

Decision of the FIFA Disciplinary Committee

passed in Zurich, Switzerland, on 6 August 2020,

COMPOSITION:

Mr. Kia Tong Lim, Singapore (member)

RESPONDENT:

FK Aktobe, Kazakhstan

Regarding failure to comply with:

Article 15 of the FDC (2019 ed.)

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 10 August 2018, the Dispute Resolution Chamber decided that the club FK Aktobe (hereinafter: *the Debtor*) had to pay to the player Joseph Fils Nane Eone (hereinafter: *the Creditor*):

KZT 21,800,000 as outstanding remuneration, within 30 days of the date of notification of the decision plus 5% interest *p.a.* calculated as follows:
 - 5% interest *p.a.* over the amount of KZT 1,400,000 as from 1 September 2017 until the date of effective payment;
 - 5% interest *p.a.* over the amount of KZT 6,800,000 as from 1 October 2017 until the date of effective payment;
 - 5% interest *p.a.* over the amount of KZT 6,800,000 as from 1 November 2017 until the date of effective payment;
 - 5% interest *p.a.* over the amount of KZT 6,800,000 as from 1 December 2017 until the date of effective payment.
3. The terms of the decision were duly communicated, amongst others, to the parties on 15 August 2018. In this regard, no request for the grounds of the decision was received from either party and, therefore, the decision of the DRC dated 10 August 2018 became final and binding.
4. On 18 June 2020, the Creditor claimed that the above mentioned decision was not respected by the Debtor and requested the Disciplinary Committee to act accordingly in application of Article 15 FDC.
5. In light of the foregoing, and as the aforementioned amounts were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 6 July 2020. Moreover, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 23 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.

6. On 9 July 2020, the Creditor informed FIFA that the Debtor had partially fulfilled its financial obligations by making a payment of KZT 19,000,000 on 22 April 2019. However, the Creditor claimed that the dispute between the parties was not settled, as the Debtor still owed him KZT 2,800,000 from the main amount determined in the decision of the Dispute Resolution Chamber dated 10 August 2018, as well as the interests over the main amount to be calculated in accordance with the said decision.

II. RESPONDENT'S POSITION

7. On 13 July 2020, the Debtor provided its position, which can be summarised as follows:
 - After receiving the decision from the Dispute Resolution Chamber, the Creditor filed a claim before the Aktobe City Court in relation to the same employment contract between the club FK Aktobe and Mr Fils Nane Eone that was the subject of the claim filed to FIFA and decided by the Dispute Resolution Chamber on 10 August 2018;
 - In the aforementioned court proceedings, the parties signed a settlement agreement whereby the club FK Aktobe undertook to pay to Mr Nane Eone the amount of KZT 19,000,000, and on his part Mr Nane Eone undertook that in case that the payment was effected he would not file any further claim against the club in relation to the contract subject of the settlement agreement;
 - The club FK Aktobe complied with the settlement agreement by making a payment of KZT 19,000,000.

III. CREDITOR'S RESPONSE

8. In light of the Debtor's submission, the Creditor was requested by the Secretariat on 17 July 2020, to confirm the following:
 - If he did file the aforementioned claim before the Aktobe City Court and whether the said claim was in relation to the same employment contract between the club FK Aktobe and Mr Fils Nane Eone that was the subject of the claim filed to FIFA and decided by the Dispute Resolution Chamber on 10 August 2018;
 - If he signed the settlement agreement with the club FK Aktobe referred to in the Aktobe City Court decision.
9. On 18 July 2020, the Creditor provided his position, which can be summarized as follows:
 - The Disciplinary Committee should decide whether Mrs Maria Tokmakova can be allowed to represent the Debtor, the club FK Aktobe, in the present proceedings, given that the Creditor was not aware that she was representing the Debtor's interests, as no Power of Attorney has been provided in the matter;
 - The Disciplinary Committee should explain why the hearing of the disciplinary matter has been postponed from 23 July to 6 August 2020;

- The Disciplinary Committee should request the Debtor to provide “(...) *the Decision of the Commission (conciliation) of FC Aktobe dated September 12, 2018 on the application of Nane Joseph Fils Eone*” as well as a translation into one of the official FIFA languages of the payment order dated 22 April 2019;
 - The decision of the Dispute Resolution Chamber dated 10 August 2018 was not mentioned in the proceedings before the Aktobe City Court, hence why the decision of the said court should not be taken into account.
10. As the Creditor did not reply in his position to the questions posed by FIFA, the Secretariat sent him a new correspondence whereby, on the one hand, it replied to the Creditor’s allegations regarding the empowerment of the Debtor’s legal representative and the postponement of the initial date for submission of the case to the Disciplinary Committee and, on the other hand, requested the Creditor again to provide a response to the two questions posed to him in FIFA’s correspondence dated 17 July 2020, namely:
- If he did file the aforementioned claim before the Aktobe City Court and whether the said claim was in relation to the same employment contract between the club FK Aktobe and Mr Fils Nane Eone that was the subject of the claim filed to FIFA and decided by the Dispute Resolution Chamber on 10 August 2018;
 - If he signed the settlement agreement with the club FK Aktobe referred to in the Aktobe City Court decision.
11. After FIFA’s correspondence dated 22 July 2020, no response has been received from the Creditor.

IV. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

A. Jurisdiction of the FIFA Disciplinary Committee

12. 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).
13. 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

14. In order to duly assess the matter, the Committee would like to begin by recalling the content and the scope of the provision at stake.

15. According to Article 15 FDC

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.

16. 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, acting as a single judge (hereinafter: *the Single Judge*).

17. The Single Judge emphasises 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.

C. Merits of the dispute

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

18. The above having been established, the Single Judge notes that the terms of the decision were duly communicated, amongst others, to the parties on 15 August 2018. Moreover, the Single Judge notes that there has been no request for the grounds of the decision and, therefore, the decision of the Dispute Resolution Chamber dated 10 August 2018 became final and binding.

19. In view of what has been explained under paragraph IV./B/17. above, the Single Judge is not allowed to analyse the case decided by the Dispute Resolution Chamber 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 decision rendered by the Dispute Resolution Chamber.

20. However, the Single Judge notes from the position provided by the Debtor that after the decision passed by the Dispute Resolution Chamber on 10 August 2018, the Creditor filed a claim before the Aktobe City Court in relation to his contractual relationship with the club FK Aktobe. In this regard, the Single Judge notes that (i) the parties are the same in the claim filed before the Aktobe City Court than those in the Dispute Resolution Chamber decision, and that (ii) the subject of the claim would also appear to be the same, namely the contractual relationship between the club FK Aktobe and the player Joseph Fils Nane Eone, and the claim by the latter of the outstanding remuneration due to him further to his employment relationship with the Debtor.
21. Moreover, the Single Judge notes that the parties reached a settlement agreement before the Aktobe City Court whereby the club FK Aktobe undertook to pay to Mr Nane Eone the amount of KZT 19,000,000, and on his part Mr Nane Eone undertook that in case the payment was effected he would not file any further claim against the club in relation to the contract subject of the said settlement agreement. In this regard, the Single Judge ascertains that as part of the proceedings before the FIFA Disciplinary Committee, the Creditor confirmed having received a partial payment of KZT 19,000,000 from the Debtor on 22 April 2019.
22. In this context, the Single Judge observes how the Creditor was inquired twice by the Secretariat whether, on the one hand, did he file the aforementioned claim before the Aktobe City Court and whether the said claim was in relation to the same employment contract between the club FK Aktobe and Mr Fils Nane Eone that was the subject of the claim filed to FIFA and decided by the Dispute Resolution Chamber on 10 August 2018; and if, on the other hand, he signed the settlement agreement with the club FK Aktobe referred to in the Aktobe City Court decision.
23. In this regard, the Single Judge is surprised to see how the Creditor, despite providing vast replies to the FIFA correspondences, seems to deliberately avoid replying to the direct questions that he was asked in relation to the identity between the claim decided by the Dispute Resolution Chamber and the one he filed before the Aktobe City Court. Not just that, but the Creditor failed to rebut with any evidence the authenticity of the decision of the Aktobe City Court provided by the Debtor.
24. Nevertheless, the Single Judge observes that in point 7 of his position dated 18 July 2020, the Creditor alleged, *inter alia*, that “(...)the plaintiff, before filing a claim before the judicial authority, (...)” , which would result in an implicit acknowledgement of having filed the claim before the Aktobe City Court.
25. At this point, the Single Judge would like to recall the basic legal principle of *res iudicata*, also known as claim preclusion, whereby a case in which there has been a final judgement is no longer subject to appeal or to a new claim with the same parties and in relation to the same object and the same cause.
26. In this regard, and further to the facts of the case and the evidence provided by the Debtor, which the Creditor failed to rebut with any evidence, the Single Judge is comfortably satisfied

to determine that the parties of the claim decided by the Dispute Resolution Chamber and that decided by the Aktobe City Court are the same, namely the player Joseph Fils Nane Eone and the club FK Aktobe.

27. Moreover, the Single Judge is comfortably satisfied to determine that the cause and the object of both claims is the same: the contractual employment relationship between the abovementioned parties and the outstanding amounts due by the club to the player based on that relationship.
28. Finally, having established that the claims lodged by the Creditor at the Dispute Resolution Chamber and the Aktobe City Court are connected with his employment contract and are identical in nature and extent, the next issue is whether the settlement of the claim before the Aktobe City Court would have led to the satisfaction of the award given by the Dispute Resolution Chamber.
29. In this regard, the Single Judge notes that the Creditor confirmed receiving the sum of KZT 19,000,000. However, he failed to prove that the settlement sum of KZT 19,000,000 was not related to the Dispute Resolution Chamber decision and that it is separate and apart from the sum of KZT 21,800,000 awarded by the Dispute Resolution Chamber. Consequently, in the absence of better evidence, which the Creditor failed to provide, to show that the sum claimed at the Aktobe City Court is different from that awarded by the Dispute Resolution Chamber, it is hard to accept that it is a coincidence that the settlement sum of KZT 19,000,000 at the Aktobe City Court is so near the sum of KZT 21,800,000, as awarded by the Dispute Resolution Chamber. Therefore, the Single judge is comfortably satisfied to conclude that the dispute between the parties was settled by means of the agreement before the Aktobe City Court.
30. In light of the foregoing, the Single Judge concludes that given the identity of the parties and the identity of the cause and of the object between the claim filed by the Creditor before the Aktobe City Court and the decision of the Dispute Resolution Chamber dated 10 August 2018, which enforcement is subject of the present disciplinary proceedings, and given that the claim appears to have been settled by means of an agreement reached before the Aktobe City Court, the Single Judge, in application of the principle of *res iudicata*, does not appear to be in a position to deal again with the present matter, nor to establish a violation of art. 15 FDC.

II. Summary

31. In view of the foregoing, the Single Judge concluded that all charges against the club FK Aktobe for the violation of art. 15 FDC must be dismissed.
32. Moreover, the Single Judge considers that the disciplinary proceedings against the club FK Aktobe must be closed.

V. DECISION OF THE DISCIPLINARY COMMITTEE

1. The FIFA Disciplinary Committee has decided that all charges against the club FK Aktobe are dismissed.
2. The disciplinary proceeding against the club FK Aktobe is hereby declared closed.

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.

NOTE RELATING TO THE LEGAL ACTION

According to art. 64 par. 5 of the FDC and art. 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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