

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 19 November 2020

COMPOSITION:

Mr. Kia Tong Lim, Singapore (Member)

RESPONDENT:

Club Hapoel Ashkelon, Israel

Regarding failure to comply with:

Article 15 of the FDC (2019 ed.)

I. FACTS OF THE CASE

1. Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the member of the FIFA Disciplinary Committee has considered all the facts, allegations, legal arguments and evidence submitted by the parties, he refers in his decision only to submissions and evidence he considers necessary to explain.
2. On 30 October 2019, the Dispute Resolution Chamber decided that the club Hapoel Ashkelon FC (hereinafter also referred to as *the Debtor*) had to pay to the player Goodness Ohireman Ajayi (hereinafter also referred to as *the Creditor*), the amount of NIS 18,581, plus interest at the rate of 5% p.a. as from 11 January 2018 until the date of effective payment, as outstanding remuneration. In addition, the Debtor was ordered to pay to the Creditor the amount of NIS 269,419, plus interest at the rate of 5% p.a. as from 14 March 2018 until the date of effective payment, as compensation for breach of contract.
3. The findings of the decision of the Dispute Resolution Chamber dated 30 October 2019 (hereinafter also referred to as "*the DRC Decision*") were notified to, amongst others, the Creditor and the Debtor, on 5 November 2019. Furthermore, the grounds of the said decision, which were requested by the Debtor, were notified on 7 April 2020.
4. On 26 April 2020, following the notification of the grounds of the DRC Decision, the Debtor filed an appeal against the said decision before the Court of Arbitration for Sport (CAS). Since the relevant advance of costs were not paid, the CAS rendered a Termination Order on 24 August 2020. Consequently, the DRC Decision is final and binding.
5. On 26 October 2020, the Creditor claimed that the DRC Decision was not respected by the Debtor and requested the Disciplinary Committee to act accordingly in application of article 15 of the FIFA Disciplinary Code (FDC).
6. In light of the foregoing, and as the aforementioned amount was not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) opened disciplinary proceedings against the Debtor on 28 October 2020. Moreover, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee and invited the former to provide its position to this respect.

II. RESPONDENT'S POSITION

1. On 11 November 2020, the Debtor provided its arguments in relation to the disciplinary proceedings. The position of the Debtor can be summarized as follows¹:

- The Debtor plays in the third division of the Israeli championship, which is a non-professional tier.
- The Debtor's annual budget is "extremely low", namely based on minor help from the local municipality.
- The Debtor has no financial means to pay the amounts awarded in the DRC Decision. It is willing to fulfill its obligations but can only afford to do so under a realistic payment plan.
- The debt was originated three sporting seasons ago. At that time, the people that managed and operated the club were different than the people managing and operating the club currently.
- The entity to which the DRC decision is addressed, is undergoing insolvency proceedings.
- In the context of the insolvency proceedings, the District Court in Beer Sheva approved the transfer of the management rights and ownership of the previous club to the Debtor.
- The Debtor has numerous creditors, all of which are subject to the jurisdiction of the Israeli Court. Therefore, the payment of any debt can only be made by the liquidator, with the approval of the mentioned court and subject to the applicable law.
- The applicable (national) law provides equal treatment to all creditors and the enforcement and execution of FIFA's decisions contravenes the said law. Hence, the Disciplinary Committee has no jurisdiction to rule on this matter, which falls purely under Israeli law.
- The Club has already been sanctioned by the Israel Football Association with a 9 point deduction for not complying with its financial obligations.
- As a consequence, imposing further sanctions for not paying the debt to the Creditor would represent a violation to the principle of double jeopardy that applies in all legal systems, according to which a person shall not be charged and convicted twice on the basis of the same infringement.
- The administration currently in charge of operating the club was not involved and have no responsibility for the situation that gave rise to the dispute that concluded in the DRC decision.

¹ The summary does not purport to include every single contention put forth by the Debtor. 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.

- Although the Debtor acknowledges that the insolvency and liquidation of the previous club does not exonerate it from the obligation to settle the said debt, due in particular, to the principle of consecutiveness, the said principle is only relevant for the obligation to fulfil the financial obligations and it does not apply when discussing possible disciplinary measures arising from the non-payment of the debts.
- In light of all the above, the Debtor requested the Disciplinary Committee to refrain from opening disciplinary proceedings.

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 Single Judge*") decided first to address the procedural aspects of the case, namely his jurisdiction and the applicable law. Secondly, the merits of the case and determining the possible failure to comply with the DRC Decision as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Single Judge analyzes whether he is competent to assess the present matter.
3. In this sense, the Single Judge highlights that art. 27 par. 1 of the FDC read together with art. 15 par. 1 of the FDC grants the FIFA Disciplinary Committee the jurisdiction to prosecute and sanction a person subject to the FDC, whenever the latter fails to respect a decision passed by a body, a committee or an instance of FIFA or CAS decision.
4. In addition, the Single Judge points out that clubs, such as the Debtor in the present case, are subject to the FIFA Disciplinary Code (art. 3 b) of the FDC) and that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee may pronounce the sanctions described in the mentioned statutes and in the FDC.
5. However, the Debtor seems to contest the jurisdiction of the FIFA Disciplinary Committee since according to it, and due to the fact that it appears that the club to which the DRC Decision was addressed is undergoing insolvency proceedings, any claim against the Debtor regarding a debt created prior to 4 July 2019 should be brought before the Israeli Court, which is the only competent authority to decide on the present matter.
6. To this respect, the Single Judge wishes to stress that the alleged insolvency proceedings the Debtor is referring to, do not have any effect on the Debtor's responsibility and liability towards its debts.

In particular, the Single Judge observes that the Debtor itself acknowledges that the insolvency proceedings or liquidation of the previous club does not exonerate it from paying the debt recognized in the DRC Decision.

7. Furthermore, the Single Judge considers it essential to remind that the Debtor, as an affiliated member of the Israel Football Association is subject to and bound by the FIFA Statutes and all other FIFA rules and regulations, as well as by all relevant decisions passed by the FIFA bodies.
8. In light of the above, the Single Judge considers that he is not prevented from dealing with the present matter, especially considering that the Debtor is affiliated to the Israel Football Association and as such, under the jurisdiction of the FIFA Disciplinary Committee.

B. Applicable law

9. In order to duly assess the matter, the Single Judge would like to recall the content and the scope of the provision at stake.
10. According to article 15 of the FDC

“ 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.

11. Moreover, the Single Judge wishes to recall that, 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.

C. Merits of the Dispute

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

12. After having established that he is competent to assess the present matter, the Single Judge moves on to analyse whether the Debtor complied with the DRC Decision.
13. First of all, the Single Judge emphasizes 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.
14. Having said that, the Single Judge notes that the findings of the decision passed by the Dispute Resolution Chamber on 30 October 2019 were duly communicated to the parties on 5 November 2019, while the grounds of the said decision were notified on 7 April 2020. Furthermore, following an appeal lodged by the Debtor before the CAS against the DRC Decision, a Termination Order was rendered on 24 August 2020. Consequently, the DRC Decision is final and binding.
15. In these circumstances, the Single Judge notes that the Debtor claims that the administration currently operating the club, is different than the one in place the moment the dispute between the Creditor and the Debtor arose. In addition, the Debtor alleges that it has no financial means to settle its debt towards the Creditor. As a result of this situation, the Debtor believes that no sanctions should be imposed to the club for not being able to pay a debt, which was originated at a time when the club was administrated by other people.
16. To this respect, the Single Judge recalls that, as CAS has confirmed on many occasions, a club is a sporting entity identifiable by itself that generally transcends the legal entities or the people that operate it².
17. Furthermore, regarding the alleged lack of financial means of the Debtor, it is necessary to stress 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.
18. 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”³. Thus, the sole fact that the Debtor may be undergoing financial

² CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

³ cf. par. 45 ff. CAS 2010/A/2144 Real Betis Balompié SAD v. PSV Eindhoven.

problems does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor, as confirmed by CAS⁴.

19. 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, in accordance with the decision passed by the Dispute Resolution Chamber on 30 October 2019 have not been paid.
20. 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. 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

21. In view of the foregoing, the Single Judge concludes that the Debtor, by its conduct as described above, violated art. 15 of the FDC.
22. Therefore, the Single Judge considers that the Debtor is to be sanctioned for the aforementioned violation.

III. The determination of the sanction

23. With regard to the applicable sanctions for the present case, the Single Judge observes, in the first place, that the Debtor is a legal person, and as such, that it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
24. The fine to be imposed under the above-referenced art. 15 par. 1 a), in combination with art. 15 par. 2 of the FDC and according to the provisions of art. 6 par. 4 of the FDC, shall range between CHF 100 and CHF 1,000,000.
25. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge it to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts due, the Single Judge regards a fine amounting to CHF 10,000 as appropriate. This amount complies with the Committee's established practice.
26. In application of art. 15 par. 1 b) of the 2019 FDC, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.

⁴ CAS 2018/A/5779; CAS 2016/A/4402; CAS 2014/A/3533; CAS 2005/A/957.

27. 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.
28. To this respect, and for the sake of good order, the Single Judge wishes to address the argument brought forward by the Debtor in relation to the sanctions imposed by the Israel Football Association.
29. In this context, the Committee recalls that, as already stipulated in point III.A.3 above, the competent body to analyse and, if applicable, impose sanctions on, amongst others, clubs, in relation to potential violations of the FIFA Disciplinary Code and in particular, of article 15 of the FDC, such as in the present case, is the FIFA Disciplinary Committee, regardless whether other sanctions to this respect may have been imposed by the relevant association.
30. The Israel Football Association is hereby reminded of its obligation to automatically implement the transfer ban following the notification of the present decision. In this respect, and for the sake of clarity, the Israel Football Association is referred to art. 34 of the 2019 FDC in what concerns the calculation of time limits. Should the Israel 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 Hapoel Ashkelon (hereinafter, the Debtor) is found guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 30 October 2019, according to which it was ordered to pay to the player Goodness Ohireman Ajayi (hereinafter, the Creditor) the following amounts:
 - NIS 18,581, as outstanding remuneration, plus 5% interest as from 11 January 2018;
 - NIS 269,419, as compensation for breach of contract, plus 5% interest as from 14 March 2018;
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 Israel 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 Israel 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 Israel 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 Israel 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 Israel 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 Israel Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Kia Tong Lim
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:

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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