

Disciplinary Committee

Date: 26 May 2021

The FIFA logo is displayed in white, bold, sans-serif capital letters on a dark blue background. A registered trademark symbol (®) is located at the top right of the word "FIFA".

Sent to:
Mr Marco Simone
c/o Mr Didier LACOMBE

didierlacombe@orange.fr

Notification of the grounds of the Decision Ref FDD-7706

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 22 April 2021.

Yours faithfully,

FIFA

A handwritten signature in black ink, appearing to read "C. Schneider", is written over a light blue horizontal line.

Carlos Schneider
Head of the FIFA Disciplinary Department

Fédération Internationale de Football Association

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Decision of the FIFA Disciplinary Committee

passed on 22 April 2021

DECISION BY:

Mr. Carlos Teran, Venezuela

ON THE CASE OF:

Chabab Mohammedia

(Decision FDD-7706)

REGARDING:

Failure to respect decisions (Article 15 FIFA Disciplinary Code)

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 member of the FIFA Disciplinary Committee (hereinafter also referred to as: Single Judge) has thoroughly considered in his 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 August 2020, the Single Judge of the Players' Status Committee ordered the club Chabab Mohammedia (hereinafter: the Respondent) to pay to Mr Marco Simone (hereinafter also as the Claimant) the amount of **MAD 1,450,000**. The grounds of the aforementioned decision were notified to the parties on 6 November 2020.
3. Following the notification of the aforementioned decision and since the parties did not challenge before the Court of Arbitration for Sport, said decision became final and binding.
4. On 22 February 2021, as the outstanding amounts due to the Claimant were not paid, the latter requested the initiation of disciplinary proceedings against the Respondent.
5. On 23 February 2021, in light of the foregoing, and since the aforementioned amounts were not paid to the Claimant, the secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) opened disciplinary proceedings against the Respondent for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the Respondent was informed that the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 25 March 2021 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 Respondent fail to submit any statement by the specified deadline.
6. On 22 March 2021, the Respondent provided its position that could be summarised as follows:
 - a. The Respondent indicates to have paid the sum due under the aforementioned decision;
 - b. The Respondent alleges to have paid a first instalment in 20 November 2019 in the amount of MAD 320.000, and a second payment in the total amount of MAD 876.000, in the following dates: 1 March 2020, 1 April 2020 and 1 May 2020;
 - c. In this regard, the Respondent sent a correspondence dated 13 November 2020 to the Claimant;

- d. Therefore, the Respondent indicates that have only a balance of MAD 584,000 (i.e. 2 x 292,000 MAD), which paid on 22 March 2021.
 - e. In light of the above, the Respondent requested to close disciplinary proceedings.
7. On 24 March 2021, the Claimant commented on the arguments brought by the Respondent as follows:
 - a. The Respondent did not provide any comments within the Players' Status Committee procedure;
 - b. The Respondent did not challenge the decision of the Single Judge of the Players' Status Committee;
 - c. The Respondent is aware to which bank account should have sent the payment since the Claimant has facilitated it numerous times, not the bank account on which they have made some payments wrongly;
 - d. Therefore, the Claimant requested to continue with the disciplinary proceedings.
8. On 25 March 2021, the Respondent added to its position as follows:
 - a. The Respondent reiterates that has paid the entire debt;
 - b. Moreover, it acknowledges that the last payments were made late and indicates that the payments were made to the Moroccan bank account of the Claimant and not to the account of appointed by his legal representative;
 - c. Thus, it requires to close the disciplinary proceedings since it has complied with the aforementioned decision.
9. On 31 March 2021, the Secretariat informed the parties that the case could not be presented to a member of the FIFA Disciplinary Committee on 25 March 2021 and will be referred to the next meeting of the FIFA Disciplinary Committee on 8 April 2021.
10. On 2, 5 and 7 April 2021, the Respondent provided additional documentation, in particular, a bank statement dated 1 April 2021, according to which the CIH Bank declares that the Respondent transferred amounts to the bank account no. 2307873021597211002600 92, which belongs to the Claimant.
11. On 13 April 2021, the Secretariat requested the Claimant to provide with its position with regard to the abovementioned bank account, in particular, as to whether said account belongs or not to the Claimant. Finally, the Secretariat informed the parties that the case could not be submitted to a member of the FIFA Disciplinary Committee on 8 April 2021 and that the matter will be submitted to a member of the FIFA Disciplinary Committee on 22 April 2021 instead.
12. On 15 April 2021, the Claimant stated *"the Moroccan account attributed to [the Claimant], and on which the [Respondent] claims to have paid various amounts, have been opened, on indication of the [Respondent], in the same bank as of the [Respondent]"* (free translation from French).

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

13. In view of the circumstances of the present matter, the member of the FIFA Disciplinary Committee (hereinafter also referred to as: 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 Respondent to comply with the decision passed by the Dispute Resolution Chamber as well as the potential sanctions resulting therefrom.

A. Jurisdiction and applicable law of the FIFA Disciplinary Committee

14. 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.

15. With regard to the matter at hand, the Single Judge points out that the disciplinary offense, i.e. the potential failure to comply with the decision of the Single Judge of the FIFA 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).

16. 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.

17. 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.
18. 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.
19. His jurisdiction being established and the applicable law determined, the Single Judge subsequently turns his attention to the decision of the Single Judge of the Players' Status Committee passed on 25 August 2020.

B. Merits of the dispute

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

20. As already established above, the decision of the Single Judge of the Players' Status Committee is final and binding. Consequently, the Single Judge is not allowed to analyse the case decided by the Single Judge of the Players' Status Committee as to the substance, i.e. to check the correctness of the amount ordered to be paid. The Single Judge has as a sole task, which is to analyse whether the Respondent complied with the final and binding decision rendered by the Single Judge of the Players' Status Committee.
21. In this respect, and according to information at his disposal, the Single Judge observes that the Respondent alleges to have complied with the Single Judge of the Players' Status Committee decision and provided with documentation to corroborate its statement.
22. On the contrary, the Single Judge notes that the Claimant argues that the alleged Respondent's payments were not made to the Claimant's legal representative bank account as informed to the Respondent.
23. Moreover, the Single Judge duly takes note that the Claimant acknowledged that the amounts transferred were made to the Claimant's Moroccan bank account instead to the Claimant's legal representative bank account.
24. In this regard, the Single Judge deems necessary to recall a reasoning of the Court of Arbitration for Sport (CAS) panel in CAS 2013/A/3323:

“it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor’s wishes”.

25. In this sense, the Single Judge considers that even though the Respondent has not followed the “*creditor’s wishes*” into which bank account the amounts should have been transferred, the Respondent has complied in full with its obligation towards the Single Judge of the Players’ Status Committee decision since it made its remittance to the Claimant’s bank account where he was employed.
26. In view of the foregoing, the Single Judge concludes that the Respondent, by its conduct as described above, has not violated art. 15 of the FDC and should not be sanctioned accordingly.

III. DECISION

All charges against the club Chabab Mohammedia are dismissed.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr. Carlos Teran, Venezuela
Disciplinary Committee

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.