

Decision

of the

FIFA Disciplinary Committee

Mr. AKPOVY Kossi Guy [TOG], Member
Mr. HAMMAMI Mahmoud [TUN], Member
Mr. HOLLERER Thomas [AUT], Member

on 26 February 2020,

to discuss the case of:

Frosinone Calcio Football Club, Italy

(Decision 200150)

regarding:

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

Article 18bis par. 1 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "Regulations") and art. 4 par. 3 of Annexe 3 of the Regulations

TCF 2871 (Related case 2869)

I. inferred from the file

1. On 15 August 2018, the club Frosinone Calcio (hereinafter also referred to as Frosinone or the Club) and the club Arsenal FC (hereinafter also referred to as Arsenal or the Counterclub) entered into an agreement for the transfer of the player Joel Nathaniel Campbell Samuels (hereinafter also referred to as the Player) from Arsenal to Frosinone. In particular, the transfer agreement included the following clause:

“Future transfer of the Player

3.5 if Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), Frosinone shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club that is regulated by a national football association in the United Kingdom (UK), 30% (thirty per cent), or (b) in the event of a Future Transfer to any other football club, 25% (twenty-five per cent), [...]”

2. Following the conclusion of the above-mentioned agreement, on 16 August 2018, the Club entered a “engage permanently against payment” instruction in the Transfer Matching System (TMS) (TMS instruction 210336).
3. In the context of the aforementioned transfer instruction, 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 28 January 2020, following the investigations conducted by FIFA’s TMS Global Transfers & Compliance Department¹ (hereinafter, the FIFA TMS) disciplinary proceedings were opened against Frosinone 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 3 February 2020, Frosinone provided its position, which, together with the arguments provided by the Club to the FIFA TMS on 5 December 2019, can be summarised as follows²:

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

- Clause 3.5 of the relevant transfer agreement does not restrict the power of determination of the Club as it just reflects a request from Arsenal to differentiate its reward in case of a future transfer of the Player to a club in the UK or outside the UK.
- The difference between the sell on fee clauses when the Player is transferred to a club in the UK or a club outside the UK is of 5%, which does not significantly affect any of the criteria mentioned in article 18bis of the Regulations.
- The relevant clause is a contractual provision, freely agreed by the parties, that responds to a need of one of them without incurring in any regulatory violation, as the relevant remedy is not suitable to have an impact on the policy of Frosinone Calcio.
- Frosinone did not assume an excessive obligation towards Arsenal as it is free to independently evaluate the best solution in case of a future transfer of the Player.
- In general, clubs affiliated to associations located in the UK have a higher “purchase power” than the medium standard of football, therefore, even though it may seem that Frosinone could be penalized by receiving a lower sell-on fee in case it transfers the Player to a club in the UK, due to the strong financial position of these clubs, it could be worthwhile selling the Player to a club in the UK, mediating therefore, no influence whatsoever by Arsenal.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the FIFA Disciplinary Committee (hereinafter also referred to as the Committee) notes that at no point during the present proceedings did the Club challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (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.

detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

B) Applicable regulations

3. In order to duly assess the matter, the Committee would like to begin by recalling the content and the scope of the provisions at stake.

1. Article 18bis of the RSTP

4. The Committee points out that article 18bis par. 1 of the RSTP establishes a prohibition on the so-called “third party influence”. As a matter of fact, this provision 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 emphasizes that this provision is addressed to clubs, which are undoubtedly responsible to ensure that they do not influence or are in any way influenced by 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 declare different 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 Frosinone Calcio

10. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular, the relevant transfer agreement 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 that it is undisputed that Frosinone concluded a transfer agreement with Arsenal on 15 August 2018. The Committee also observes that the Club has not questioned or disputed neither the content nor the validity of the said transfer agreement at any point.

i. Analysis of the transfer agreement in connection with art. 18bis of the RSTP

12. Having determined the above, the Committee proceeds to analyse the content of clause 3.5 of the transfer agreement concluded between Frosinone and Arsenal (cf. point I/1 *ut supra*).
13. In this respect, the Committee is of the firm opinion that this clause limits the freedom of Frosinone in transfer-related matters. In fact, it appears to be clear that Frosinone would have to pay Arsenal a higher sell-on fee (30% instead of 25%) should the former decide to transfer the Player to a club in the United Kingdom. Therefore, it is evident that in a scenario in which Frosinone receives two similar and/or identical offers for the transfer of the Player, one being from a club in the United Kingdom and the other one coming from a club outside the United Kingdom, Frosinone would be more inclined to accept the offer coming from the club outside the United Kingdom, as it would make the operation more profitable from a purely financial point of view.
14. In this context, the Committee would like to address the argument brought forward by the Club, according to which the difference between the sell-on fee to which Frosinone would be entitled to, depending on whether the Player is transferred to a club in the UK or outside the UK, is of 5%, which cannot be considered a significant amount capable of influencing the independence of Frosinone in employment and transfer-related matters. According to Frosinone, by including the relevant clause in the transfer agreement concluded with Arsenal, the former did not assume an excessive obligation towards the latter as it is free to independently evaluate the best option in case it decides to transfer the Player.
15. In this sense, the Committee wishes to emphasize that a club is to be found in breach of art. 18bis of the Regulations whenever it concludes a contract that enables or entitles another club to influence, at any level and regardless whether or not the said influence materializes, the former's independency in transfer related and employment matters.
16. Furthermore, the Committee underlines that in order for clubs to be considered fully independent, they shall not be subject to any kind of conditions when deciding, amongst others, where, how and when to transfer their players. In the case at hand, the Committee considers that, by the mere existence of the clause 3.5 of the relevant

transfer agreement, Frosinone is influenced by Arsenal in employment and transfer-related matters.

17. In sum, the Committee considers that the relevant clause undoubtedly grants Arsenal the ability to influence in employment and transfer-related matters the independence, policies and the performance of Frosinone's teams, and therefore concludes that Frosinone is liable for the breach of article 18bis par. 1 of the RSTP:

ii. Analysis of the facts in light of art. 4 par. 3 of Annexe 3 of the RSTP

18. The Committee further notes that in the relevant transfer instruction (TMS ref. 210336) Frosinone declared that it did not enter into a contract enabling a *"third-party influence"*.

19. As a consequence, the Committee holds that, since it has already been demonstrated that the transfer agreement signed between Arsenal and Frosinone, enabled Arsenal to acquire the ability to influence Frosinone *"in employment and transfer-related matters its independence, its policies or the performance of its teams"*, the Club has failed to declare the existence of third party influence.

20. As a consequence, the Club is to be found guilty of having violated art. 4 par. 3 of Annexe 3 of the RSTP.

iii. Summary

21. 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 contracts enabling the counter club to influence the Club;
- Art. 4 par. 3 of Annexe 3 of the Regulations, 2018 edition; for failing to declare mandatory data in the TMS.

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

D) Determination of the sanction

23. With regard to the applicable sanctions for the present case, the Committee observes in the first place that Frosinone is a legal person, and as such it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

24. For the sake of good order, the Committee underlines 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).

25. In these circumstances, the Committee considers that the relationship between the clubs involved in the present case in relation to the scope and effects of the relevant clause have to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clause lies on Frosinone, while Arsenal is undoubtedly benefitting from the provision described in said clause.
26. In the same line, the Committee deems it 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 behaviour of the club being influenced is less reprehensible than the one of the club with the ability to influence. In the matter at hand, the Committee notes that Arsenal is the influencing club as it was only in Arsenal's interest to impose such clauses. However, even if Frosinone does not receive a benefit from the provision included in clause 3.5. of the relevant transfer agreement, the latter still went along with it, which also represents a reprehensible conduct.
27. Having said that, the Committee notes that Frosinone does not have any precedents related to violations of art. 18bis of the RSTP.
28. In light of all the above, the Committee considers a fine to be the appropriate sanction.
29. 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 100 and greater than CHF 1,000,000.
30. Taking into consideration all the circumstances of the case, while keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour, the Committee deems a fine of CHF 10,000 to be adequate and proportionate to the offence.
31. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Frosinone's conduct. In particular, Frosinone 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 Frosinone Calcio Football Club responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to declare mandatory information in TMS (art. 4 par. 3 of Annexe 3)
2. The FIFA Disciplinary Committee orders Frosinone Calcio Football Club to pay a fine to the amount of CHF 10,000.
3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, Frosinone Calcio Football Club 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



HOLLERER Thomas
Member of the 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

This decision can be contested, in accordance with art. 49 together with art. 57 par. 1 of the FIFA Disciplinary Code, 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 the contact details of the CAS are the following:

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