyundai A-League (HAL) clubs and players does not permit a player to participate in organised football matches unless and until that player is registered with that club”;

“in accordance with the Regulations, one of the precedent conditions to registration is that a player must have obtained an International Transfer Certificate (ITC)”;

“at the time the Player participated in the two (2) friendly matches (the Matches) for Adelaide United (the Club), the Player had not received the approval of the FIFA Players’ Status Committee to [be] register[ed] provisionally with the FFA pursuant to the Regulations”;

ii. In addition, the Australian FA points out that the two aforementioned friendly matches cannot be considered as “official matches or organised football as defined in the Regulations”.

iii. In this respect, the Australian FA stresses that the fact that the Club has provided the “FFA Match Approval Request Form” for the two friendly matches is irrelevant; This approval is not intended to allow a club to participate in a friendly match but rather concerns certain legal, commercial and operational issues (authorisation to use intellectual property rights / insurance policies / compliance with minimum safety and medical standards);

iv. With respect to the match sheets on file, the Australian FA “submits that limited or no significance should be attributed to the form of the starting lists used for the Matches” as “the Club appears to have elected to use the historical version of the forms for the Matches as a matter of convenience” while the Australian FA “does not prescribe the form of starting list to be used for friendly matches”;

v. The Australian FA considers that the RSTP “do not appear to preclude a player from participating in friendly and trial matches prior to registering with the player’s new club and Member Association, which would include the receipt of a valid ITC for that player”;

vi. As a result the Australian FA submits that the relevant matches are not part of organised football in the sense of art. 5 par. 1 of the RSTP. Should the Disciplinary Committee however find the Australian FA in violation of art. 5.1 of the RSTP, the latter requests that the following mitigating circumstances are taken into consideration:

  o This would be the first offence of this nature committed by the Australian FA;
There was not advantage that could have been gained by the player participating in these two matches as there were not official;
FIFA authorised the Australian FA to register provisionally the player on 2 September 2019, which was 7 days after the second match.

II. and considered

1. In view of the circumstances of the present matter, the FIFA Disciplinary Committee (hereinafter also referred to as the Committee) decided to briefly address its jurisdiction to decide on the present matter, before entering into the substance of the matter and assessing the potential violations committed by the Australian FA as well as the potential sanctions resulting therefrom.

A) Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Committee notes that at no point during the present proceedings did the Australian FA challenge its jurisdiction or the applicability of the FDC.

3. 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 of the RSTP, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B) Analysis of the potential violations

4. In these circumstances, the Committee first noted that the matter at hand relates to two matches played by the Player for the Australian club, namely on 14 and 27 August 2019, i.e. prior to his formal registration at the Australian FA on 30 August 2019.

5. In this context, the Committee notes from the circumstances of the case, but also from the arguments raised by the Australian FA, that the heart of the discussions in the matter at hand are on the one hand the status and/or the qualification of these matches and, on the other hand, as to whether the Player had to be (and/or was) registered at the Australian FA when taking part in these matches.

6. With the above in mind, the Committee acknowledged that the Australian FA considers that cannot be considered as “official matches or organised football as defined in the Regulations”.
7. In the light of this, the Committee found it essential to recall that, in accordance with art. 5 par. 1 of the RSTP, a player must be registered at an association to play for a club as either a professional or an amateur. Only registered players are eligible to participate in organised football. At this stage, and as a preliminary remark with respect to the arguments raised by the Australian FA, the Committee wanted to underline that this article does not refer to the notion of official matches, but solely to the one of organised football.

8. Against such background, the Committee held that this provision leaves no room for interpretation: players must be registered at an association to participate in organised football.

9. In this respect, in order to determine as to whether a potential violation of art. 5 par. 1 of the RSTP exists with regard to the present matter, the Committee had to define whether the Player took part in what is considered to be organised football. In sum, the Committee had to assess if the aforementioned matches (cf. para. II.4 supra) fall under the definition of organised football, i.e. if it is organised under the auspices of FIFA, a confederation or an association, or if it has been authorised by them (as specified in the definition section of the RSTP).

10. As a result, it is of outmost importance to define as to whether the matches in question fall under the scope of organised football. In the affirmative, the Player should have been registered to take part in these matches.

11. In this context, and for the sake of good order, the Committee wished to address the distinction made by the Australian FA between official matches and friendly matches. In particular, the Committee recalled that organised football is comprised of official matches, friendly matches and tournaments. For the sake of clarity, it is clear that there is a specific definition for “Official Matches” that – as emphasised above – was deliberately not used for the purpose of art. 5 of the RSTP. The definition of official matches indicates that these matches are part of the broader construct of organised football, the former not being limited to it.

12. In addition to the above and for the sake of completeness, the Committee stressed that the Australian FA’s arguments related to the notion of “trial” are irrelevant – matches played by a player after the conclusion of an employment contract with his new club, as is in the case at hand, can obviously no longer be considered as being part of a trial – and will therefore not be addressed.

13. This being established, the Committee went on to analyse the status of the matches in question, and particularly as to whether they have been “organised under the auspices of FIFA, a confederation or an association, or authorised by them”.
To do so, the Committee turned its attention to the match sheets on file and noticed that although they seem to indicate that the matches are “sanctioned friendly”, they contain the logos of (1) the Hyundai A-League, (2) the Westfield W-League and (3) the National Youth League. In addition, and most importantly, the Committee underlined that Adelaide United FC has provided the “FFA Match Approval Request Form” for the relevant matches, which seem to indicate that the matches required the authorisation of the FFA.

In this respect, the Committee noted that the Australian FA argued on the one hand that that the approval is not intended to allow the club to participate in a friendly match but rather concerns certain legal, commercial and operational issues (authorisation to use intellectual property rights / insurance policies / compliance with minimum safety and medical standards) and on the other hand that “limited or no significance should be attributed to the form of the starting lists used for the Matches”.

The Committee however stressed that it could not adhere to the explanation and arguments brought forward by the Australian FA. As a matter of fact, and with regard to the “FFA Match Approval Request Form”, the Committee’s attention was drawn to the following elements:

i. The documents indicate that the Australian FA appoints match officials in some circumstances;

ii. The documents do not appear to reflect any legal and/or commercial issue. At most, they underline some organisational aspects of the match such as the number of permanent goals, the presence of scoreboards, the organisation of the dressing rooms, etc.

iii. One section is purely reserved for the use of the Australian FA and only refers to the approval of the matches;

iv. The last section of the documents makes references to the approval of the Australian FA which does not seem to be limited to legal and/or commercial issues:
   - “The Opposing Club (Adelaide City) has approval from its governing body to participate in the match”, the governing body being the Australian FA (emphasis added);
   - “The Opposing Club (Melbourne City) has approval from its governing body to participate in the match” (emphasis added).

On that basis, the Committee deemed that it had no other alternative but to determine that the two matches at hand were organised under the auspices of the Australian FA or at least authorised by the latter as can be seen from the “FFA Match Approval Request Form”. As a result, the Committee held that, regardless of their status of “friendly matches”, these matches undoubtedly fall under the definition of organised football and that, by way of consequence, the Player had to be duly registered to play these matches.
With this in mind, the Committee acknowledged that although the Player’s registration process was initiated on 6 August 2019, i.e. before the matches at stake were played, the latter was only formally registered at the Australian FA on 30 August 2019 (following the authorisation granted by the Single Judge of the Players’ Status Committee), i.e. after the matches were played.

As a result, the Committee could only conclude that the Player took part in these matches without being registered, therefore in contravention of the principles enshrined in art. 5 par. 1 of the RSTP.

This being established, the Committee went on to analyse as to whether the Australian FA can be held liable for said infringement.

To that end, the Committee referred to CAS award 2014/A/3813 Real Federación Española de Fútbol v. FIFA (par. 259) in which CAS established that the association concerned “had an ancillary duty to play in ensuring full compliance of [art. 5 par. 1 of the Regulations]” and that “[t]his role entailed undertaking both preventive and curative measures in monitoring clubs’ compliance thereof”. As such, the Committee agreed with the conclusions reached by CAS and deems that the Australian FA was required to ensure that its affiliated club, in casu Adelaide, followed the procedure laid down under art. 5 par. 1 of the Regulations.

Consequently, the Committee, referring to its aforementioned conclusions – namely that the Player participated in organised football prior to his registration – determined that the Australian FA was in violation of art. 5 par. 1 of the Regulations, and is to be sanctioned for said violation.

C) Determination of the sanction

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

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).

At this stage, the Committee first stressed the clean record of the Australian FA.
26. Notwithstanding the above, the Committee held that the provisions of art. 5 par. 1 of the RSTP are of paramount importance and need to be fully complied with by all stakeholders. By failing to play its ancillary duty to ensure full compliance with said article, the Australian FA enabled a player to take part in organised football without being duly registered. The Committee therefore underlined that it was left with no other option but to sanction such behaviour which cannot be tolerated to safeguard the integrity of the registration and transfer system as a whole.

27. Taking into account the relevant principles and conclusions set out above, the Committee considered a fine to be the appropriate sanction. Such fine, according to the provisions of art. 6 par. 4 of the FDC, may not be lower than CHF 300 and greater than CHF 1,000,000.

28. After a thorough analysis of all the circumstances of the case, but also of the explanations provided by the Australian FA as well as its clean record, the Committee considered a fine of CHF 5,000 to be adequate and proportionate to the offence.

29. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to the Australian FA’s conduct. In particular, the latter is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular the RSTP and its provisions related to the registration of players) 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 Australian FA.
III. has therefore decided

1. The FIFA Disciplinary Committee found the Football Federation Australia Limited responsible for the infringement of the relevant provisions of the RSTP related to registration of players (art. 5 par. 1).

2. The FIFA Disciplinary Committee orders the Football Federation Australia Limited to pay a fine to the amount of CHF 5,000.

3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Football Federation Australia Limited 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

PIERA Alejandro
Deputy Chairman of the Disciplinary Committee
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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.

Legal Action

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

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