



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/7016 Sport Club Corinthians Paulista v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. José Juan **Pintó Sala**, Attorney-at-Law, Barcelona, Spain
Arbitrators: Mr. Mariano **Clariá**, Attorney-at-Law, Buenos Aires, Argentina
Mr. Sofoklis P. **Pilavios**, Attorney-at-Law, Athens, Greece

in the proceedings between

Sport Club Corinthians Paulista, São Paulo, Brazil

Represented by Mr. Sergio Ventura Engelberg, Attorney-at-law, São Paulo, Brazil.

- Appellant –

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Dr. Emilio García Silvero, Mr. Miguel Liétard Fernández-Palacios and Mr. Alexander Jacobs, Attorneys-at-law, FIFA Litigation Department, Zurich, Switzerland

- Respondent–

I. PARTIES

1. Sport Club Corinthians Paulista (hereinafter, the “**Appellant**”, “**Corinthians**” or “**the Club**”) is a Brazilian professional football club, with its registered office in São Paulo, Brazil. It is a member of the Confederação Brasileira de Futebol (CBF), which in turn is affiliated to the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (hereinafter, the “**Respondent**” or “**FIFA**”) is an association incorporated under Swiss Law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football and exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties’ written submissions, the evidence filed with these submissions, and the statements made by the parties. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.
4. On 20 December 2012, the German club Bayer 04 Leverkusen Fußball GmbH (hereinafter, “**Bayer 04**”) and Corinthians concluded a transfer agreement (hereinafter, the “**Transfer Agreement**”) of the Brazilian professional player Mr. Renato Soares de Oliveira Augusto (hereinafter, the “**Player**”), which in its relevant part reads as follows:

“[...]”

2. Transfer sum

*SC Corinthians will pay to Bayer 04 Leverkusen a transfer sum in the amount of **EUR 3.500.000**, --(in words: Euro three million five hundred thousand) for the transfer of the player Renato Augusto from Bayer 04 Leverkusen to SC Corinthians and the assignment of part of the financial interest in the player Renato Augusto (the financial interest in the player means the financial participation in a future transfer sum received for the transfer of the player). Therefore, Bayer 04 Leverkusen will keep a financial interest in the player. This transfer sum is payable without any tax deductions in three instalments after proper invoice of Bayer 04 Leverkusen as follows:*

due on 15.01.2013: EUR 1.500.000,--

due on 15.07.2013: EUR 1.000.000,--

due on 31.01.2014: EUR 1.000.000,--

Further, SC Corinthians shall pay any solidarity contribution due for this transfer to any third party according to the FIFA Regulations in addition to the transfer sum and the financial participation in a future transfer.

3. Future Transfer and Financial Participation

Due to the remaining financial interest of Bayer 04 Leverkusen in the player Renato Augusto, SC Corinthians shall comply with the following obligations:

In case SC Corinthians receives an offer for the transfer of the player Renato Augusto to another club, SC Corinthians shall inform Bayer 04 Leverkusen immediately about the offer and its contents. SC Corinthians is obligated to accept the offer to transfer the player, if the transfer sum amounts to EUR 8.000.000,-- or higher.

In case the player Renato Augusto will be transferred to a third club, Bayer 04 Leverkusen is entitled [sic.] receive 50% of the transfer sum including all payments related to the transfer, but at least EUR 3.000.000,--. This means, in case the transfer sum is EUR 3.000.000,-- or lower, Bayer 04 Leverkusen will receive the full amount. In case the transfer sum is EUR 6.000.000,-- or higher, Bayer 04 Leverkusen will receive 50%.

[...]

5. On 14 January 2013, Corinthians entered a transfer instruction in the FIFA Transfer Matching System (hereinafter, “**TMS**”) to engage the permanent transfer of the Player disclosing that in such transfer (i) no intermediary participated in the name of Corinthians or the Player and (ii) there was no third party influence.
6. On 16 January 2013, Mr. Carlos Leite (hereinafter, “**Mr. Leite**”) sent a communication to Corinthians asking “for the elaboration of the contract to sign” and indicating that the expected commission to be paid by Corinthians with respect to his participation in the negotiation should amount “10% of the Contract”.
7. On 4 January 2016, the Chinese club Beijing Guoan FC (hereinafter, “**Beijing FC**”) sent an offer to Corinthians for the permanent transfer of the Player in the amount of EUR 8.000.000.
8. On 5 January 2016, Corinthians accepted the offer with the conditions that (i) the aforementioned amount “*shall be paid with no deduction or retention*” and (ii) Beijing FC would assume the responsibility to pay the solidarity contribution “*with no retention or deduction over the transfer FEE*”.
9. On the same day, Bayer 04 sent an email to Corinthians with the following content:

*“Dear Roberto de Andrade,
Dear Carlos Leite,

We are glad to confirm you the below mentioned proposal that we accept the 3Mio.€ under the condition that we receive the total amount directly in one payment.”*
10. On 8 January 2016, Corinthians and Beijing FC agreed on the Player’s transfer and

signed the relevant agreement (hereinafter, “**Transfer Contract**”), which in the pertinent part reads as follows:

“3. Party A shall pay Party B Euro 8.000.000 (Eight Million) NET as the fees of the permanent transfer before the release of the ITC, on the basis of both parties and player sign this contract. Considering that Bayer 04 Leverkusen, a German football club, holds part of the economic rights of the Player, as already informed by Party B to FIFA, the payment has to be split by Part A as the following:

- A) Euro 5,000,000 (Five Million) NET to Party B on the following bank account...*
- B) Euro 3,000,000 (Three Million) NET to Bayer 04 Leverkusen Fussball GmbH on the following bank account...”*

III. PROCEEDINGS BEFORE THE FIFA’S JUDICIAL BODIES

11. On 26 November 2018, following investigations conducted by the Integrity & Compliance Department of FIFA TMS, the Deputy Secretary to the Disciplinary Committee of FIFA informed Corinthians that disciplinary proceedings were opened against the Club before the FIFA Disciplinary Committee (hereinafter, the “**FIFA DC**”) due to an alleged breach of arts. 18bis and 4 par. 2 of Annexe 3 of the RSTP, in connection with the referred transfer of the Player from Bayer 04 to Corinthians and the information uploaded in the TMS related to said transfer.
12. On 21 December 2018, the FIFA DC issued the following decision (hereinafter, the “**FIFA DC Decision**”):

“1. The club SC Corinthians Paulista is declared liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players [ed. 2012] (RSTP) for entering into a contract which enabled a third-party to acquire the ability to influence the club’s independence in employment and transfer-related matters in relation to the transfer of the player Renato Soares de Oliveira Augusto

2. The club SC Corinthians Paulista is also declared liable for the violation of art. 4 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players [ed. 2012] as a result of failing to enter correct information in TMS in relation to the transfer of the Player Renato Soares de Oliveira Augusto (TMS instruction. no. 62331).

3. The club SC Corinthians Paulista is ordered to pay a fine to the amount of CHF 55,000. This fine is to be paid within 30 days of receipt of the ruling. Payment can be made either in Swiss francs (CHF) to the 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 the account no. 0230325519.71U, UBS AG, Bahnhofstrasse 45 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 02303255 1971 U, with reference to case no. 180284 bbu.

4. In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code, the club SC Corinthians Paulista is warned on its future conduct. The club SC Corinthians Paulista is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular the RSTP and its provisions related to third-party influence, are strictly complied with. Should such infringements occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club SC Corinthians

Paulista.

5. The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the club SC Corinthians Paulista and be paid according to the modalities stipulated under 3. above.”

13. On 17 April 2019, the grounds of the FIFA DC Decision were notified to Corinthians. These grounds may be summarized as follows:

i. With respect to the infringement of Article 18bis of the RSTP:

Clause 3 of the Transfer Agreement constitutes a flagrant breach of the Article 18bis of the RSTP: in the case Corinthians received a transfer offer in the amount of EUR 8.000.000 or above, Corinthians had not only to inform Bayer 04 but had to transfer the Player, irrespective of Corinthians’ interest in keeping the Player in the team and its sportive and financial needs. The fact that Bayer 04 did not receive the full amount that it was entitled to receive under the Transfer Agreement is irrelevant to this purpose. The agreement allowed Bayer 04 *to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.*

ii. With respect to the violation of Article 4 par. 2 of Annexe 3 of the RSTP:

Corinthians failed to declare in the TMS the involvement of Mr. Leite as representative of Corinthians and/or the Player and the third-party influence mentioned above, and this constitutes a violation of this article of the RSTP

iii. With respect to the sanction imposed:

The most serious infraction committed by Corinthians is the one of Article 18bis of the RSTP, and for this reason the club is fined in the amount of CHF 50.000, and this amount is increased in 5.000 CHF as regards of the breach of Art. 4 par. 2 of Annexe 3 of the RSTP. A sanction of warning is additionally imposed.

14. On 26 April 2019, Corinthians appealed the FIFA DC Decision before the FIFA Appeal Committee (hereinafter, the “**FIFA AC**”).

15. On 6 September 2019, the FIFA AC issued a decision (hereinafter, the “**Appealed Decision**”) rejecting the appeal lodged by Corinthians and confirming in its entirety the FIFA DC Decision.

16. On 7 April 2020, the FIFA AC notified the grounds of the Appealed Decision. The relevant part of these grounds reads as follows:

i. With respect to the violation of Article 18bis of the RSTP:

As confirmed by the FIFA DC, clause 3 of the Transfer Agreement clearly infringes Article 18bis of the RSTP, since it is indisputable that this clause not only influences Corinthians’ conduct but also affected Corinthians behaviour when facing the transfer offer for the Player exceeding EUR 8.000.000.

ii. With respect to the violation of Article 4 par. 2 of Annexe 3 of the RSTP:

Bearing in mind (i) that Corinthians infringed Article 18bis of the RSTP and failed to disclose this third-party influence in the TMS and (ii) that Corinthians confirmed that Mr. Leite assisted the Player and the Club in concluding the employment contract with no reference to this being made in the TMS by Corinthians, Article 4 par. 2 of the Annexe 3 of the RSTP is to be considered violated.

iii. With respect to the sanction imposed:

Corinthians contravened several provisions of the RSTP which protect one of the FIFA main objectives¹. Therefore, the FIFA AC found that the fine imposed to Corinthians is not disproportionate and there were no mitigating circumstances which justify a lower sanction, taking into account all the facts and circumstances of the case.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 29 April 2020, pursuant to Articles R47 and R48 of the 2019 edition of the Code of Sports-related Arbitration (hereinafter, the “**CAS Code**”), Corinthians filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the “**CAS**”) against the Appealed Decision issued on 6 September 2019 and notified on 7 April 2020, with the following request for relief:

“ ...

(i) *To stay the decision issued by the FIFA DC on 21 December 2018, which was confirmed by the FIFA APC on 6 September 2019, in order to prevent irreversible damage to the Appellant;*

(ii) *To fully dismiss and annul the decisions issued by the FIFA DC and FIFA APC since it did not analyzed correctly the facts and proofs, as well as the arguments brought by the Appellant to the records;*

(iii) *To condemn the Respondent to the payment of the legal expenses incurred by the Appellant; and*

(iv) *If there, to establish that the costs of the ongoing arbitration will be borne by the Respondent.*

Alternatively and only in the case the above is rejected:

(v) *To alter the decision passed by FIFA DC and FIFA APC, to substitute the sanction of a fine for a sanction of a warning or a reprimand, or, to reduce the amount of the fine imposed, since its value is excessive and disproportionate.”*

18. On 6 May 2020, Corinthians withdrew its application for stay of the Appealed Decision.

¹ Article 2 lit g) of the FIFA Statutes: “to promote integrity, ethics and fair play with a view to preventing all methods and practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member or give rise to abuse of association football.”

19. On 8 May 2020, in accordance with Article R51 of the CAS Code, Corinthians submitted its Appeal Brief with the following request for relief:

“ ...

(i) To fully dismiss and annul the decision issued by the FIFA DC and FIFA APC (exhibits 08 and 09), since both judicial bodies has analyzed the facts and proofs inaccurately and applied wrongly the law, in order to absolve the Appellant of the payment of the fine in the amount of CHF 55.000, bearing in mind that Corinthians has never infringed the provisions of art. 18bis, and art.4, par2, Annexe 3, of the FIFA RSTP;

(ii) To condemn the Respondent to the payment of the legal expenses incurred by the Appellant; and

(iii) If there, to stablish that the cost of the ongoing arbitration will be borne by the Respondent.

Alternatively and only in the case the above is rejected:

(iv) To alter the decisions passed by FIFA DC and FIFA APC (Exhibits 08 and 09), to impose to the Appellant the sanction of a warning (art. 13 of the FDC), or alternatively, with a fine in the minimum amount provided by art. 15 of FDC; or

(v) Due to its excess and disproportion, to reduce the imposed fine, that shall be calculated over the amount of EUR 1.500.000, which corresponds to the financial gain of the Appellant in connection with the transfer of the Player.”

20. On 13 May 2020, FIFA challenged the admissibility of the Club’s appeal and requested the bifurcation of the proceedings.
21. On the same day, the CAS Court Office invited Corinthians to provide its comments on such objection raised by FIFA.
22. On 18 May 2020, Corinthians confirmed that all the time limits were met when it filed the Statement of Appeal and the Appeal Brief.
23. On 19 May 2020, FIFA withdrew its challenge to the admissibility of the appeal.
24. On 29 May 2020, pursuant to Article R54 of the CAS Code, the CAS Court Office informed the parties the Panel appointed to settle the present dispute would be composed as follows:

President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain

Arbitrators: Mr. Mariano Clariá, Attorney-at-Law, Buenos Aires, Argentina
Mr. Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece

25. On 22 June 2020, in accordance with Article R55 of the CAS Code, FIFA filed its Answer to the Appeal, submitting the following prayers for relief:

“ ...

- a) *reject the Appellant's appeal in its entirety;*
- b) *confirm the decision 180284 APC rendered by the FIFA Appeal Committee on 6 September 2019;*
- c) *order the Appellant to bear all cost incurred with the present procedure;*
- d) *order the Appellant to make a contribution to FIFA's legal costs."*

26. On 30 June 2020, after considering the Parties position and in accordance with Article R57 of the CAS Code, the CAS Court Office informed the Parties that the Panel deemed itself sufficiently well-informed to decide this case based solely on the parties' written submissions.
27. On 2 July 2020, the CAS Court Office, on behalf of the President of the Panel, issued the relevant Order of Procedure, which was accepted and countersigned by the parties.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

28. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. CORINTHIANS

29. FIFA judicial bodies made an inaccurate representation of the facts and a wrong application of the law.
30. Since Corinthians was unable to acquire the 100% of the Player's economic rights in the Transfer Agreement, Bayer 04 maintained the 50% of the amount resulted from the Player's transfer to a third club. Then, Beijing FC acquired the services of the Player and paid directly EUR 5.000.000 to Corinthians and EUR 3.000.000 to Bayer 04 (EUR 8.000.000 total amount of the second transfer).
31. Neither the Transfer Agreement nor the Transfer Contract allowed any other party to the contract or third-party to obtain the ability to influence in Corinthians' employment and transfer-related matters independence, policies or teams' performance. Corinthians received an offer from Beijing FC and accepted it based on its own financial interest.
32. Contrary to what FIFA's judicial bodies concluded, the wording of clause 3 of the Transfer Agreement, and the mere fact of the presence of such clause, does not infringe Article 18bis of the RSTP *per se*. In the present case, Bayer 04 never obliged, forced or influenced Corinthians' to transfer the Player to Beijing FC. No influence was suffered by Corinthians, which kept at all times its independence and policies in transfer-related matters. On the contrary, Bayer 04's behaviour clearly proves that it never had influenced in the transfer of the Player because Bayer 04 accepted to receive EUR 1.000.000 less than the amount it was entitled to by virtue of the Transfer Agreement.
33. Related to the violation of Art. 4, par.2, Annexe 3 of FIFA RSTP, there is no reason to consider that Mr. Leite played a major role in the conclusion of the Transfer Agreement since he only assisted the parties during the procedure of signature of the Player employment contract, receiving a commission for this and not for the transfer itself.

Therefore it did not have to include anything in this respect in the TMS instruction, and the same happens with the declaration on third party influence: bearing in mind that no party or third-party influenced in Corinthians' employment and transfer-related matters independence, policies or teams' performance, no detail in this respect had to be disclosed in the TMS instruction. Consequently, Corinthians did not infringe Article 4 par. 2 of Annexe 3 of the RSTP.

34. In any event, taking almost six years to initiate and conclude a disciplinary procedure represents a serious issue of legal certainty, which cannot be accepted.
35. The fine imposed is extremely excessive and disproportionate and the Appealed Decision does not clarify the dosimetry of the sanction. The financial gain of Corinthians for the transfer of the Player is EUR 1.500.000, which should be the amount over which the fine should be calculated. In addition, Corinthians always collaborated with FIFA judicial bodies in this file. The imposition of a fine have educational effects, and not cause financial losses to Corinthians. Therefore, the application of a fine shall be replaced by an application of a warning or a reprimand.

B. FIFA

36. The Appealed Decision was correctly adopted with full regard for the particularities of the present case.
37. Article 18bis of the RSTP prohibits the possible external influence on the clubs' abilities to determine by their own the conditions and policies concerning matters such as the composition and performance of their teams as well as the labour relationship with and the transfer of its players. This prohibition applies whenever "*any other party to that contract or any third party*" is able or enabled to exercise such influence. In the Transfer Agreement, Bayer 04 is Corinthians' contracting party and clearly falls within the scope of Article 18bis of the RSTP.
38. In accordance with Clause 3 of the Transfer Agreement, if Corinthians received an offer for the Player, it had the obligation to immediately inform Bayer 04 about the offer and its content, and more importantly, Corinthians was contractually obliged to accept the offer to transfer the Player, and if the transfer price amounted to EUR 8.000.000 or more. In such situation, it cannot be denied that Corinthians was not totally free or independent to do what it wished.
39. FIFA AC correctly considered that a club violates Article 18bis of the RSTP at the moment of the conclusion of the agreement when there is a clause that enables a third-party to influence the club's independence and policies in employment and transfer-related matters or the performance of its team. Furthermore, in accordance with CAS jurisprudence, the mere fact that a clause of the kind of Clause 3 of the Transfer Agreement qualifies as an infringement of this article *per se*. Thus, it is completely irrelevant that Bayer 04 received EUR 1.000.000 less than the amount it was entitled to pursuant to the Transfer Agreement.
40. In light of the abovementioned, it is evident that Corinthians breached Article 18bis of the RSTP by concluding the Transfer Agreement, and the fact that the aforementioned influence was not reported in TMS implies that Article 4 para. 2 of Annexe 3 of the RSTP is also infringed.

41. The list of documents required to be uploaded in the TMS in accordance to Article 4 par. 2 of the Annexe 3 of the RSTP is not only limited to those that concern the transfer agreement but also include those of the employment relationship between the club and the player. Corinthians acknowledged that Mr. Leite assisted the parties in the conclusion of their contract and was financially compensated accordingly. Therefore, it is unquestionable that Mr. Leite participated in the transactions that led Corinthians to engage the Player and he was financially compensated for his assistance. Corinthians should have declared such information in TMS and thus incurs in the violation of Article 4 para. 2 of Annexe 3 of the RSTP.
42. In view of the seriousness of the infringement, the importance to guarantee the respect of FIFA's regulations, the past jurisprudence with several cases proving the proportionality of the sanction, the absence of mitigating factors or circumstances and Corinthians international experience, the sanction imposed by the FIFA AC is just and proportionate to all the facts surrounding the present case.

VI. JURISDICTION

43. The CAS jurisdiction derives from Article R47 of the CAS Code, that provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

44. Articles 57 and 58 of the FIFA Statutes read in the pertinent part as follows:

Article 57: “1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents...”

Article 58: 1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted...”

45. The Panel notes that the Appealed Decision has been issued by a FIFA legal body, that the FIFA Statutes provide for the recourse to the CAS and that all the prior legal remedies available to Corinthians have been exhausted, so the general conditions for the CAS to have jurisdiction in accordance with Article R47 of the CAS Code are met.

46. In addition, all the parties accepted that the CAS has jurisdiction to resolve this dispute and, moreover, confirmed it by signing the Order of Procedure.
47. Therefore, the prerequisites of Article R47 of the CAS Code are met in this case and CAS is competent to rule on it.

VII. ADMISSIBILITY

48. Pursuant to Article 58, par. 1 of the FIFA Statutes, in connection with the Article R49 of the CAS Code, Corinthians had 21 days from the notification of the Appealed Decision to file their Statements of Appeal before the CAS.
49. The grounds of the Appealed Decision were communicated to Corinthians by facsimile on 7 April 2020, and its Statement of Appeal was filed on 27 April 2020, i.e. within the time limit established by the FIFA Statutes and Article R49 of the CAS Code. Consequently, the present appeal is admissible.

VIII. APPLICABLE LAW

50. Article R58 of the CAS Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

51. In addition, Article 57, par.2 of the FIFA Statutes establishes the following:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”

52. Taking the aforementioned provisions into account, the Panel must decide the present dispute in accordance with the FIFA Regulations and, additionally, Swiss law.
53. With respect to the version of the FIFA RSTP to be applied to the case, the Panel notes that the Appealed Decision refers to the FIFA RSTP 2012 edition in accordance with Article 26 of the RSTP, since it was the version in force when Bayer 04 and Corinthians concluded the Transfer Agreement on 20 December 2012, and also when Corinthians failed to upload the relevant information in TMS on 14 January 2013; and with regard to the edition of the FIFA Disciplinary Code applied in the proceedings of instance, the Panel observes that the FIFA AC applied the 2017 edition, even though the relevant facts occurred while the FDC 2011 was in force, because (i) the sanctions applicable are the same in both editions and (ii) FIFA judicial bodies decided on these facts while the FDC 2017 edition was in force. No objection has been raised by the parties on this issue and the Panel shares the opinion of the FIFA AC in this specific case, so it will apply the FIFA RSTP 2012 edition and the FDC 2017 edition, and subsidiarily Swiss law to decide the present dispute.

IX. MERITS

54. Before entering into the merits of the present case, the Panel deems it appropriate to remind the wording of Articles 18bis and 4 par. 2 of the Annexe 3 of the RSTP, which in the pertinent part reads as follows:

“Article 18bis (Third-party influence on clubs)

1. No club shall enter into a contract which enables any other party to that contract 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.

2. The FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article.

Article 4 par. 2 of the Annexe 3 (obligations of clubs)

2. Clubs must provide the following compulsory data when creating instructions, as applicable:

- Instruction type (Engage player or Release player)*
- [...]*
- Club agent’s name, type and commission*
- [...]*
- Player’s fixed remuneration as provided for in player’s contract with the new club*
- Player agents name and type*
- [...]*
- Declaration on third-party payments and influence”*

55. The Appealed Decision finds that Corinthians infringed these articles and imposed a fine in the amount of CHF 55.000 and a warning to the Club. The Panel notes that while Corinthians considers that the Appealed Decision made an inaccurate representation of the facts and a wrong application of the law, and requests the Panel to annul such decision or in the alternative, reduce the sanction, FIFA considers that the Appealed Decision was correctly adopted with full regard to the particularities of the case and that the sanction imposed against Corinthians is just and proportionate.

A. ON THE VIOLATIONS OF ARTICLE 18BIS RSTP AND ARTICLE 4.2 OF ANNEXE 3 RSTP

56. The Panel is aware and agrees that, as acknowledged in CAS 2017/A/5463 Sevilla FC v. FIFA, for an infringement of Article 18bis RSTP to exist (i) the contract at stake shall enable or entitle the third party to have an influence on the club in the terms described in such article, regardless of the practical materialization of this influence or not, and (ii) that this capacity to influence shall be real and effective. The prohibition established in Article 18bis RSTP will apply insofar as the contract at stake confers to a third party a real and true capacity of producing effects, condition or affect the conduct of a club in labour or transfer-related matters, in a way that the club’s independence and autonomy is really restricted.

57. The approach to the existence of prohibited influence shall be made on a case by case basis and with due care, given the necessary restrictive interpretation that shall be given to prohibitions².
58. In line with this, the Panel has carefully examined the content of Clause 3 and the facts and circumstances occurred in the case, to ascertain whether an infringement of Article 18bis RSTP has taken place or not.
59. Clause 3 of the Transfer Agreement, in its pertinent part, reads as follows:

“In case SC Corinthians receives an offer for the transfer of the player Renato Augusto to another club, SC Corinthians shall inform Bayer 04 Leverkusen immediately about the offer and its contents. SC Corinthians is obligated to accept the offer to transfer the player, if the transfer sum amounts to EUR 8.000.000,-- or higher.

In case the player Renato Augusto will be transferred to a third club, Bayer 04 Leverkusen is entitled [sic.] receive 50% of the transfer sum including all payments related to the transfer, but at least EUR 3.000.000,--. This means, in case the transfer sum is EUR 3.000.000,-- or lower, Bayer 04 Leverkusen will receive the full amount. In case the transfer sum is EUR 6.000.000,-- or higher, Bayer 04 Leverkusen will receive 50%.”

60. After having made the relevant analysis of the very specific circumstances of this case, the Panel has reached the conclusion that article 18bis RSTP has been violated by Corinthians. The wording of Clause 3 of the Transfer Agreement clearly reveals that Corinthians was contractually obliged with Bayer 04 to accept any transfer offer for the Player equal or superior to EUR 8.000.000, which is considered by the Panel as an ability of Bayer 04 to actually and effectively influence the independence of Corinthians in transfer-related matters. The fact that Bayer 04, at the end, received less money than the one contractually agreed does not make any difference for the Panel in terms of existence of prohibited influence: the relevant issue is that Corinthians had to accept an offer that it may receive in the terms contractually agreed, that it was bound to do it, not how this influence was in practice finally materialized.
61. For all these reasons, the Panel considers that Corinthians committed a violation of Article 18bis of the RSTP with regard to the Transfer Agreement of the Player.
62. With regard to Article 4 par. 2 of the Annexe 3 of the RSTP, the Panel notes that the Appealed Decision found that Corinthians violated this provision in relation to the information uploaded in the TMS on 14 January 2013 when it failed to provide the correct information regarding (i) the involvement of Mr. Leite as agent of Corinthians and/or of the Player in the engagement of the latter with the first and ii) the declaration on third-party influence and payments.
63. After examining the arguments brought by the parties and the evidence taken, the Panel shall concur that indeed a violation of such article 4.2 has taken place in this case. The failure to upload the missing information is self-evident, and the grounds given by Corinthians to excuse the non-inclusion of Mr. Leite’s intervention in TMS are of no

² See CAS 2017/A/5463, para. 92.

avail: Corinthians itself has recognized in these proceedings and in the proceedings of instance that Mr. Leite assisted the parties during the procedure of signature of the employment contract of the Player, receiving a commission because of such assistance calculated over the amount paid in the Player's contract, which confirms that Mr. Leite not only intervened but played an important role in the negotiations between the Player and Corinthians which enabled the transfer of the Player from Bayer 04 to Corinthians, which in the Panel's view should have led to make the relevant information disclosure in TMS.

64. As a consequence of the foregoing, the Panel concludes that Corinthians violated Article 4 par. 2 of the Annexe 3 of the RSTP.

B. DETERMINATION OF THE SANCTION

65. The FIFA AC sanctioned Corinthians with a fine of CHF 55.000 and a warning for the breach of Articles 18bis and 4 par. 2 of the Annexe 3 of the RSTP.
66. Corinthians alleges that “the fine sanctioned is evidently and grossly disproportionate”, and requests the CAS to reduce it.
67. The Panel shall firstly refer in this respect to the CAS jurisprudence on the revision of disciplinary decisions, citing ad exemplum *CAS 2019/A/6278 Cruzeiro EC v. FIFA* in which it is stated that “CAS may amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily. (cf. *RIRMENR H. M., Berner Kommentar, Art. 60-79 ZGB, no 230 on art. 70 ZGB*). This is, however, not the case if the Panel merely disagrees with a specific sanction, but only in the sanction concerned is to be considered as evidently and grossly disproportionate to the offence (*CAS 2014/A/3562*).”
68. This being said and having this “margin of discretion” of the instance bodies in mind, the Panel has examined the arguments on which Corinthians intends to ground the request for reduction, and concluded that these are not convincing. The Panel does not concur with the gross disproportion sustained by Corinthians: on the contrary, it is convinced that taking into account the circumstances of the case, the fine imposed in Appealed Decision is compliant with the proportionality threshold, is not absolutely arbitrary and is in line with the provisions of the FDC. The Panel finds no valid reason in Corinthians allegations to deviate from this conclusion and considers that FIFA is not directly and solely bound by the financial gain of the transaction at stake to determine the sanction (as alleged by Corinthians), and even if it was, CHF 55.000 over the important financial gain obtained by Corinthians in the transfer of the Player is in any case a very moderate amount.
69. As a consequence of the foregoing, with respect to Corinthians' request to mitigate the sanction imposed on the Appealed Decision, the Panel considers that it cannot be granted since the Appealed Decision is correct in this respect, and is in line with the FIFA jurisprudence and within the principle of proportionality.

C. CONCLUSION

70. In light of the aforementioned, the Panel considers that Corinthians' appeal shall be totally dismissed, and that the Appealed Decision must be confirmed in its entirety.

X. COSTS

71. The present arbitration procedure is subject to the provisions on costs set out in Article R65 of the CAS Code.

72. Article R65.2 of the CAS Code provides that:

“Subject to Articles R65.2, para.2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1.000- without which CAS shall not proceed and the appeal shall be deemed withdrawn.

If an arbitrator procedure is terminated before a Panel has been constituted, the Division President shall rule on costs in the termination order. She/he may only order the payment of legal cost upon request of a party and after all parties have been given the opportunity to file written submissions on costs.”

73. Furthermore, Article R65.3 of the CAS Code provides that:

“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.”

74. In accordance with Article R65.1 and 2 of the Code, the fees and cost of the arbitrators in the present proceedings are borne by the CAS.

75. Finally, with regard to the legal fees and other expenses incurred by the parties in connection with this proceeding, taking into account the outcome of the proceedings, the financial resources of the parties, and the complexity and the specific circumstances of this case, the Panel considers fair and appropriate that each party bear its own legal costs and other expenses incurred in connection with the present proceeding.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sport Club Corinthians Paulista on 29 April 2020 against the Decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association (FIFA)* on 6 September 2020 is dismissed.
2. The Decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association (FIFA)* on 6 September 2020 is confirmed.
4. The costs of the arbitration shall be borne by the Court of Arbitration for Sport.
5. Sport Club Corinthians Paulista and *Fédération Internationale de Football Association (FIFA)* shall bear its own legal fees and other expenses incurred in connection with this arbitration.
6. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 13 November 2020

THE COURT OF ARBITRATION FOR SPORT

Jose Juan Pinto Sala
President

Mariano Claria
Arbitrator

Sofoklis P. Pilavios
Arbitrator