

# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 24 September 2020

## COMPOSITION:

Mr. Alejandro Piera, Paraguay (Deputy Chairman)

## RESPONDENT:

Club Naestved Boldklub, Denmark

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 deputy chairman of the FIFA Disciplinary Committee has thoroughly considered 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 8 June 2020, the FIFA Administration provided the clubs Naestved Boldklub (hereinafter also referred to as "*the Debtor*") and the club FK Sumadija 1903 Kragujevac (hereinafter also referred to as "*the Creditor*") with a proposal related to the distribution of the training compensation in connection with the registration of the Serbian player Aleksa Todorovic.
3. This proposal was made in accordance with art. 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter, "*the Procedural Rules*") as well as FIFA Circular 1689, meaning that the aforementioned clubs had 15 days to either accept or reject the proposal. In addition, it was clearly indicated that should the parties accept the proposal or should they fail to provide an answer to the FIFA Players' Status Department within the stipulated deadline, the proposal would become binding.
4. On 24 July 2020, the FIFA Administration informed the parties that the proposal had become binding. Consequently, the club Naestved Boldklub had to pay to the club FK Sumadija 1903 Kragujevac, within 30 days as from the date of the notification, the amount of EUR 85,479.45 plus 5% interest *p.a.* as of the due date until the date of effective payment. In addition, it was specified that should the aforementioned amount not be paid within the given time limit, the Creditor could request the submission of the case to the FIFA Disciplinary Committee for consideration and formal decision.
5. On 25 August 2020, as the aforementioned amount had not been paid by the Debtor, the Creditor requested the opening of disciplinary proceedings.
6. In light of the foregoing, the secretariat to the FIFA Disciplinary Committee (hereinafter, "*the Secretariat*") opened disciplinary proceedings against the Debtor on 28 August 2020. In this regard, the Debtor was informed that the case would be submitted to a member of the Disciplinary Committee on 24 September 2020, and was invited to provide its position within six days of the notification of the opening of the disciplinary proceedings. Moreover, the Secretariat emphasized 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

1. After the opening of the disciplinary proceedings, no position has been received from the Debtor.

### III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In view of the circumstances of the present matter, the deputy chairman of the FIFA Disciplinary Committee (hereinafter also referred to as “*the deputy chairman of the Committee*” or “*the Single Judge*”) decided first to address the procedural aspects of the case, namely his jurisdiction and the applicable law. Secondly, the nature of the proposal from the FIFA Administration should be discussed before proceeding to the merits of the case and determining the possible failure to comply with the proposal at hand as well as the potential sanctions resulting therefrom.

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

2. First of all, the deputy chairman of the Committee noted 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 deputy chairman of the Committee found it worthwhile to emphasize 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 deputy chairman of the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the proposal from the FIFA Administration, 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 emphasized that equal to the competence of any enforcement authority, he cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable.
9. His jurisdiction being established and the applicable law determined, the deputy chairman of the Committee subsequently turned his attention to the proposal from the FIFA Administration.

### **C. Nature of the Proposal from the FIFA Administration**

10. The Single Judge observed that the present disciplinary proceedings concerned the enforcement of a proposal from the FIFA Administration that became binding on the parties on 24 July 2020.
11. In this regard, the deputy chairman of the Committee noted that this proposal was made by the FIFA Administration in accordance with art. 13 of the Procedural Rules and FIFA Circular 1689.
12. This provision provides that in disputes relating to training compensation and solidarity mechanism without complex factual or legal issues, the FIFA Administration is entitled to make a written proposal to the parties regarding the amounts owed and the calculation of these amounts. It is further stated that, upon receipt of a FIFA's proposal, the parties have 15 days to request, in writing, a formal decision from the competent decision-making body. Moreover, a failure to request a formal decision, *i.e.* to reject the FIFA's proposal, will result in the proposal being regarded as accepted by all the parties and binding on them.
13. In addition, the aforementioned principles were reflected in FIFA Circular 1689 of 21 August 2019, which expressly provided that should none of the parties reject the proposal from the FIFA Administration within 15 days of its notification via TMS, the proposal would become binding on the parties.
14. Against this background, the deputy chairman of the Committee held that the aforementioned provision and circular solely provide that the proposal would become binding on the parties in the event that neither of them requests a formal decision, without however determining the nature of that "binding" proposal and its effects.

15. In this regard, the Single Judge turned his attention to a CAS award that had already addressed the possible characterization of a letter from FIFA as a decision<sup>1</sup>. In particular, it was emphasized that:
- The form of the communication has no relevance to determine whether there exists a decision or not;
  - For a communication to be regarded as a decision, it must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties;
  - A decision is an unilateral act, sent to one or more determined recipients and is intended to produce legal effects;
  - An appealable decision of a sport association or federation is normally a communication directed to a party and based on an “*animus decidendi*”, i.e. an intention of a body of the association to decide on a matter;
  - A simple information, which does not contain any ruling, cannot be considered a decision.
16. The foregoing implies that, in order to be considered a decision, a letter must contain a ruling intending to affect the legal position of one or more parties, as opposed to a purely informative letter that cannot be regarded as a decision.
17. Considering the above, the deputy chairman of the Committee noted that the correspondence sent by the FIFA Administration on 24 July 2020 i) informed the parties that the FIFA’s proposal had become binding on them and ii) ordered the Debtor to pay a specified amount to the Creditor within 30 days, failing which the matter could be submitted to the Disciplinary Committee for consideration and decision at the request of the Creditor.
18. Thus, the Single Judge considered it evident that, given its wording and the legal effects deriving from it, the aforementioned correspondence was to be regarded as a decision since it materially and definitively affected the legal position of the Debtor and the Creditor, and was therefore enforceable before the competent authority.
19. The nature of a FIFA proposal being determined, the deputy chairman of the Committee then turned to the possible non-compliance of the Debtor with the proposal from the FIFA Administration dated 24 July 2020.

## **D. Merits of the dispute**

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

20. In this context, the deputy chairman of the Committee noted that, on 24 July 2020, the parties were duly informed that the proposal issued by the FIFA Administration on 8 June 2020 had become binding in accordance with art. 13 of the Procedural Rules and FIFA Circular 1689. Moreover, the Single Judge recalled that a binding proposal has the characteristics of a decision, which can therefore be enforced.

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<sup>1</sup> CAS 2018/A/5746.

21. In view of what has been explained under paragraph III./8. above, the deputy chairman of the Committee is not allowed to analyze the proposal of the FIFA Administration 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 analyze if the Debtor has complied with the binding proposal from the FIFA Administration.
22. In this respect, the deputy chairman of the Committee noted that on 24 July 2020, the FIFA Administration informed the parties that the proposal became binding and that the Debtor had 30 days as from this notification to pay the amounts due to the Creditor.
23. As the Debtor did not comply with the proposal of the FIFA Administration, and is consequently withholding money from the Creditor, it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the FDC.

## **II. Summary**

24. 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**

25. With regard to the applicable sanctions, the deputy chairman of the Committee observed in the first place that the Debtor was a legal person, and as such could be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
26. 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.
27. This being established, it is emphasized that the Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amounts due.
28. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the deputy chairman of the Committee regarded a fine amounting to CHF 10,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
29. In application of art. 15 par. 1 b) of the FDC, the Single Judge considered a final deadline of 30 days as appropriate for the amounts due to be paid to the Creditor.
30. 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 amounts due are paid.

31. For the sake of good order, the Danish 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 Danish Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Danish Football Association fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee 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 Naestved Boldklub (hereinafter, the Debtor) is found guilty of failing to comply in full with the proposal made by the FIFA secretariat on 24 July 2020 (in accordance with Article 13 Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber) according to which it was ordered to pay to the club FK Sumadija 1903 Kragujevac (hereinafter, the Creditor) EUR 85,479.45 plus 5% interest *p.a.* as of the due date until the date of effective payment.
2. The Debtor is ordered to pay a fine to the amount of CHF 10,000. 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 Danish 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 Danish 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 Danish 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 Danish 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 Danish 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 Danish Football Association of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Alejandro Piera**

Deputy Chairman 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 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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