

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 18 May 2020,

COMPOSITION:

Mr. Yasser Al-Misehal, Saudi Arabia (member)

Mr. Charlie Cuzzetto, Canada (member)

Mr. Carlos Teran, Venezuela (member)

RESPONDENT:

Cercle de Joachim Sports Club, Mauritius

Regarding transfers outside of TMS without ITC (Ref 200523)

Articles 1 pars. 5 and 6, 8.1 par. 1 and 8.2 par. 1 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players, 2019 edition (hereinafter, “the Regulations” or “RSTP”)

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. 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.
2. On 25 February 2020, FIFA's TMS Global Transfers & Compliance Department contacted the Cercle de Joachim Sports Club (hereinafter: *the Club*) concerning the alleged transfer of the following five players (hereinafter: *the Players*) from Madagascar to the Club outside the Transfer Matching System (hereinafter: *TMS*) and without an International Transfer Certificate (hereinafter: *ITC*):
 - I. Michel Randrianarivo, date of birth: 17.10.1998, nationality: Madagascar
 - II. Jean Alberto Sydoniel, date of birth: 21.10.1993, nationality: Madagascar
 - III. Fredy Erika Randrianandrasana, date of birth: 23.10.1996, nationality: Madagascar
 - IV. Christophe Rabemananjara, date of birth: 03.08.1996, nationality: Madagascar
 - V. Jean Fidelitchiarinick Randrianjafimanga, date of birth: 21.07.1998, nationality: Madagascar
3. On 16 April 2020, following the investigations conducted by FIFA's TMS Global Transfers & Compliance Department, the Secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Club with respect to a potential breach of art. 1 par. 5, 1 par. 6, 8.1 par. 1 and 8.2 par. 1 of Annexe 3 of the Regulations on the Status and Transfer of Players, 2019 edition (hereinafter: *the RSTP* or *the Regulations*).

II. RESPONDENT'S POSITION

1. On 21 April 2020, the Club and the Mauritius Football Association (hereinafter: *the MFA*) submitted a common position, which can be summarized as follows:
 - The MFA referred to the content of the letter of warning from FIFA's TMS Global Transfers & Compliance Department, dated 21 January 2020, for which the MFA has taken the necessary steps and measures to avoid that regional amateur clubs recruit foreign players and limited the acquisition of non-Mauritian players to the clubs participating in the national competitions only since their previous main transfer period ending 31st August 2019. This happened once but the FIFA TMS Global Transfers & Compliance Department presented it as if the MFA had been breaching deliberately the regulations several times;
 - In the DTMS course that took place in December 2018 the consequences of breaches of the RSTP were not discussed;

- Reference is made to the FIFA Circular No. 1693 dated 24 September 2019 which states that “(...) *international transfers of amateur players which can, from 1 October 2019 onwards, also be processed through the FIFA International Transfer Matching System (ITMS)*” and that “*The transitional period from 1 October 2019 to 30 June 2020 for the implementation of the relevant procedural requirements give the associations the opportunity to set up their internal process*” and “*Starting from 1 July 2020, all steps to process the international move of players over the age of ten to be registered with their new club as amateurs via ITMS and the relevant procedural requirements will become mandatory (cf. FIFA Circular no. 1679)*”;
- The releasing clubs were regional clubs affiliated to a regional league in Madagascar with no TMS account and the Players were all amateurs. They were transferred as amateurs to Mauritius on 24 January 2020 and then became professional players;
- In the past months, the MFA has continuously received ITC requests by email, also from associations from Europe;
- The MFA and the Cercle de Joachim Sports Club were confused and the transfers were not done to deliberately breach the RSTP, as they were convinced that the regulations would only become mandatory as from 1 July 2020.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

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 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 law

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.
4. In this sense, according to art. 1 pars. 5 and 6 of Annexe 3 of the Regulations:

“The use of TMS is a mandatory step for all international transfers of professional male and female players within the scope of eleven-a-side football, and any registration of such a player without the use of TMS will be deemed invalid [...]”

“An international transfer needs to be entered in TMS whenever a player is to be registered as a professional (cf. article 2 paragraph 2) by the new association”.

5. Furthermore art. 8.1 par. 1 of Annexe 3 of the Regulations establishes that:

“Any professional player who is registered with a club that is affiliated to one association may only be registered with a club affiliated to a different association after an ITC has been delivered by the former association and the new association has confirmed receipt of the ITC. The ITC procedure must be conducted exclusively via TMS. Any form of ITC other than the one created by TMS shall not be recognised”.

6. Likewise, art. 8.2 par. 1 of Annexe 3 of the Regulations establishes that:

“A professional player is not eligible to play in official matches for his/her new club until the new association has confirmed the receipt of the ITC and has entered and confirmed the player registration date in TMS”.

C. Standard and burden of proof

7. The Committee recalled the basic principle of burden of proof, as stipulated in art. 36 par. 2 of the FDC, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

D. Merits of the dispute

I. Analysis of the potential violations of the RSTP by the Cercle de Joachim Sports Club

8. The above having been established, the Committee subsequently analyses the evidence at its disposal (in particular the documents gathered during the investigation conducted by the FIFA TMS and during the disciplinary proceedings) in light of the aforementioned provisions.
9. For the sake of good order, the Committee notes that it is undisputed that the Club has transferred the Players from Madagascar outside TMS.
10. In this respect, the Committee notes that, in order to justify why TMS was not used and no ITC was requested, the Club argues that the releasing clubs were regional clubs affiliated to a regional league in Madagascar with no TMS account, and that the Players were all transferred as amateurs to Mauritius on 24 January 2020 and then became professional players.
11. In this sense, the Committee highlights that it is mandatory for the Club to be aware and respect the Regulations, which, amongst others, establish the obligation to process international transfers on TMS and the need of an ITC for professional players to be registered with their new club.

12. In particular, the Committee wishes to underline that the Players were registered as professionals. In this respect, the Committee highlights that in accordance with art. 1 par. 6 of Annexe 3 of the RSTP, an international transfer needs to be entered in TMS whenever a player is to be registered as a professional by the new association.
13. Having established the foregoing, the Committee understands that the invalid registration of the Players at the MFA implies two main infringements of the Regulations committed by the Club: the transfer of the Players outside of TMS and the failure to request an ITC.
14. In this sense, the Committee notes, firstly, that the Regulations clearly establish that all international transfers of players must be done in TMS. In addition, the RSTP specifies that such mandatory step applies to the transfers of professional players.
15. Considering the status of the Players, who were registered at the MFA as professionals, and the fact that they were previously registered with the Malagasy Football Association, the Committee finds that by transferring the Players outside of TMS, the Club breached art. 1 pars. 5 and 6 of Annexe 3 of the RSTP
16. Secondly, the Committee takes note that players that were previously registered at an association can be registered at the new association only upon receipt of the relevant ITC.
17. In this regard, the Committee highlights that the Regulations clearly define the deliverance of the ITC exclusively via TMS as a mandatory requirement in order to register a professional player at a new association. In other words, the Regulations clearly stress the fact that any form of ITC other than the one created by TMS shall not be recognized.
18. Therefore, the Committee refers to the undisputed facts set above and considers that by transferring the Players without a valid ITC the Club has violated art. 8.1 par. 1 and art. 8.2 par. 1 of Annexe 3 of the Regulations.
19. In view of all the above, the Committee concludes that the Club transferred professional players from Madagascar outside TMS in breach of the Regulations.
20. Therefore, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

II. The determination of the sanction

21. With regard to the applicable sanctions for the present case, the Committee observes in the first place that the Cercle de Joachim Sports Club 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.
22. 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).

23. As it was established above, the Club is found guilty of having infringed art. 1 pars. 5 and 6, art. 8.1 par. 1 and art. 8.2 par. 1 of Annexe 3 of the Regulations.
24. In this sense, the Committee examines all the circumstances belonging to the case at stake.
25. First of all, the Committee wishes to underline that TMS was created in order to achieve greater transparency in international transfers and financial flows, which in turn increases the confidence of the stakeholder in the market as well as global integrity in football.
26. Therefore, it is of paramount importance that all international transfers of professional players are reflected in TMS and that the relevant procedures to perform such transfers are strictly complied with.
27. Secondly, the Committee points out that when the violation occurred, the Club was participating in the Mauritian League, the top division of professional football in Mauritius. In this sense, the Committee considers that professional clubs are supposed to be aware of the legal framework within which they operate, including the FIFA regulations in general and the RSTP in particular.
28. Subsequently, the Committee highlights that the Regulations are very clear: each club is responsible for transferring players in compliance with the rules set forth under the RSTP. In the case at stake, the Club should have carried out all the necessary investigations in order to ensure the correct registration of the Players. In this respect, there is no element in the file suggesting that the Club enquired on the Players' previous status.
29. Finally, it has to be pointed out that the Club has no previous record of any infringement of the RSTP for the same violation.
30. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction.
31. 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.
32. 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 10,000 to be adequate and proportionate to the offence.
33. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Cercle de Joachim Sports Club's conduct. In particular, the Club is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular the FDC as well as the RSTP) 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.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The FIFA Disciplinary Committee found the Cercle de Joachim Sports Club responsible for the infringement of the relevant provisions of the RSTP related to the mandatory use of TMS for all international transfers of professional players (art. 1 pars. 5 and 6 of Annexe 3) and to the administrative procedure governing the transfer of professionals between associations (art. 8.1 par. 1 and 8.2 par. 1 of Annexe 3).
2. The FIFA Disciplinary Committee orders the Cercle de Joachim Sports 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, the Cercle de Joachim Sports 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



Carlos Teran

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.

NOTE RELATING TO THE 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.

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