

# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 10 July 2020,

## COMPOSITION:

Mr. Carlos Teran, Venezuela (member)

## RESPONDENT:

Al Jazira SC, United Arab Emirates

Regarding failure to comply with a decision (Ref. FDD-5701)

Article 15 of the FIFA Disciplinary Code (2019 edn.)

## 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 17 May 2018, the Dispute Resolution Chamber decided that the club Al Jazira SC (hereinafter: *the Debtor*) had to pay to the player Angel Imanol Lafita (hereinafter: *the Creditor*):
  - EUR 400,000 as outstanding remuneration plus 5% interest *p.a.* as of 18 October 2017 until the date of effective payment;
  - EUR 600,000 as a penalty fee within 30 days as from the date of notification of the decision. Interest at the rate of 5% *p.a.* will fall due as of the expiry of the stated time limit.
3. The terms of the decision of the Dispute Resolution Chamber were duly communicated to the parties on 23 May 2018, while the grounds of said decision were notified on 24 October 2018.
4. Following the notification of the grounds, the Creditor lodged an appeal before the Court of Arbitration for Sport (CAS), which issued an Award on 7 April 2020.
5. In this respect, CAS upheld the appeal lodged by the Creditor and hence, confirmed with addendum the decision passed by Dispute Resolution Chamber on 17 May 2018. In accordance with the addendum, in addition to the amounts awarded by the Dispute Resolution Chamber (cf. para. 1.2 *ut supra*), the Debtor was ordered to pay to the Creditor the amount of EUR 822,830.95. Furthermore, the CAS ordered the Debtor to pay to the Creditor CHF 9,000 as a contribution towards the legal costs incurred by the latter in connection with the arbitration proceedings.
6. On 8 May 2020, as the Creditor had only received a partial payment of EUR 1,000,000 from the Debtor as confirmed under paragraph VIII/60 of the aforementioned CAS Award, the Creditor claimed that the aforesaid CAS Award was not respected by the Debtor and requested the Disciplinary Committee to act accordingly in the application of Article 15 FDC.
7. In light of the foregoing, since the aforementioned amounts were not paid to the Creditor in full (cf. points 2 & 5 *ut supra*), the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 3 June 2020.
8. Additionally, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 6 July 2020, and invited the Debtor to provide its position within six days of the notification of the opening of the disciplinary proceedings. Finally, the Secretariat informed the Debtor that the member of the FIFA Disciplinary

Committee would take a decision based on the documents in his possession, should the Debtor fail to submit any statement by the specified deadline.

## II. RESPONDENT'S POSITION

9. On 3 July 2020, the Debtor provided its position in relation to the present disciplinary proceedings, which can be summarised as follows:
  - The Debtor is “*fully aware*” of its financial obligations towards the Creditor, and had started to take the internal administrative steps required in order to execute payment of the outstanding amounts.
  - For this reason, the Debtor decided “*not to make any comment*” in regards to the matter at stake and “*would only write to the [Secretariat] about the execution of the payment*”.
  - The Debtor referred to the “*problems created*” by the COVID-19 pandemic, in particular the resulting financial difficulties which “*every club is facing*”, and stated that a “*rigorous process*” had been implemented in order to control every payment, each of which requires several authorizations and internal checks before execution.
  - The Debtor claimed that it had expected to have these internal processes terminated, and the payment of the outstanding amounts due to the Creditor executed, by the beginning of July and before the submission of the matter to a member of the FIFA Disciplinary Committee.
  - However, the Debtor's Group CEO and Legal Counsel responsible for football matters surprisingly left in June, leaving the mentioned internal procedures required to authorize payment to the Creditor unconcluded.
  - The Debtor stated that it had aimed to pay the outstanding amounts due to the Creditor before 6 July 2020, however, given the aforementioned, was not certain that it would be able to do so before the matter was analyzed by the FIFA Disciplinary Committee.
  - The Debtor, considering the above and with regard to the COVID-19 pandemic that has “*seriously affected the club*”, requested that the FIFA Disciplinary Committee exceptionally grant a final deadline of 60 to 90 days, as opposed to 30 days, for the Debtor to execute payment to the Creditor on the basis of article 24 of the FIFA Disciplinary Code (hereinafter: *the FDC*).
  - The Debtor concluded that it is committed to the execution of the payment of the outstanding amounts due to the Creditor “*as soon as possible*”.

## III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In view of the circumstances of the present matter, the member of the FIFA Disciplinary Committee (hereinafter also referred to as: *the member of the Committee* or *the Single Judge*) decided to first address the procedural aspects of the present matter, namely, its jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing

the possible failure of the Debtor to comply with the CAS award as well as the potential sanctions resulting therefrom.

#### A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the FIFA Disciplinary Committee (hereinafter: *the Committee*) notes that at no point during the present proceedings did the Debtor challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
3. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

#### B. Applicable law

4. With regard to the matter at hand, the member of the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the CAS award, was committed after the 2019 FDC entered into force. As a result, he deemed that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC (hereinafter: *the 2019 FDC*).
5. Having established the above, the Single Judge wished to recall the content and scope of art. 15 of the FDC in order to duly assess the case at hand.
6. According to this provision:
  1. *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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*
    - a) *will be fined for failing to comply with a decision; in addition:*
    - b) *will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
    - c) *in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

(...)

3. *If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*

7. Moreover, in line with art. 54 par. 1 h) of the FDC, cases involving matters under art. 15 of the FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
8. Finally, the Single Judge emphasised that equal to the competence of any enforcement authority, he cannot review or modify as to the substance of a previous decision, which is final and binding and, thus, has become enforceable.
9. His jurisdiction being established and the applicable law determined, the member of the Committee subsequently turned his attention to the CAS award.

## C. Merits of the dispute

### I. Analysis of the facts in light of art. 15 FDC

10. The above having been established, the Single Judge noted that the terms of the decision passed by Dispute Resolution Chamber on 17 May 2018 were duly communicated to the parties on 23 May 2018, and that the grounds, which were requested by the Creditor, were notified on 24 October 2018. In addition, the Single Judge observed that said decision was appealed against by the Creditor before CAS, which, by means of its Award from 7 April 2020, confirmed with addendum the aforementioned decision of the Dispute Resolution Chamber. The member of the Committee finally noticed that no appeal against the aforementioned CAS award was lodged before the Swiss Federal Tribunal, so that said award became final and binding.
11. In view of what has been explained under paragraph III.B./8. above, the Single Judge is not allowed to analyse the case decided by the Dispute Resolution Chamber and subsequently, confirmed with addendum 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 analyse if the Debtor complied with the final and binding award rendered by CAS on 7 April 2020.
12. In this respect, the Single Judge first acknowledged that the Debtor claimed, *inter alia*, that the Group CEO and Legal Counsel responsible for football matters surprisingly left the club in June, thereby leaving the Debtor's internal procedures required to authorize payment of the outstanding amounts due to the Creditor uncompleted, and which had resulted in the delay of payment to the Creditor.
13. In addition, the Single Judge observed that, according to the Debtor, the COVID-19 pandemic had had a significant impact upon the club and had resulted in, amongst other effects, financial difficulties which had likewise contributed to the resulting delay in payment of the outstanding amounts due to the Creditor.
14. Moreover, the Single Judge acknowledged that the Debtor requested to be exceptionally granted a final deadline of 60 to 90 days to execute payment to the Creditor.

15. In light of the Debtor's arguments, the Single Judge deemed it necessary to emphasize that clubs have the duty to be aware of their 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.
16. To that end, the Single Judge also wished 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”<sup>1</sup>. Thus, the sole fact that the Debtor may be facing organizational issues associated with the changes in its management and administration or that it is also encountering impediments to the usual operations of the club, thereby hindering timely payment, does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor.
17. In addition, the Single Judge pointed out that a possible payment plan – by means of which the Debtor is granted an extension of time to pay the amounts due – has to be agreed upon directly with the Creditor, *in casu* the player Angel Imanol Lafita. As such, under no circumstances may the member of the Committee subrogate himself to the rights of the Creditor and impose a payment plan.
18. Finally, and with respect to the argument relating to the COVID-19 pandemic put forward by the Debtor, the member of the Committee found it appropriate to turn to the content of the FIFA publication of 2 April 2020 titled “COVID-19 – Football Regulatory Issues”.
19. In said publication, it was publicly indicated that “*although FIFA is fully aware of the potential financial difficulties of some clubs flowing from the obligation to comply with financial decisions rendered by the DRC, the PST or the Disciplinary Committee, no exceptions will be granted in this regard. Consequently, decisions passed by the above-mentioned judicial bodies must be respected by MAs, clubs, players and coaches without exception. FIFA will continue to apply article 15 of the FIFA Disciplinary Code in the event of failure to respect these decisions*”.
20. As such, the Single Judge deemed that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor in accordance with the award issued by CAS on 7 April 2020 have not been paid.
21. In light of all the above, the Single Judge concluded that the Debtor failed to comply in full with the aforementioned CAS award, and is consequently withholding money from the Creditor. As a result, the Debtor is considered guilty of non-compliance with a financial decision under the terms of art. 15 of the 2019 FDC.

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<sup>1</sup> cf. par. 46 ff. CAS 2010/A/2144 Real Betis Balompié SAD v. PSV Eindhoven.

## II. Summary

22. In view of the foregoing, the Single Judge concluded that the Debtor, by its conduct as described above, violated art. 15 of the FDC and should be sanctioned accordingly.

## III. The determination of the sanction

23. With regard to the applicable sanctions, the Single Judge observed in the first place that the Debtor 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. In these circumstances, the Single Judge underlined that the fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 100 and CHF 1,000,000.
25. This being established, it is emphasized that the Debtor withheld the amounts unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the amounts due to the Creditor.
26. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regarded 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.
27. In the application of art. 15 par. 1 b), the Single Judge considered a final deadline of 30 days as appropriate for the Debtor to settle the amounts due to be paid to the Creditor.
28. In accordance with art. 15 par. 1 c) of the FDC, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.
29. For the sake of good order, the United Arab Emirates Football Association 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 United Arab Emirates Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the United Arab Emirates Football Association 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.

## IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The club Al Jazira SC (hereinafter, the Debtor) is found guilty of failing to comply in full with the award issued by the Court of Arbitration for Sport on 7 April 2020 confirming with addendum, the decision passed by the Dispute Resolution Chamber on 17 May 2018,

according to which it was ordered to pay to the player Angel Imanol Lafita (hereinafter, the Creditor) the following amounts:

- EUR 400,000 as outstanding remuneration plus 5% interest *p.a.* as of 18 October 2017 until the date of effective payment;
- EUR 600,000 as a penalty fee within 30 days as from the date of notification of the decision. Interest at the rate of 5% *p.a.* will fall due as of the expiry of the stated time limit;
- EUR 822,830.95 in accordance with the addendum to the decision of the Dispute Resolution Chamber on 17 May 2018 as awarded by the Court of Arbitration for Sport on 7 April 2020;
- CHF 9,000 as contribution towards the legal costs incurred in connection with the Arbitral proceedings.

In particular, the Creditor only received a partial amount of EUR 1,000,000 from the Debtor.

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.
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 United Arab Emirates Football Association 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 United Arab Emirates Football Association 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 United Arab Emirates Football Association 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 United Arab Emirates Football Association 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 United Arab Emirates Football Association 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 United Arab Emirates Football Association of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature is stylized and appears to read 'Carlos Teran'.

**Carlos Teran**

Member of the Disciplinary Committee

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**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:**

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 numbers of the CAS are the following:

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