

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 20 August 2020

COMPOSITION:

Mr. Alejandro Piera, Paraguay (Deputy Chairman)

Mr. Thomas Hollerer, Austria (member)

Mr. Carlos Teran, Venezuela (member)

RESPONDENT:

FC Krasnodar, Russia

Decision FDD-5836

Regarding third-party influence and failure to enter correct information in TMS
(Ref. FDD-5836)

Art. 18bis par. 1 of the FIFA Regulations on the Status and Transfer of Players
(2018 ed.) (hereinafter, the "Regulations")

Art. 4 par. 3 of Annexe 3 of the Regulations

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 24 December 2018, the Russian club FC Krasnodar (hereinafter also referred to as the Club or Krasnodar) concluded a loan agreement (hereinafter also referred to as the Agreement) with the Czech club FK Mlada Boleslav (hereinafter also referred to as Boleslav) to release the player Alexey Tataev (hereinafter also referred to as the Player) for one year, i.e. 1 January 2019 until 31 December 2019. The Agreement included a call option for Boleslav. In this sense, after the Player had been registered with Boleslav on loan for one year (i.e. from 1 January 2019 until 31 December 2019), Boleslav executed the mentioned call option to engage the Player on a permanent basis.
3. In particular, clause 2 of section 3 of the Agreement read as follows:

“2. FK Mlada Boleslav undertakes to pay to Krasnodar conditional compensation in the amount of 500 000 (five hundred thousand) Euro (VAT not applicable) for each match within any official competition played by Footballer for FK Mlada Boleslav against Krasnodar during the “Period of loan” in accordance with the terms of this Contract [...].”

Furthermore, the parties also agreed on the following (clause 4 of section 5 of the Agreement):

*“4. Additionally Krasnodar will receive **twenty five percent (25%)** of the Euro 157,000 exceeding amount of gross transfer compensation [...] that FK Mlada Boleslav will receive as transfer compensation [...] a third professional football club will pay for the transfer of the football player Alexei Tataev (Sell-on compensation). This 25% participation is applicable for a transfer to a non-Russian football club. In the case of a transfer to a professional Russian football club the participation percentage amounts to fifty percent (50%) of the Euro 157,000 exceeding amount of a gross transfer compensation. [...].”*

4. On 29 January 2019, the Club entered a “release on loan” instruction in the Transfer Matching System (TMS) (TMS instruction 224797) to release the Player on loan to Boleslav, and, on 23 January 2020, it entered a “release from loan to permanent” instruction in the TMS (269989) to release the Player permanently to Boleslav.
5. In the context of the aforementioned transfer instructions, the Club indicated for each of the said instructions, that it had not entered into a contract that enabled a counter club/counter

clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matter its independence, its policies or the performance of its teams.

6. On 1 July 2020, following the investigations conducted by the FIFA's Regulatory Enforcement Department (hereinafter, *FIFA TMS*) disciplinary proceedings were opened against Krasnodar with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players, 2018 edition (hereinafter, *the RSTP* or *the Regulations*) and art. 4 par. 3 of Annexe 3 of the RSTP.

II. RESPONDENT'S POSITION

7. On 7 July 2020, Krasnodar provided its position, which, together with the arguments provided by the Club to the FIFA TMS on 8 and 22 May 2020, can be summarised as follows:
 - The conditional payment laid out in clause 2 of section 3 of the Agreement is a normal business practice in football. The will of the parties was not to have an influence on determining the line-up of Boleslav, but that Krasnodar could get a fair reward if Boleslav plays in UEFA club competitions, including through the use of a football player coming from Krasnodar, for which it will receive additional income in the form of payments from UEFA.
 - The inclusion of such conditional payment clause in the transfer agreement is done by voluntary mutual decision of the parties.
 - In addition, it is worth noting that Krasnodar and Boleslav did not play against each other during the loan period, so a possible violation cannot be considered as committed since the conditions established in the relevant clause were not met.
 - The condition stipulated in clause 4 of section 5 of the Agreement is only a double mechanism for determining the additional transfer fee in the form of a percentage from the future transfer of the Player, this is, a sell on fee.
 - The said clause does not give Krasnodar any rights or power to decide or influence on the future transfer of the Player from Boleslav to a third club.
 - If the parties made a differentiation in the percentage of the transfer fee surplus Krasnodar would be entitled to in case the Player is transferred in the future is because they believed that if the Player moves outside Russia, it would mean that Boleslav would have made a greater contribution to the potential growth of the Player than if he stays in Russia.
 - Boleslav has confirmed that there is no potential influence from Krasnovar since all conditions were mutually negotiated and agreed.
 - Krasnodar and Boleslav have amended clause 4 of section 5 by establishing a "*uniform see-on percentage for all potential future transfer of the player*".¹

¹ A copy of the amendment was provided to the Secretariat on 9 July 2020

8. The more detailed arguments made by the Respondent in support of his written submissions are set out below as far as they are relevant.

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, 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 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.

i. 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*).

ii. 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 players through TMS.

8. In particular, article 4 par. 3 of Annexe 3 of the Regulations imposes the obligation on clubs to declare different information within the framework of an international transfer of a 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 article 18bis of the Regulations), the club concerned must indicate it in TMS when entering the relevant transfer instruction.

C. Standard and burden of proof

10. 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. Issues of review:

11. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular, the relevant transfer 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 provision.
12. For the sake of good order, the Committee notes that it is undisputed that Krasnodar concluded a loan agreement with Boleslav on 24 December 2018. The Committee also observes that the Club has not questioned or disputed neither the content nor the validity of the said loan agreement at any point.

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

13. Having determined the above, the Committee proceeds to analyse the content of clause 2 section 3 and clause 4 of section 5 of the Agreement (point I.3 *ut supra*)
14. In this respect, the Committee is of the firm opinion that clause 2 section 3 prevents Boleslav from freely making a decision as to which players to field in a match, given that it is instigated to refrain from fielding the Player in case of an eventual match against Krasnodar, due to the negative financial impact that doing so would involve. In this regard, the Committee observes that it is clear that Boleslav would not have enjoyed complete independence with regard to its policies or the performance of its teams.
15. In this context, the Committee notes that the Club argued that clause 2 of section 3 of the Agreement just contains a conditional payment clause mutually agreed by the parties, which is considered a normal business practice in football and that, in any event, no violation of the

Regulations could have been committed by the Club since the conditions laid out in the relevant clause were never met.

16. To this respect, the Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct (cf. para II.i.4 *supra*) whenever the contract in question enables or entitles a club to be influenced by another one (or by a third party), regardless of whether or not this influence actually materialises after the conclusion of the contract. By the mere existence of this clause, the Club is influencing in Boleslav's employment and transfer-related matters as well as the performance of its team as demonstrated above.
17. Moreover, the Committee turns its attention to clause 4 of section 5 of the Agreement and concludes that the said clause limits the freedom of Boleslav in transfer-related matters. In fact, it appears to be clear that Boleslav would have to pay Krasnodar a higher amount of money should it decide to transfer the Player to a club in Russia. Therefore, it is evident that in a scenario in which Boleslav receives two similar or identical offers for the Player, one being from a club in Russia and the other coming from a club outside Russia, Boleslav would be inclined to accept the offer coming from the club outside Russia, as it would make the operation more profitable from a purely financial point of view.
18. In this context, the Committee would like to address the argument brought forward by the Club, according to which the said clause has to be considered as a sell on fee and hence, it does not contain any *"veto rights or similar rights for FC Krasnodar upon the future transfer of the Player from FK Mladá Boleslav to the third club"*.
19. In this sense, the Committee believes it important to stress that the nature or category of a clause is not relevant when assessing if there is a potential infringement of article 18bis of the RSTP and recalls that, as already explained in point III.D.16 *ut supra*, a club is found to be in breach of article 18bis of the Regulations whenever the contract in question enables or entitles a club to be influenced by another one (or by a third party),
20. Therefore, following the above conclusion reached by the Committee (point III.D.17), the latter points out that clause 4 of section 5 of the Agreement would interfere in Boleslav independence regarding transfer related matters since, as already explained, the difference between the fee Boleslav would have to pay to Krasnodar depending on where the former transfers the Player, has financial implications for Boleslav that would influence its decision making process.
21. In addition, and for the sake of good order, the Committee wishes to express that the fact that the Club amended Clause 4 of Section 5 does not modify the existence of the Agreement. To this respect, the Committee is of the opinion that the Club only decided to amend the relevant clause after the present disciplinary proceedings were opened against it and has, therefore, serious doubts as to whether the Club would have reacted the same way if he would not have become aware that it could be subject to disciplinary measures.
22. Having clarified the above, and following the analysis of the clauses here at stake, the Committee concludes that Krasnodar entered into the Agreement enabling it to influence the independence and policies of Boleslav in employment and transfer-related matters as well as

the performance of its team. Therefore, the Committee concludes that the Club is liable for the breach of article 18bis par.1 of the RSTP in relation to the Agreement.

III. Analysis of the facts in light of article 4 par. 3 of Annexe 3 of the RSTP

23. The Committee further noted that in the relevant transfer instructions (TMS ref 224797 & 269989) Krasnodar declared that it did not enter into a contract enabling a “third-party influence”.
24. Keeping in mind that, as demonstrated above, the Agreement signed between Krasnodar and Beslolav, enabled Krasnodar to acquire the ability to influence Beslolav “in employment and transfer-related matters its independence, its policies or the performance of its teams”, the Committee considers that, by declaring in TMS that there was no third-party influence, the Club failed to disclose full and correct information in TMS.
25. As a consequence, the Committee holds that the Club is to be found guilty of having violated art. 4 par. 3 of Annexe 3 of the RSTP.

IV. Summary

26. 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 of the Regulations (2018 edition), for entering into contracts enabling the Club to influence another clubs;
 - Art. 4 par. 3 of Annexe 3 of the Regulations (2018 edition), for failing to declare mandatory data in the TMS.
27. Therefore, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

V. The determination of the sanction

28. With regard to the applicable sanctions for the present case, the Committee observes in the first place that Krasnodar 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.
29. 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).

30. In these circumstances, the Committee is of the opinion that the relationship between the two clubs in relation to the scope and effects of the relevant clauses of the Agreement need to be taken into account. As a matter of fact, the burden of such clause mainly lies on Beslolav, while Krasnodar is undoubtedly benefitting from it.
31. 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 influencer's behaviour is more reprehensible than the one of the influenced. In the matter at hand, the Committee notes that Krasnodar is the influencing club as it was only in Krasnodar's interest to impose such clauses.
32. Having said that, the Committee notes that Krasnodar does not have any precedents related to violations of art. 18bis of the RSTP.
33. In light of all the above, the Committee considers a fine to be the appropriate sanction.
34. 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.
35. 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.
36. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Krasnodar's conduct. In particular, Krasnodar 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.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The FIFA Disciplinary Committee found FC Krasnodar responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to declare mandatory information in TMS (art. 4 par. 3 of Annexe 3).
2. The FIFA Disciplinary Committee orders FC Krasnodar 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, FC Krasnodar 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



Alejandro Piera

Member of the FIFA 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.

The full address and the contact details of the CAS are the following:

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