

Decision

of the

FIFA Disciplinary Committee

Mr LIM Kia Tong [SIN], Acting Chairman
Mr AL MISEHAL Yasser [KSA], Member
Mr BERGSSON Gudni [ISL], Member

on 29 January 2020

to discuss the case of:

Club Sporting CP, Portugal

(Decision 191222 & 200015 TMS)

regarding:

Third-party influence and failure to enter correct information in TMS

(Art. 18bis par. 1 of the RSTP [ed. 2016 and 2018]
as well as art. 4 par. 2 of Annexe 3 of the RSTP [ed. 2016] / art. 4 par. 3 of Annexe 3 of
the RSTP [ed. 2018])

I. inferred from the file

Disciplinary case reference: 191222

1. On 20 January 2017, the Portuguese club Sporting Clube de Portugal (hereinafter: *Sporting*) and the Ecuadorian club Liga Deportiva Universitaria de Quito (hereinafter: *Liga Deportiva*) concluded a transfer agreement (hereinafter: *Agreement 1*) for the transfer of the player Hernán Barcos (hereinafter: *the Player 1*). In particular, the agreement contained the following clause 5.2:

“2. LIGA DEPORTIVA shall also pay the amount €30.000.000 (thirty million euro) in case the Player is transfer (and therefore only if the player is under contract with LIGA DEPORTIVA) at the moment of such transfer from LIGA DEPORTIVA to any Portuguese club until the 30th of June 2021, with exception of SPORTING, SAD.”

2. On 30 January 2017, Sporting entered a transfer instruction (TMS ref. 159513) in the Transfer Matching System (hereinafter: *TMS*) to release permanently the Player 1 to Liga Deportiva.
3. In the context of the aforementioned transfer instruction, Sporting 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.

Disciplinary case reference: 200015

4. On 2 September 2019, Sporting and the French club Stade Rennais FC (hereinafter: *Stade Rennais*) concluded a transfer agreement (hereinafter: *Agreement 2*) for the transfer of the player Raphael Dias Belloli (hereinafter: *the Player 2*). In particular, the agreement contained the following clause 4:

“Conditional Indemnity II

If the Player is definitively transferred by STADE RENNAIS FOOTBALL CLUB to Sport Lisboa e Benfica – Futebol, SAD or Futebol Clube do Porto – Futebol, SAD before 5 September 2024, the parties agree that STADE RENNAIS F.C. will pay SPORTING CP a fixed additional fee of 10,000,000 (ten million Euros), solidarity mechanism included. This additional fee, if relevant, shall be paid in accordance with a schedule which is itself strictly in accordance with the schedule for the payment of the transfer fee to be received by STADE RENNAIS FOOTBALL CLUB, as specified in the future transfer contract. In this situation, the Sell-on clause won't be applied”.

5. On the same date, Sporting entered a transfer instruction (TMS ref. 255246) in the TMS to release permanently the Player 2 to Stade Rennais.
6. In the context of the aforementioned transfer instruction, Sporting 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.

7. Following investigations conducted by FIFA's TMS Global Transfers & Compliance Department¹, disciplinary proceedings were opened against Sporting **i)** on 26 November 2019 in relation to Agreement 1 and with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players (2016 ed.) and art. 4 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players (2016 ed.); and **ii)** on 8 January 2020 in relation to Agreement 2 and with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players (2018 ed.) and art. 4 par. 3 of Annexe 3 of the Regulations on the Status and Transfer of Players (2018 ed.).
8. On 3 December 2019 (Agreement 1) and on 14 January 2020 (Agreement 2), Sporting provided its positions, which are almost identical and can be summarized as follows²:
 - The objective that presided over the inclusion of art. 18bis in the FIFA RSTP was, first and foremost, the integrity of clubs and competitions, and such purpose was not hindered in the slightest way by the adoption of the clauses at stake.
 - Sporting already explained before FIFA TMS its position on the abovementioned clauses, and wishes to insist therein.
 - Sporting understands that the clauses at stake are not in breach of art.18bis RSTP since they were freely and independently negotiated and accepted by both parties, and have effects solely between the two clubs that are part of each agreement. Therefore, a clause freely negotiated and accepted by both clubs part of an agreement cannot be interpreted as having influence in transfer related matters of any of the clubs.
 - From the wording of art. 18bis of the RSTP, Sporting understands that the influence of a third party refers to events where the club might be forced to accept or reject an offer to sell or loan a player or even to consult with another club in the event of an offer, which is not the case in the agreements at stake.
 - Sporting has not been involved in any way in the decision-making process of Liga Deportiva and Stade Rennais.
 - Sporting had no conscience of the wrongfulness of the clauses at stake and has always acted in good faith, hence why it considers that no disciplinary measure shall be imposed on it. Moreover, Sporting has always collaborated with FIFA in its battle against third-party influence and third-party ownership.
 - Finally, as regards the alleged introduction of incorrect information in TMS, it was never Sporting's intention to do so and to omit declaring any third-party influence in TMS. On the contrary, the only reason for non-declaring said

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.

influence is that Sporting did not believe the clauses at stake represented any influence, hence why it declared in TMS the lack of third-party influence.

9. In addition to the abovementioned arguments, Sporting requested to be allowed to present its position in relation to both cases in a hearing, which was held on 29 January 2020 at the Home of FIFA in Zurich, before a panel constituted by the three members of the FIFA Disciplinary Committee mentioned in the heading of this decision.

II. and considered

Please note that given the similar nature of the clauses at stake and for reasons of procedural economy, the FIFA Disciplinary Committee decided to merge the cases 191222 and 200015 into one decision.

A) Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the Committee notes that at no point during the present proceedings did Sporting challenge the jurisdiction of the Disciplinary Committee (hereinafter: *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. 52 of the FDC as read together with arts. 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.
4. In this regard, the Committee notes that the relevant provisions of the RSTP applicable to Agreement 1 are those of the 2016 edition, whereas the provisions applicable to Agreement 2 are those of the 2018 edition. However, given that the wording of the provisions in both editions is identical, the forthcoming analysis of the Committee will apply to both editions.

1. Article 18bis of the RSTP

5. 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".

6. Consequently, the Committee emphasizes 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).
7. 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. Art. 4 par. 2 (2016 ed.) and art. 4 par. 3 (2018 ed.) of Annexe 3 of the RSTP

8. Annexe 3 of the RSTP analyses in a very detailed manner the procedure related to international transfers of professional players through TMS.
9. In particular, art. 4 par. 2 (2016 ed.) and art. 4 par. 3 (2018 ed.) of the Regulations, impose 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 [...]"*.
10. 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 Sporting

11. The above having been established, the Committee subsequently analyses the evidence at its disposal (in particular the transfer agreements 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.
12. For the sake of good order, the Committee notes on the one hand that it is undisputed that Sporting signed Agreement 1 with Liga Deportiva on 20 January 2017 and Agreement 2 with Stade Rennais on 2 September 2019, and, on the other hand, that Sporting has not questioned or disputed neither the content nor the validity of the contracts at any time.
13. Moreover, the Committee wishes to point out that in its forthcoming analysis of the violations of the RSTP by Sporting it has taken into account not only Sporting's position

before FIFA TMS Global Transfers & Compliance Department and before the Disciplinary Committee but also the arguments put forward by the club in the hearing held at the Home of FIFA on 29 January 2020.

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

14. Having determined the above, the Committee proceeds to analyse, on the one hand, the content of the clause 5.2 of Agreement 1 which reads as follows:

"2. LIGA DEPORTIVA shall also pay the amount €30.000.000 (thirty million euro) in case the Player is transfer (and therefore only if the player is under contract with LIGA DEPORTIVA) at the moment of such transfer from LIGA DEPORTIVA to any Portuguese club until the 30th of June 2021, with exception of SPORTING, SAD."

15. In this respect, the Committee is of the firm opinion that this clause limits the freedom of Liga Deportiva in transfer-related matters. In fact, it appears to be clear that Liga Deportiva would have to pay Sporting a significantly high amount (EUR 30 million) should it decide to transfer the Player 1 to a Portuguese club other than Sporting. Therefore, it is evident that in a scenario in which Liga Deportiva receives two similar and/or identical offers for the transfer of the Player 1, it would be more inclined to accept the one not coming from a Portuguese club that is not Sporting, this, in order to make the most profitable operation from a purely financial point of view.

16. In this context, the Committee notes that Sporting argued that the clause was negotiated freely and accepted by Liga Deportiva, and that Sporting would not have any influence in the decision-making process of the Ecuadorian club should it decide to sell the Player 1.

17. In this sense, the Committee wishes to emphasize 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 materializes after the conclusion of the contract.

18. Moreover, 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, Liga Deportiva is influenced in its employment and transfer-related matters as demonstrated above.

19. On the other hand, the Committee proceeds to analyse the content of the clause 4 of Agreement 2 which reads as follows:

"Conditional Indemnity II

If the Player is definitively transferred by STADE RENNAIS FOOTBALL CLUB to Sport Lisboa e Benfica – Futebol, SAD or Futebol Clube do Porto – Futebol, SAD before 5 September 2024, the parties agree that STADE RENNAIS F.C. will pay SPORTING CP a fixed additional fee of 10,000,000 (ten million Euros), solidarity mechanism included. This additional fee, if relevant, shall be paid in accordance with a schedule which is

itself strictly in accordance with the schedule for the payment of the transfer fee to be received by STADE RENNAIS FOOTBALL CLUB, as specified in the future transfer contract. In this situation, the Sell-on clause won't be applied".

20. As for the previous clause analyzed, the Committee is of the firm opinion that this clause limits the freedom of Stade Rennais in transfer-related matters. In fact, it appears to be clear that Stade Rennais would have to pay Sporting a significantly high fixed additional fee (EUR 10 million) should it decide to transfer the Player 2 to two specific Portuguese clubs like SL Benfica and FC Porto, which are direct competitors of Sporting. Therefore, it is evident that in a scenario in which Stade Rennais receives two similar and/or identical offers for the transfer of the Player 2, it would be more inclined to accept the one not coming from any of the aforementioned Portuguese clubs, this, in order to make the most profitable operation from a purely financial point of view.
21. In this regard, the Committee considers that the analysis made in relation to the aforementioned clause 5.2. of Agreement 1 is fully applicable to clause 4 of Agreement 2, given that the clauses at stake are almost identical and the fact that Sporting provided a similar position in relation to both clauses.
22. In sum, the Committee considers that the abovementioned clauses undoubtedly grant Sporting the ability to influence the independence of Liga Deportiva and Stade Rennais in employment and transfer-related matters, as well as their policies and the performance of their teams.
23. Following an analysis of the aforementioned clauses, the Committee concludes that Sporting entered into the Agreements enabling it to influence the independence and policies of Liga Deportiva and Stade Rennais in employment and transfer-related matters as well as the performance of their teams 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. 2 (2016 ed.) and art 4 par. 3 (2018 ed.) of Annexe 3 of the RSTP

24. The Committee further noted that in the relevant transfer instructions (TMS ref. 159513 – Agreement 1 / TMS ref. 255246 – Agreement 2) Sporting declared that it did not enter into a contract enabling a "*third-party influence*".
25. Keeping in mind that, as demonstrated above, the Agreements signed by Sporting with Liga Deportiva and Stade Rennais enabled Sporting to acquire the ability to influence both clubs "*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, Sporting failed to disclose full and correct information in TMS.
26. As a consequence, the Committee holds that Sporting is to be found guilty of having violated art. 4 par. 2 (2016 ed.) and art. 4 par. 3 (2018 ed.) of Annexe 3 of the RSTP.

3. Summary

27. In view of the foregoing, the Committee concludes that Sporting, 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.* Agreement 1) enabling the Club to influence another club;
- Art. 18bis of the Regulations, 2018 edition, for entering into a contract (*i.e.* Agreement 2) enabling the Club to influence another club;
- Art. 4 par. 2 of Annexe 3 of the Regulations, 2016 edition, for failing to enter correct information in TMS in relation to Agreement 1;
- Art. 4 par. 3 of Annexe 3 of the Regulations, 2018 edition, for failing to enter correct information in TMS in relation to Agreement 2.

28. Therefore, the Committee considers that Sporting is to be sanctioned for the aforementioned violations.

D) Determination of the sanction

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

30. 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).

31. In these circumstances, the Committee was of the opinion that the relationship between Sporting and the other two clubs – Liga Deportiva and Stade Rennais – in relation to the scope and effects of the relevant clauses of the Agreements needed to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clause mainly lies on Liga Deportiva and Stade Rennais, while Sporting is undoubtedly benefitting from it.

32. 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 Sporting is the influencing club as it was only in Sporting's interest to impose such clause.

33. Having said that, the Committee notes that Sporting has a precedent related to a violation of art. 18bis of the RSTP.

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

35. 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.
36. 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 50,000 to be adequate and proportionate to the offence.
37. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Sporting's conduct. In particular, Sporting 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 Sporting.

III. Therefore decided

1. The FIFA Disciplinary Committee decided to merge the cases 191222 and 200015.
2. The FIFA Disciplinary Committee found the club Sporting CP responsible for the infringement of the relevant provisions of the RSTP related to third-party influence (art. 18bis par. 1 [ed.2016 and 2018]) and to the obligations of clubs in relation to TMS (art. 4 par. 2 of Annexe 3 [ed. 2016] / art. 4 par. 3 of Annexe 3 [ed.2018]).
3. The FIFA Disciplinary Committee orders the club Sporting CP to pay a fine to the amount of CHF 50,000.
4. In application of art. 6 par. 1 a) of the FIFA Disciplinary Code, the club Sporting CP is warned on its future conduct.
5. The above fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



LIM Kia Tong
Acting 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).