

Decision

of the

FIFA Disciplinary Committee

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

on 04 May 2020,

to discuss the case of:

Liverpool Football Club, England

(Decision 200363)

regarding:

Third-party influence and failure to enter correct and complete information in the Transfer Matching System (TMS)

Article 18bis par. 1 and article 4.3 of annex 3 of the FIFA Regulations on the Status and Transfer of Players (the "Regulations")

I. inferred from the file

1. On 8 January 2020, Liverpool Football Club (hereinafter also referred to as Liverpool or the Club) and Cercle Brugge KSV (hereinafter also referred as Cercle or the Counterclub) entered into an agreement for the loan of the player Isaac Christie-Davies (hereinafter also referred to as the Player) from Liverpool to Cercle. In particular, the transfer agreement included the following clauses (hereinafter, the Clauses):

"2.3 If the Player is named in the starting line-up for Cercle Brugge in at least 70% or more of the Belgian First Division A games that he is available for during the Loan Period, then there shall be no penalty fee payable by Cercle Brugge.

2.4 If the Player is named in the starting line-up for Cercle Brugge in 60% or more, but less than 70% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €50,000, plus VAT (if applicable). Such payment to be made on 30th June 2020 upon receipt of a valid invoice.

2.5 If the Player is named in the starting line-up for Cercle Brugge in 50% or more, but less than 60% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €100,000, plus VAT (if applicable). Such payment to be made on 30th June 2020 upon receipt of a valid invoice.

2.6 If the Player is named in the starting line-up for Cercle Brugge in fewer than 50% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €150,000, plus VAT (if applicable). Such payment to be made on 30th June 2020 upon receipt of a valid in-voice."

2. Following the conclusion of the above-mentioned agreement, on 9 January 2020, the Club entered a "release against payment on loan international" instruction in the Transfer Matching System (TMS) (TMS instruction 264141).
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 12 March 2020, following the investigations conducted by FIFA's TMS Global Transfers & Compliance Department¹ (hereinafter, the FIFA TMS) disciplinary proceedings were opened against Liverpool with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players, (hereinafter: *the RSTP or the Regulations*) and art. 4 par. 3 of Annexe 3 of the RSTP.
5. On 18 March 2020, Liverpool provided its position, which, together with the arguments provided by the Club to the FIFA TMS on 20 January and 14 February 2020, can be summarised as follows²:
 - The Clauses do not breach article 18bis of the Regulations because Liverpool does not acquire any ability to influence Cercle in any way. As a matter of fact, Cercle ultimately retains full independence and control over its team and is free to decide whether the Player plays or not.
 - It is Liverpool's understanding that article 18bis of the Regulations is not intended to provisions similar to the ones described in the Clauses, which are agreed as part of a loan transaction between clubs. This is consistent with ECA and CAS view, according to which any agreement between two clubs are likely to be subject to a more lenient application and restrictive interpretation of article 18bis of the Regulations due to its restrictive effects on certain powers and fundamental rights of clubs.
 - Liverpool had a legitimate expectation, when it entered into the loan agreement with Cercle, that the Clauses would not breach Article 18bis.
 - In this sense, Liverpool has used the Clauses in a number of loan agreements over several years without any issue. In fact, the use of such clauses was essentially ratified by FIFA in the case of Liverpool vs Fenerbahce AS (reference number: 17-00452), in which FIFA upheld the Club's claim and during which no issues were raised in respect of the nature of the clause in question. Furthermore, no disciplinary proceedings were opened against the Club with respect to the mentioned clauses. Therefore, Liverpool believes that it can sensibly be contended that provisions similar to the Clauses are, on the one hand, considered to be valid, binding and enforceable by the FIFA Players' Status Committee and on the other hand, to be considered contrary to article 18bis of the Regulations by the FIFA Disciplinary Committee.

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.

- Since Liverpool has used similar provisions to the ones described in the Clauses for several years, it would be unreasonable and unjust for FIFA now to sanction LFC for having agreed said clauses.
- The “declaration on third party payments and influence” done by the Club was correct since, first of all, there was no breach of article 18bis, and secondly, Cercle is not a third party for the purpose of the RSTP. In any event, Liverpool acted in good faith and completed the declaration believing that no influence existed.

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 art. 25 par. 3 and art.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 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 Liverpool

10. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular, the relevant loan 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 Liverpool concluded a transfer agreement with Cercle on 8 January 2020. 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 clauses 2.3, 2.4, 2.5 and 2.6 of the transfer agreement concluded between Liverpool and Cercle (cf. point I/1 *ut supra*).
13. In this respect, the Committee is of the firm opinion that this clause limits the freedom of Cercle in employment related matters and the management of its team. In fact, it appears to be clear that Cercle would have to pay Liverpool a penalty fee if Cercle

does not field the Player in the starting lineup in 70% or more games of the Belgian First Division A during the loan period. Furthermore, the Committee observes that the amount of the penalty fee rises in inverse proportion to the number or percentage of games in which Cercle would not field the Player in the starting lineup. Therefore, it is evident that Cercle is not completely free and autonomous to decide the starting lineup of its team as it always has to bear in mind that the Player has to be fielded at the start of the game for a certain number of matches in order for Cercle not to suffer an economic loss.

14. Therefore, in light of what has been explained above, the Committee does not consider that Cercle retains full independence and control over its team selection as stated by the Club and hence, does not share the latter position to this respect.
15. In addition, 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 in which any of its provisions enables or entitles another club to influence the former's independency in transfer related and employment matters, at any level and regardless of the objective the contracting parties pursue by including the said provisions and whether or not the said influence materializes.
16. Furthermore, the Committee observes that the Club claims that it had legitimate expectation that the Clauses were not in breach of article 18bis of the Regulations as it had included similar clauses in different agreements over several years without any issues being raised and in addition, FIFA had already ratified the validity of such clauses.
17. To this respect, and before entering into the analysis of the Club's argument, the Committee considers it relevant to remind and clarify the concept of legitimate expectation. In general, both procedural and substantive legitimate expectations are recognized. Substantive legitimate expectations are expectations induced by a public authority (or any other authority) that an individual will be granted or retain some substantive benefit³. Therefore, it is the Committee's opinion that this expectation extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive.
18. This having said, the Committee notes that the Club relies on the absence of actions taken by the Committee with regard to clauses agreed by the Club similar to the ones at stake in the present proceedings, to justify a legitimate expectation. In this sense, the Committee deems that the absence of an action, in this case, disciplinary proceedings, cannot be considered as a benefit given to the Club. To this respect, the Committee refers to article 52 of the FIFA Disciplinary Code, which provides an exhaustive list of the conditions and/or basis under which disciplinary proceedings can be initiated by the Committee. It follows from the content of said article that the Committee is only authorized to open disciplinary proceedings for potential infringements that have come to its attention, not being able then, as it is obvious, to prosecute possible infringements that it is not aware of.

³ <https://www.oxfordreference.com/view/10.1093/oi/authority.20110810105248783>

19. However, the fact that no disciplinary proceedings are carried out for a potential infringement, does not, in anyway, mean that an action considered to be in breach of the Regulations is not a breach just because it has not been subject of disciplinary proceedings or sanctions.
20. Therefore, the Committee does not agree that the fact that similar clauses to the ones at stake in the present case have not been analyzed and later on, considered to be a breach of article 18bis of the Regulations, created a legitimate expectation on the Club that the content of said clauses was in line with the FIFA regulations.
21. Furthermore, and with respect to the alleged validation by FIFA of the content of the Clauses or of similar clauses, the Committee deems that this could have not created a legitimate expectation on the Club simply because the argument of the Club is false. The Committee observes that the Club believes that the Clauses or clauses with similar provisions were validated and accepted by the FIFA Players' Status Committee.
22. First of all, the Committee considers important to highlight that the FIFA Players' Status Committee and the FIFA Disciplinary Committee are different legal bodies, independent from each other and with different competencies. The distinction of competencies between the Players' Status Committee and the Disciplinary Committee is founded on the application of two different sets of rules: the former renders decisions based on principles of contractual civil law, whereas the latter intervenes in cases where private regulations of an association, in this case, the Regulations, are violated. Consequently, a contractual clause that is contrary to the private regulations of an association is not necessarily contrary to the principles of contractual civil law, and any dispute arising therefrom will be dealt with accordingly by the Players' Status Committee. Nevertheless, clauses of a contract that are valid from the perspective of principles of contractual civil law may be contrary to private regulations of an association. As a result, the Committee may enter into the merits of a possible breach of FIFA's regulations without discussing whether the contract is valid from the perspective of civil law principles.
23. In light of what has been explained above, the Committee stresses that the fact that the Players' Status Committee orders a club to pay an amount of money to another club on the basis of a clause agreed upon the said clubs, does not prevent the Disciplinary Committee to open disciplinary proceedings against those clubs if it finds that the relevant clause is in violation of the FIFA regulations. In fact, the CAS reached to the same conclusion in the case CAS 2018/A/6027, where the Panel pointed out that *"Article 18bis is not concerned with the issue of the validity and/or the binding nature of the contractual provisions enabling a party to an agreement to exercise undue influence to its counter party-football club. This is a matter to be settled under the applicable law, which is the task of the FIFA PSC when called to examine the validity and the binding nature of the same contractual provisions in the context of a contractual dispute that is brought before the FIFA PSC. It is perfectly possible that said contractually agreed provisions are enforceable under a set of applicable (civil law) rules and at the same time fall foul of Article 18bis of the FIFA Regulations (which*

at any case does not and cannot determine whether they are illegal, invalid or unenforceable)."

24. In sum, the Committee considers that the Clauses undoubtedly grant Liverpool the ability to influence in employment and transfer-related matters the independence, policies and the performance of Cercle's teams, and that there was no legitimate expectation for Liverpool to believe that such clauses were in line with the Regulations. Therefore, the Committee concludes that Liverpool is liable for the breach of article 18bis par. 1 of the Regulations.

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

25. The Committee further notes that in the relevant transfer instruction (TMS ref. 264141) Liverpool declared that it did not enter into a contract enabling a *"third-party influence"*.

26. As a consequence, the Committee holds that, since it has already been demonstrated that the transfer agreement signed between Liverpool and Cercle, enabled Liverpool to acquire the ability to influence Cercle *"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.

27. However, the Committee notes that the Club claims that Cercle *"is not a third party for the purposes of the RSTP"* and as such, the declaration made in the TMS was correct.

28. To this respect, the Committee wishes to point out that it is clear from the provisions in the Regulations that the mandatory declaration of third party influence refers to the engagement of contracts as described in art. 18bis of the RSTP (cf. point II B) 4 *ut supra*).

29. In light of the above, the Committee finds the Club responsible of having violated art. 4 par. 3 of Annexe 3 of the RSTP for failing to disclose full and correct information in TMS.

iii. Summary

30. 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 par. 1 of the Regulations, for entering into contracts enabling the Club to influence the counter club;
- Art. 4 par. 3 of Annexe 3 of the Regulations, for failing to declare complete and correct mandatory data in the TMS.

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

D) Determination of the sanction

32. With regard to the applicable sanctions for the present case, the Committee observes in the first place that Liverpool 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.

33. 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).

34. 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 clauses have to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clauses lies on Cercle, while Liverpool is undoubtedly benefitting from the provision described in said clauses.

35. 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 Liverpool is the influencing club as it was only in Liverpool's interest to impose such clauses.

36. Having said that, the Committee notes that Liverpool does not have any precedents related to violations of art. 18bis of the RSTP.

37. In light of all the above, the Committee considers a fine to be the appropriate sanction.

38. 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.

39. 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 15,000 to be adequate and proportionate to the offence.

40. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Liverpool's conduct. In particular, Liverpool 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 Liverpool 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 enter correct and complete information in TMS (art. 4 par. 3 of Annex 3)
2. The FIFA Disciplinary Committee orders Liverpool Football Club 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, the Liverpool Football Club is warned on its future conduct.
4. The 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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