

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 20 August 2020,

COMPOSITION:

Mr. Leonardo Stagg, Ecuador (member)

RESPONDENT:

Club Cruzeiro EC, Brazil

Regarding failure to comply with a decision (Ref. FDD-5952)

Article 15 of the FIFA Disciplinary Code (hereinafter, the "FDC")

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 September 2019, the Single Judge of the Players' Status Committee decided that the club Cruzeiro Esporte Clube (hereinafter: *the Debtor*) had to pay:
 - a) To the coach Sergio E Castro Costa (hereinafter: *the Creditor*):
 - Brazilian Real (BRL) 89,250 as outstanding remuneration, plus interest until the date of effective payment as follows:
 - a) 5% *p.a.* as of 13 September 2017 on the amount of BRL 17,850;
 - b) 5% *p.a.* as of 13 October 2017 on the amount of BRL 17,850;
 - c) 5% *p.a.* as of 13 November 2017 on the amount of BRL 17,850;
 - d) 5% *p.a.* as of 13 December 2017 on the amount of BRL 17,850;
 - e) 5% *p.a.* as of 13 January 2018 on the amount of BRL 17,850.
 - CHF 1,000 as costs of the proceedings.
 - b) In addition, since the Debtor requested the grounds of the aforementioned decision, it was sentenced to pay to FIFA the amount of CHF 2,000 as costs of the proceedings, within 30 days as from the date of notification of the decision.
3. The terms of the decision of the Single Judge of the Players' Status Committee were duly communicated to the parties on 1 October 2019, while the grounds of said decision were notified on 5 February 2020.
4. Following the notification of the grounds, the Debtor lodged an appeal before the Court of Arbitration for Sport (CAS), which issued a Termination Order on 15 June 2020.
5. In this respect, CAS informed that the Debtor had withdrawn the appeal and hence, the relevant arbitration proceeding was removed from the CAS roll. As a consequence, the decision of the Single Judge of the Players' Status Committee from 25 September 2019 is final and binding.
6. On 16 July 2020, as the outstanding amounts due to the Creditor (cf. point 2 *ut supra*) were not paid, the latter requested the initiation of disciplinary proceedings against the Debtor.

7. In light of the foregoing, and since the aforementioned amounts were not paid to the Creditor and to FIFA, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 17 July 2020. Moreover, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee and invited it 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.

II. RESPONDENT'S POSITION

8. On 24 July 2020, the Debtor provided its position in relation to the disciplinary proceedings. The arguments brought forward by the Debtor can be summarised as follows¹:
 - The Debtor acknowledges and admits its debt towards the Creditor, however, it has currently no financial means to afford such a payment.
 - The Debtor stipulates that it will comply with the payment “as soon as possible”, in particular, after receiving an injection of funds from the sale of a plot of land and a crowdfunding campaign.
 - The Debtor was relegated to the second division of Brazilian Football, namely because of its financial troubles.
 - The imposition of a sanction is unnecessary since the Debtor will be paying the amounts due to the Creditor in the following months.
 - The Debtor makes reference to the COVID-19 pandemic, which it claims has caused “*incomprehensible losses*”, including the decision of the Brazilian authorities on 14 March to immediately suspend all football competitions, which the Debtor claims has “*worsened [the scenario] considerably*”. This suspension includes the suspension of payments of TV rights in relation to the State Championships, with further suspension of payments expected in the upcoming days in conjunction with the “*drastic devaluation of the Brazilian Real when compared to other universal and stronger currencies*” such as the US Dollar and the Euro.
 - Such crisis implied a huge decrease of all incomes, such as ticketing, sponsorship, prize money, selling of TV rights, amongst others, of all football clubs, including the Debtor. In addition, the Debtor has been relegated to the second division of Brazilian Football for the “*first time in its history*”, which the Debtor states is mainly due to its financial troubles and the economic situation of Brazil.
 - The COVID-19 outbreak’s disruption to football has been recognized by the FIFA Council Bureau as a case of force majeure, which the Debtor notes as “*unforeseeable*”

¹ The summary does not purport to include every single contention put forth by the Debtor. However, the member of the FIFA Disciplinary Committee has thoroughly considered in his 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.

[and] *unavoidable to all stakeholders of the football community*” and therefore, as *“expressly confirmed by FIFA”*, fulfills the typical context of a case of force majeure.

- The Debtor refers to the ‘Principle of Proportionality’ that is *“enshrined in the FIFA DC (2019 ed.) under Art 24.”* and therefore argues that there is an inherent obligation of the FIFA judicial bodies to take into consideration all the issues and circumstances before rendering sanctions.
- The Debtor concludes that, on the basis of the above-mentioned, it fulfils the concept of the so-called *“exceptional circumstances”* and that as such, a *“fair sanction”* should be imposed without ignoring the referenced *“exceptional circumstances”* which, according to the Debtor, would constitute a violation of the aforesaid principles of proportionality.

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*) decides to first address the procedural aspects of the present matter, namely, his jurisdiction and the applicable law, before entering into the substance of the matter and assessing the possible failure of the Debtor to comply with the decision passed by the Single Judge of the Players’ Status Committee as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Single Judge notes that at no point during the present proceedings did the Debtor challenge his jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
3. Notwithstanding the above and for the sake of good order, the Single Judge finds it worthwhile to emphasise that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Disciplinary 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 points out that the disciplinary offense, *i.e.* the potential failure to comply with the decision of the Single Judge of the Players’ Status Committee, was committed after the 2019 FDC entered into force. As a result, he deems 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 wishes to recall the content and scope of art. 15 of the FDC in order to duly assess the case at hand.
 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.*
6. 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.
 7. Finally, the Single Judge emphasises that equal to the competence of any enforcement authority, he cannot review or modify the substance of a previous decision, which is final and binding and, thus, has become enforceable.
 8. His jurisdiction being established and the applicable law determined, the member of the Committee subsequently turns his attention to the decision of the Single Judge of the Players' Status Committee from 25 September 2019.

C. Merits of the dispute

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

9. The above having been established, the Single Judge notes that the terms of the decision passed by the Single Judge of the Players' Status Committee on 25 September 2019 were duly communicated to the parties on 1 October 2019, and that the grounds, which were requested by the Debtor, were notified on 5 February 2020. In addition, the Single Judge observes that said decision was appealed against by the Debtor before CAS, which, after the withdrawal of the appeal by the Debtor, rendered a Termination Order. As a consequence of the Termination Order, the arbitration proceedings was terminated and thus, the decision of the Single Judge of the Players' Status Committee became final and binding.
10. In view of what has been explained under paragraph III.B./7. above, the Single Judge is not allowed to analyse the case decided by the Single Judge of the Players' Status Committee 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 Single Judge of the Players' Status Committee.

11. In this respect, the Single Judge acknowledges that the Debtor claims that it is facing economic problems due to the financial recession and political crisis in Brazil, the relegation of the club to a lower division as well as to the COVID-19 pandemic. The Debtor claims that the disruption to football caused by the COVID-19 pandemic constitutes a case of so-called *force majeure*, the principle of which the Debtor touches upon in its submission.
12. In light of the Debtor's argument, the Single Judge deems it necessary to emphasize that a club has the duty to be aware of its 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.
13. To that end, the Single Judge also wishes 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”². Thus, the sole fact that the Debtor may be undergoing financial problems does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor, as confirmed by CAS³.
14. In the same vein, the member of the Committee points out that the alleged financial difficulties the Debtor faces because of the economic crisis and the consequential loss of value of the local currency are not valid arguments, as already confirmed by CAS in its award 2018/A/5864 Cruzeiro EC v. FIFA. According to the conclusion made by the Sole Arbitrator in the said Award, “*The fluctuations of foreign currency are a standard risk in business dealings and any entity dealing in foreign currency [...] ought to be aware of the possibility of it and should plan its financial dealings accordingly. Pursuant to the principle of pacta sunt servanda, the Club should have been aware of its financial situation*”⁴. Furthermore, in the same CAS proceedings, the Sole Arbitrator stressed that he failed “*to see how the fall in value of the Brazilian currency can either be a justification for non-payment, or how it amounts to “exceptional circumstances”*”
15. Finally, and with respect to the argument relating to the COVID-19 pandemic put forward by the Debtor, the member of the Committee finds it appropriate to turn to the content of the FIFA publication of 2 April 2020 titled “COVID-19 – Football Regulatory Issues”.
16. 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*

² cf. par. 45 ff. CAS 2010/A/2144 Real Betis Balompié SAD v. PSV Eindhoven.

³ CAS 2018/A/5779; CAS 2016/A/4402; CAS 2014/A/3533; CAS 2005/A/957.

⁴ cf. par. 118 CAS 2018/A/5864 Cruzeiro E.C. v FIFA.

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”.

17. As such, the Single Judge deems that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor and FIFA in accordance with the decision passed by the Single Judge of the Players’ Status Committee on 25 September 2019 have not been paid.
18. In light of all the above, the Single Judge concludes that the Debtor failed to comply with the aforementioned decision, and is, consequently, withholding money from the Creditor and FIFA. As a result, the Debtor is considered responsible of not complying with a financial decision under the terms of art. 15 of the 2019 FDC.

II. Summary

19. In view of the foregoing, the Single Judge concludes 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

20. With regard to the applicable sanctions, the Single Judge observes, 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.
21. In these circumstances, the Single Judge underlines 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.
22. This being established, it is emphasized that the Debtor withheld the amounts unlawfully from the Creditor and FIFA. 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 and FIFA.
23. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regards a fine amounting to CHF 5,000 as appropriate. This amount complies with the Committee’s established practice, namely to the fines imposed in cases in which similar amounts were due.
24. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the Debtor to settle the amounts due to be paid to the Creditor and FIFA.
25. 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.
26. For the sake of good order, the Brazilian 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 Brazilian Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Brazilian 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 Cruzeiro EC is found guilty of failing to comply in full with the decision passed by the Single Judge of the Players' Status Committee on 25 September 2019, according to which it was ordered to pay:

To the coach Sergio E Castro Costa:

- BRL 89,250 as outstanding remuneration, within 30 days of the date of notification of the decision plus interest until the date of effective payment as follows:
 - a) 5% *p.a.* as of 13 September 2017 on the amount of BRL 17,850;
 - b) 5% *p.a.* as of 13 October 2017 on the amount of BRL 17,850;
 - c) 5% *p.a.* as of 13 November 2017 on the amount of BRL 17,850;
 - d) 5% *p.a.* as of 13 December 2017 on the amount of BRL 17,850;
 - e) 5% *p.a.* as of 13 January 2018 on the amount of BRL 17,850.
- CHF 1,000 as costs of the proceedings.

To FIFA

- CHF 2,000 as costs of the proceedings
2. The Debtor is ordered to pay a fine to the amount of CHF 5,000. 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 and to FIFA.
 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 Brazilian 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 Brazilian 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 Brazilian 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 Brazilian 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 Brazilian 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 Brazilian Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Leonardo Stagg

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 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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