

Decision

of the

FIFA Disciplinary Committee

Mr PIERA Alejandro [PAR], Deputy Chairman
Mr BERGSSON Gudni [ISL], Member
Mr HOLLERER Thomas [AUT], Member

on 4 May 2020,

to discuss the case of:

Club A, Country C

(Decision 200362)

regarding:

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

Art. 18bis par. 1 of the FIFA Regulations on the Status and Transfer of Players, 2020 ed.,
(hereinafter, "RSTP") and art. 4 par. 3 of Annexe 3 of the RSTP

I. Inferred from the file

1. On 20 January 2020, Club A (hereinafter also referred to as "*the Club*" or "*Club A*") and Club B concluded a loan agreement (hereinafter, "*the Agreement*") for the loan of the player D (hereinafter, "*the Player*"). In particular, this Agreement contained the following clause:

"Article 4. Contractual penalties

[Club B] obliges to pay to [Club A] the contractual penalty in the amount of € 20.000,00 (twenty thousand Euros) in the case if Player is not fielded in the starting 11 (eleven) in at least 50% (fifty percent) of the official matches of [Club B] during the loan period."

2. On the same day, Club A entered a transfer instruction in the Transfer Matching System (hereinafter "*TMS*") to release the Player on loan to Club B.
3. In the context of the aforementioned transfer instruction, Club A 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 12 March 2020, following an investigation conducted by FIFA's TMS Global Transfers & Compliance Department¹, the Secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against Club A with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players (hereinafter, "*the RSTP*") and art. 4 par. 3 of Annexe 3 of the RSTP.
5. On 18 March 2020, Club A provided its position, which can be summarised as follows²:
 - The Club first emphasized that it was internationally renowned for its football academy and the transfers of its players. In particular, world-class players successfully completed their training education at Club A and are now playing for the biggest European clubs;
 - As a result, many talented players joined its teams, but for none of them has the Club been found guilty of breaching art. 18bis of the RSTP or art 4. par. 3 of Annexe 3 of

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 Club A. 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 RSTP, as it undertook considerable efforts to ensure compliance with the provisions contained in the RSTP;
- With respect to the present disciplinary proceedings, Club A considered that no violation of the RSTP occurred for the following reasons:
 - The Agreement concerns the temporary transfer of the Player without payment of any financial fee, which means that at the end of the loan period, the Player will return to Club A;
 - The very low contractual penalty provided for in article 4 of the Agreement is to be considered as a conditional compensation, meaning that this compensation may or may not be realized;
 - The parties did not intend to infringe the provisions contained in the RSTP and the Agreement was even uploaded in TMS. Moreover, the Club stressed that it acted in good faith and entered correct information in TMS. In particular, it argued that there was no violation of art. 4 par. 3 of Annexe 3 of the RSTP given that it never submitted inaccurate information within the wording of the aforementioned provision;
 - With respect to art. 18bis of the RSTP, Club A argued that neither club intended to breach that article because the agreed conditional compensation was very low (EUR 20,000) and there was no attempt on its part to influence Club B's independence, policies or the performance of its team in employment and transfer-related matters.
 - Accordingly, Club A requested the Disciplinary Committee:
 - a) to dismiss the present disciplinary proceedings, as it did not commit any wrongdoing; or alternatively
 - b) to issue a warning or a reprimand on the basis of the following mitigating circumstances:
 - Absence of disciplinary records relating to art. 18bis or art. 4 par. 3 of Annexe 3 of the RSTP, so that the first offence should never be sanctioned with a fine;
 - Absence of intent to breach the provisions contained in the RSTP;
 - The Club always collaborated with FIFA and regrets these offences;
6. On 27 April 2020, the Secretariat to the Disciplinary Committee acknowledged receipt of the aforementioned correspondence and informed Club A that the case would be submitted on 4 May 2020 to the FIFA Disciplinary Committee for consideration and formal decision.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the FIFA Disciplinary Committee (hereinafter, "*the Committee*") notes that at no point during the present proceedings did Club A challenge the jurisdiction of the Committee or the applicability of the FDC.
2. Notwithstanding the above and for the sake of good order, the Committee finds 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.

B) Applicable regulations

3. In order to duly assess the present matter, the Committee first wants to recall the content and the scope of the provisions at stake.

1. Article 18bis of the RSTP

4. The Committee firstly points out that art. 18bis par. 1 of the RSTP establishes a prohibition on 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 which influences another club's independence, policy or performance of its teams in employment and transfer-related matters. In particular, there should be no influence on the club's ability to determine independently the conditions and policies concerning purely sporting issues such as the composition and performance of its teams. Finally, it is reminded that 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 Annexe 3 of the RSTP imposes 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 [...]”*.
9. This means that should there be any influence from a counter club and/or third party on a club (as per art. 18bis of the RSTP), the club concerned must indicate such influence in TMS when entering the relevant transfer instruction.

C) Analysis of the violations of the RSTP by Club A

10. After having outlined the content and the scope of the aforementioned provisions, the Committee subsequently examines the evidence at its disposal (in particular the Agreement, the documents uploaded into TMS as well as those collected during the investigation carried out by FIFA TMS) in light of the said provisions.
11. For the sake of good order, the Committee notes on the one hand that it is undisputed that Club A and Club B entered into the Agreement on 20 January 2020 and, on the other hand, that Club A has not questioned or disputed neither the content nor the validity of the contract at any time.

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

12. Bearing in mind the foregoing, the Committee proceeds to analyse the content of article 4 of the Agreement, which reads as follows:

“Article 4. Contractual penalties

[Club B] obliges to pay to [Club A] the contractual penalty in the amount of € 20.000,00 (twenty thousand Euros) in the case if Player is not fielded in the starting 11 (eleven) in at least 50% (fifty percent) of the official matches of [Club B] during the loan period.”

13. In this respect, the Committee observes that Club A argued that the contractual penalty provided for in article 4 of the Agreement represented a conditional compensation of the loan fee. Furthermore, Club A claimed that there was no attempt on its part to influence Club B’s independence, policies or the performance of its team in employment and transfer-related matters.
14. Against this background, and although Club A argued that it never influenced Club B, the Committee firmly believes that this clause 4 prevents Club B from freely determining the players to be selected in a match with the aim of achieving the best possible result. In

particular, the Committee finds that Club B is induced to select a certain Player in order to avoid paying the contractual penalty provided for in the Agreement, and therefore does not enjoy complete autonomy with regard to its policies or the performance of its teams.

15. Furthermore, the Committee does not share the Club's argument that clause 4 should be regarded as a conditional payment. In particular, it finds that this clause differs greatly from usual clauses containing a conditional bonus payments, such as "*the club shall receive EUR xx in the event that the Player plays in at least xx% of the matches*", where the new club is still free to decide if the player should be fielded or not. As far as clause 4 is concerned, the Committee finds that it does not grant such a bonus payment in the event that the Player has participated in a certain number of matches. To the contrary, this clause rather imposes a penalty on Club B should the Player do not start in at least 50% of the matches.
16. Finally, the Committee deems it relevant to recall 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 (or a third party) to influence another one, regardless of whether or not this influence actually materializes after the conclusion of the contract.
17. As a result, the Committee considers that, by the mere existence of clause 4 in the Agreement, Club A influenced Club B because the latter cannot freely determine the composition and the performance of its teams. This is particularly illustrated by the fact that if Club B does not field the Player in a specific number of official matches, it will have to pay a contractual penalty of EUR 20,000 to Club A.
18. In sum, the Committee finds that the aforementioned clause undoubtedly grants Club A the ability to influence Club B's independence in determining the conditions and policies concerning purely sporting matters such as the composition and performance of its teams, and therefore concludes that Club A is liable for the breach of art. 18bis par. 1 of the RSTP.

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

19. The Committee further observes that in the relevant transfer instruction Club A declared that it did not enter into a contract enabling a "*third-party influence*".
20. Bearing in mind that the Agreement at hand enabled Club A to acquire the ability to influence Club B "*in employment and transfer-related matters its independence, its policies or the performance of its teams*", the Committee considers that Club A, by declaring in TMS that there was no third-party influence, failed to disclose complete and correct information in TMS, and thus infringed art. 4 par. 3 of Annexe 3 of the RSTP.

3. Summary

21. In view of the foregoing, the Committee concludes that Club A, by its conduct as described above, breached the following provisions of the RSTP:
- Art. 18bis of the RSTP, 2020 edition, for entering into a contract enabling the Club to influence another club, *i.e.* Club B;
 - Art. 4 par. 3 of Annexe 3 of the RSTP, 2020 edition, for failing to enter correct information in TMS.
22. Therefore, the Committee considers that Club A is to be sanctioned for the aforementioned violations.

D) Determination of the sanction

23. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that Club A is a legal person, and as such 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 deems that account should be taken of the relationship between the two clubs with regard to the scope and effects of the relevant clause of the Agreement. As a matter of fact, the burden of such clause mainly lies on Club B, while Club A is undoubtedly benefitting from clause 4 of the Agreement.
26. In the same line, 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 finds that the behaviour of the club being influenced is less reprehensible than the one of the club with the ability to influence.
27. In the matter at hand, it appears that Club A is the influencing club as it was only in its interest to impose such a clause.
28. Having said that, the Committee notes that Club A does not have any precedent in relation to violations of art. 18bis of the RSTP and regrets the infringements committed.
29. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction, which may not be lower than CHF 100 and greater than CHF 1,000,000 according to art. 6 par. 4 of the FDC.

30. In light of all the circumstances of the case, and bearing in mind the deterrent effect that the sanction must have on the reprehensible behaviour, the Committee regards a fine of CHF 15,000 to be adequate and proportionate to the offence committed.
31. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Club A's conduct. In particular, the latter is ordered to undertake all appropriate measures in order to guarantee that 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 Club A responsible for the infringement of the relevant provisions of the RSTP related to third-party influence (art. 18bis par. 1) and the failure to enter correct information in TMS (art. 4 par. 3 of Annexe 3).
2. The FIFA Disciplinary Committee orders Club A to pay a fine to the amount of CHF 15,000.
3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, fClub A 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

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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