

Decision

of the

FIFA Disciplinary Committee

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

on 28 January 2020,

to discuss the case of:

Cruzeiro Esporte Clube, Brazil

(Decision 200018)

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 6 March 2018, the Single Judge of the Players' Status Committee decided that Cruzeiro Esporte Clube (hereinafter also referred to as *the Debtor*) had to pay to the club Tigres (hereinafter also referred to as *the Creditor*), within 30 days as from the date of notification of the relevant decision, the amount of USD 1,000,000 plus 5% interest *p.a.* as from 2 July 2017.

In addition, since the debtor requested the grounds of the aforementioned decision, it was sentenced to pay the costs of the proceedings in the amount of CHF 20,000, from which 15,000 CHF should be paid to FIFA and CHF 5,000 to the Creditor.

2. The findings of the decision of the Single Judge of the Players' Status Committee were duly communicated to the parties on 14 March 2018, while the grounds of the said decision were notified on 25 April 2018.
3. Following the notification of the grounds, the Debtor lodged an appeal before the Court of Arbitration for Sport (CAS), which issued an Award on 24 December 2018.
4. To this respect, the CAS dismissed the appeal lodged by the Debtor and hence, confirmed the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018. Furthermore, the CAS ordered the Debtor to pay to the Creditor CHF 6,000 as a contribution towards the legal fees and other expenses incurred by the latter during the arbitration proceedings.
5. On 8 January 2020, as the outstanding amounts due (cf. points 1 & 4 *ut supra*) were not paid, the secretariat of the FIFA Disciplinary Committee opened disciplinary proceedings against the Debtor, which was granted a six-day deadline as from notification of the relevant correspondence to provide its position. In addition, the parties were informed that the case was going to be submitted to a member of the FIFA Disciplinary Committee for evaluation on 27 January 2020.

6. On 14 January 2020, the Debtor sent a correspondence to the secretariat of the FIFA Disciplinary Committee, by means of which it stressed the following¹:
 - i. The Debtor acknowledges and admits its debit towards the Creditor.
 - ii. However, the Debtor has no financial means to afford such payment now, due, namely, to the huge devaluation of the Brazilian Currency in relation to the Dollar (USD) together with the economic crisis faced by the country (i.e. Brazil) in 2015 onwards.
 - iii. Such crisis implied a huge decrease of all incomes, such as ticketing, sponsorship, prize money, selling of TV rights, amongst others, of all football clubs, including the Debtor. In addition, the Debtor has been relegated to the second division of Brazilian Football. For all this reasons, the payment of the outstanding amounts to the Creditor became impracticable.
 - iv. The critical financial situation in Brazil as to be considered as an “exceptional circumstance” and therefore, has to be taken into account by the FIFA Disciplinary Committee whenever considering the imposition of disciplinary sanctions.
 - v. The Debtor will address a payment plan to the Creditor with view to find an amicable solution to resolve the matter.

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 first address the procedural aspects of the present matter, namely, the applicable law, as well as its jurisdiction, before entering into the substance of the matter and assessing the potential failure of the Debtor to comply with the decision of the Single Judge of the Players’ Status Committee as well as the potential sanctions resulting therefrom.

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

2. First of all, the Committee goes on to analyze which version of the FIFA Disciplinary Code (FDC) applies to the present case.

¹ The summary does not purport to include every single contention put forth by the Debtor. 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.

3. In this sense, the Committee underlines 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 that it applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
4. To this respect, the Committee observes that the disciplinary offense, *i.e.* the potential failure to comply with the decision of the Single Judge of the Players' Status Committee, was committed before the 2019 FDC entered into force. As a result, the member of the Committee deemed that the merits of the present case fall under the previous edition of the FDC, this is, the 2017 edition (hereinafter, *the 2017 FDC*).
5. Notwithstanding the above, the Committee holds that the procedural aspects of the present matter are governed by the 2019 FDC.
6. The applicable law having been determined and its jurisdiction having been established, the Committee subsequently turns its attention to the decision rendered by the Single Judge of the Players' Status as well as to the Award from the CAS.

B) Did the Debtor comply with the Award rendered by the Court of Arbitration for Sport and, consequently, with the decision of the Single Judge of the Players' Status Committee?

7. First of all, the Committee emphasizes that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.
8. Having said that, the Committee notes that the findings of the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018, was duly communicated to the parties on 14 March 2018 and that the grounds, which were requested by the Debtor, were notified on 25 April 2018. In addition, the Committee observes that the said decision was appealed against by the Debtor before CAS, which, by means of its Award from 24 December 2018, confirmed the decision of the Single Judge of the Players' Status Committee. Consequently, the said decision became final and binding.
9. In view of what has been explained under paragraph II.B.7 above, the Committee is not allowed to analyze the case decided by the Single Judge of the Players' Status Committee and, subsequently, confirmed by CAS, as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has

as a sole task to analyze if the Debtor complied with the final and binding decision rendered by CAS.

10. In these circumstances, the Committee notes that the Debtor claimed that it was not in a position to pay the amounts due to the Creditor as a result of "*brazil's most vulnerable financial crisis period*" which also affected the Debtor.
11. In this sense, the Committee observes that, according to the Debtor's information, the financial crisis causing its difficult economic situation hit the country in 2015, bringing, amongst others, a considerable devaluation of the Brazilian currency with respect to the US Dollar as well as a "retraction of approximately 3,6%" of the "Gross Domestic Product". Furthermore, the Committee notes that the contract that gave rise to the relevant dispute, which concluded in the decision of the Single Judge of the Players' Status Committee and, subsequently, in the CAS Award, was signed on 25 June 2016.
12. In light of the above, since the relevant agreement was concluded after the difficult financial situation described by the Debtor affected the country in 2015, the Committee considers that the Debtor was aware of its financial capacity and could, anyhow, foresee the situation.
13. With this in mind, the Committee deems it necessary to emphasize that a club has the duty to be aware of its actual financial strength, constitute provision in anticipation of possible issues, such as a decrease in the income or a relegation (*i.e.* a contingency that any club may face), 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.
14. To that end, the Committee also wishes 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.
15. As such, the Committee deems that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor in accordance with the decision passed by the Single Judge of the Players' Status have not been paid.

16. In light of all of the above, the Committee concludes that the Debtor did not comply with the decision passed by the Single Judge of the Players' Status on 6 March 2018, which was later confirmed by CAS, and is consequently withholding money from the Creditor, as a result of which it is considered guilty of non-complying with a financial decision, under the terms of art. 64 of the 2017 FDC.
17. After having established the violation committed by the Debtor, the Committee moves on to assess the sanction resulting therefrom.

C) The sanctions to be imposed

18. First of all, and with regard to the sanction to be imposed, the Committee recalls that the 2017 FDC applies. In particular, the latter refers to art. 64 of the 2017 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 subsequent CAS appeal decision:
- a) will be fined for failing to comply with a decision;
 - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;
 - c) if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, (...) a transfer ban may also be pronounced.
19. In these circumstances, the Committee underlines that the fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2017 FDC, in combination with art. 15 par. 2 of the 2017 FDC, shall range between CHF 300 and CHF 1,000,000.
20. This being established, the Committee considers that the Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due.
21. In view of all the circumstances pertaining to the present case, but particularly taking into account the outstanding amount due, the Committee regards 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. 64 par. 1 b) of the 2017 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Committee decides to grant the Debtor with a final deadline of 30 days to pay the amount due to the Creditor.
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 subsequent CAS appeal decision are respected and complied with) while keeping in mind the content of FIFA circular no. 1628, the Committee considers a ban from registering new players (at national and international level) as an appropriate sanction. In particular, taking into account the standing practice of the Committee in similar situations, the Committee holds that 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 amount to the Creditor.
24. For the sake of good order, the Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol is referred to art. 34 of the 2019 FDC in what concerns the calculation of time limits. Should the Confederação Brasileira de Futebol 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 is found guilty of failing to comply with the decision passed by the Court of Arbitration for Sport (CAS) on 24 December 2018, confirming the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018, and according to which it was ordered to pay to:
 - Club Tigres:
 - USD 1,000,000, plus 5% interest as from 2 July 2017 until the date of effective payment;
 - CHF 5,000 as costs of proceedings;

- CHF 6,000 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 to 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



LIM Kia Tong
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

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 details of the CAS are the following:

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