

Decision
of the
Deputy Chairman of the FIFA Disciplinary
Committee

Mr Alejandro Piera [PAR]

on 7 November 2019,

to discuss the case of:

Club Cruzeiro Esporte Clube, Brazil

(Decision 190731 PST)

regarding:

failure to comply with

art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

I. inferred from the file

1. On 17 April 2018, the Single Judge of the Players' Status Committee decided that the club Cruzeiro Esporte Clube (hereinafter, "*the Debtor*") had to pay the following amounts:
 - To the club FC Zarya Luhansk (hereinafter, "*the Creditor*") the amount of EUR 975,000 as outstanding transfer fee, plus 5% interest *p.a.* as follows:
 - over the amount of EUR 487,500 as from 8 October 2016 until the date of effective payment;
 - over the amount of EUR 487,500 as from 7 April 2017 until the date of effective payment.
 - To FIFA: CHF 15,000 as costs of the proceedings.
2. The findings of the decision were communicated to the parties on 2 May 2018. Upon request on the Debtor, the grounds of the aforementioned decision were duly notified on 6 June 2018.
3. On 28 June 2018, the Debtor appealed the aforementioned decision before the Court of Arbitration for Sport (CAS).
4. On 22 August 2019, CAS rendered an award dismissing the Debtor's appeal and confirming the decision rendered on 17 April 2018 by the Single Judge of the Players' Status Committee.
5. In addition, CAS ordered the Debtor to pay CHF 20,000 to the Creditor as contribution towards its legal costs and expenses incurred with the arbitration proceedings.
6. On 15 October 2019, as the aforementioned amounts were not paid to the Creditor and to FIFA, the Secretariat to the FIFA Disciplinary Committee (hereinafter: "*the Secretariat*") opened disciplinary proceedings against the Debtor.
7. On 22 October 2019, the Debtor provided the Secretariat with its position, which can be summarized as follows:
 - i. The Debtor claimed that it intended to pay the outstanding amounts to the Creditor as soon as possible but that it did not have the financial means to afford such

¹ The summary does not purport to include every single contention put forth by the Debtor. However, the Deputy Chairman has thoroughly considered in his 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 his position and in the ensuing discussion on the merits.

payment. In particular, the Debtor requested the Disciplinary Committee to respect the principle of proportionality when issuing a decision in this matter and to take into account the particularities of the case at hand, such as:

- a) The Debtor never received any sanction for having disrespected a decision passed by one of the decision-making bodies of FIFA or CAS;
 - b) Even though the Debtor did not deny that it owed the outstanding amounts to the Creditor, it is currently lacking the financial means to make such payment due to exceptional circumstances. In this respect, the Debtor stressed that the Brazilian economy underwent one of the most serious financial recessions and political crises, which resulted in the impeachment of the president. This crisis has led to a considerable drop in the income of all football clubs, including the Debtor, such as revenues from ticket sales, sponsors and television rights.
 - c) It was during this period that the Debtor entered into a transfer agreement with the Creditor. This crisis had an impact on the Debtor's revenue and prevented the latter from paying the amounts due to the Creditor. Nevertheless, the Debtor pointed out that it had paid four instalments (out of the six) established in the transfer agreement, indicating its good faith to comply with its financial obligations;
 - d) The Debtor further claimed that it would address a payment plan to the Creditor in the upcoming weeks to amicably settle this dispute;
 - e) The Debtor has already settled several other debts towards other creditors.
- ii. In light of the above, the Debtor requested the Disciplinary Committee to *"find a true and real balance between imposing a fair sanction without, however, ignoring the referenced" exceptional circumstances"*.

II. and considered

1. In view of the circumstances of the present matter, the Deputy Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as *"the Deputy Chairman"*) decided to first address the procedural aspects of the present matter, namely the applicable law as well as its jurisdiction (A), before entering into the substance of the matter and assessing the potential failure to comply with the CAS award (B) as well as the potential sanctions resulting therefrom (C).

A) Applicable law and jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

2. First of all, the Deputy Chairman went on to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Deputy Chairman underlined that the 2019 edition of the FDC (hereinafter, "*the 2019 FDC*") entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
4. With regard to the matter at hand, the Deputy Chairman highlighted that the disciplinary offense, *i.e.* the potential failure to comply with the CAS award issued on 22 August 2019, was committed after the 2019 FDC entered into force. As a result, the Deputy Chairman deemed that the merits of the present case fall under the 2019 edition of the FDC.
5. In addition to the above, the Deputy Chairman held that the procedural aspects of the present matter should also be governed by the 2019 FDC.
6. Having said that, and for the sake of good order, it is worth emphasizing that, in line with art. 54 par. 1 lit h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC may be decided by one member of the Disciplinary Committee alone, as in the case at hand.
7. The applicable law having been determined and his jurisdiction having been established, the Deputy Chairman subsequently turned his attention to the aforementioned CAS award.

B) Did the Debtor comply with the award issued by the Court of Arbitration for Sport?

8. First of all, the Deputy Chairman emphasized that equal to the competence of any enforcement authority, he cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.
9. Having said that, the Deputy Chairman noted that the findings of the decision passed by the Single Judge of the Players' Status Committee on 17 April 2018 had been duly notified on 2 May 2018, and that the grounds, upon request of the Debtor, had been communicated on 6 June 2018 to the parties. The Deputy Chairman also observed that the Debtor lodged an appeal before the Court of Arbitration for Sport (CAS). On 22 August 2019, CAS dismissed the appeal and confirmed the aforementioned decision of the Single Judge of the Players' Status Committee. The Deputy Chairman finally

noticed that no appeal against the aforementioned CAS award was lodged before the Swiss Federal Tribunal. Therefore, the CAS award dated 22 August 2019 became final and binding.

10. In view of what has been explained under paragraph II./8. above, the Deputy Chairman is not allowed to analyse the case decided upon by CAS as to the substance, in other words, to check the correctness of the amounts ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding award issued by CAS on 22 August 2019.
11. In these circumstances, the Deputy Chairman first acknowledged that the Debtor claimed that it was facing “*exceptional circumstances*” due to the financial recession and political crisis in Brazil, which allegedly prevented the latter from paying the amounts due to the Creditor.
12. In light of these elements, the Deputy Chairman found it worthwhile to emphasise that a club has the duty to be aware of its actual financial strength, constitute provision in anticipation of possible issues and finally conclude contracts that can be fulfilled. In other words, the principle of *pacta sunt servanda* – more relevant in the context of contractual dispute *per se* – is of paramount importance for FIFA and a key issue to be protected among others by the Regulations on the Status and Transfer of Players.
13. To that end, the Deputy Chairman also wished to refer to the content of art. 2 of the Swiss Civil Code, according to which “*[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith*” (cf. par. 45 ff. CAS 2010/A/2144 Real Betis Balompié SAD v. PSV Eindhoven). Thus, the sole fact that the Debtor may be undergoing financial problems does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor and to FIFA.
14. As such, the Deputy Chairman deemed that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor and to FIFA in accordance with the CAS award have not been paid.
15. In light of all of the above, the Deputy Chairman concluded that the Debtor did not comply with the CAS award issued on 22 August 2019, and is consequently withholding money from the Creditor and FIFA, as a result of which it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the 2019 FDC.

C) The sanctions to be imposed

16. First of all, and with regard to the sanction to be imposed, the Deputy Chairman recalled that the 2019 FDC is applicable. In particular, the latter referred to art. 15 of the 2019 FDC, in accordance with which anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision):
- a) will be fined for failing to comply with a decision; in addition:
 - b) will be granted a final deadline of 30 days in which to pay the amount due (...);
 - c) in the case of clubs; upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid (...).
17. In these circumstances, the Deputy Chairman underlined that the fine to be imposed under the above-referenced art. 15 par. 1 a) of the 2019 FDC, in combination with art. 6 par. 4 of the 2019 FDC, shall range between CHF 100 and CHF 1,000,000.
18. This being established, the Deputy Chairman considered that the Debtor withheld the amounts unlawfully from the Creditor and FIFA. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due.
19. In this respect, the Deputy Chairman observed that the Debtor requested the Disciplinary Committee to respect the principle of proportionality when issuing the decision and to take into account the particularities of the case at hand, such as i) the financial and political crisis in Brazil, ii) the acknowledgement of its debt to the Creditor and its willingness to settle it as well as iii) the fact that it never received any sanction for having disrespected a decision passed by one of the decision-making bodies of FIFA or CAS. The Deputy Chairman also noticed that the Debtor asked the Disciplinary Committee to *"find a true and real balance between imposing a fair sanction without, however, ignoring the referenced exceptional circumstances"*.
20. As already exposed above, the Deputy Chairman recalled that the financial and political crisis in Brazil cannot be considered as exceptional circumstances that could be invoked by the Debtor to delay the payment of the amounts due to the Creditor and to FIFA. Furthermore, the Deputy Chairman would like to point out that, contrary to the Debtor's allegations, the latter has already been sanctioned by the Disciplinary Committee for failing to comply with financial decisions². Consequently, the Deputy Chairman must reject the aforementioned arguments of the Debtor.

² Cases 171478 and 180196

21. In view of all the circumstances pertaining to the present case, but particularly taking into account the outstanding amounts due, the Deputy Chairman regarded a fine amounting to CHF 30,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
22. In application of art. 15 par. 1 b) of the 2019 FDC, the Deputy Chairman decided to grant the Debtor a final deadline of 30 days to pay the amount due to the Creditor and FIFA.
23. In continuation, in view of the circumstances of the case but also the aim of the provision at hand (*i.e.* to ensure that decisions passed by a body, a committee or an instance of FIFA or a CAS decision are respected and complied with), the Deputy Chairman considered a ban from registering new players (at national and international level) as an appropriate sanction. In particular, the Deputy Chairman recalled that in accordance with art. 15 par. 1 c) of the 2019 FDC such ban will be automatically imposed on the Debtor following the expiry of the granted deadline and will only be lifted upon the payment of the total outstanding amounts to the Creditor.
24. For the sake of good order, the Brazilian Football Association is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Brazilian Football Association is referred to art. 34 of the 2019 FDC in what concerns the calculation of time limits. Should the Brazilian Football Association fail to automatically implement said sanction and provide the Secretariat with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

III. has therefore decided

1. The club Cruzeiro Esporte Clube (hereinafter, "*the Debtor*") is found guilty of failing to comply with the award issued by the Court of Arbitration for Sport (CAS) on 22 August 2019 – confirming the decision rendered by the Single Judge of the Players' Status Committee on 17 April 2018 – according to which it was ordered to pay the following amounts to:
 - The club FC Zarya Luhansk (hereinafter, "*the Creditor*"):
 - EUR 975,000 as outstanding transfer fee, plus 5% interest *p.a.* to be paid in accordance with the said decision;
 - CHF 20,000 as contribution towards the expenses incurred in connection with the CAS proceedings.
 - FIFA: CHF 15,000 as costs of the proceedings.
2. The Debtor is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 30 days of notification of the present decision.
3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor and FIFA.
4. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Brazilian Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Brazilian Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.
5. As a member of FIFA, the Brazilian Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Brazilian Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.

6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment made and to provide the relevant proof of payment.
7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera

Deputy 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.

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.

The full address and contact numbers of the CAS are the following:

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