

Date: 19 May 2021

Sent to

Respondent: FC Zorya Lugansk
utchenk@rambler.ru; admin@zarya-lugansk.com

Notification of the grounds of the decision

Ref FDD-6321

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the Deputy Chairman of the FIFA Disciplinary Committee on 3 December 2020.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA

Carlos Schneider
Head of the FIFA Disciplinary Department

Decision of the FIFA Disciplinary Committee

passed in Zurich, Switzerland, on 3 December 2020

COMPOSITION:

Mr. Alejandro Piera, Paraguay (Deputy Chairman)

RESPONDENT:

FC Zorya Lugansk, Ukraine

Regarding misuse of TMS and failure to declare payments in TMS

(Ref FDD-6321)

Art. 1.2, 3.1.1, 4.3, 4.7 and 9.1.2 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players (October 2019 ed.) (hereinafter, the “Regulations”)

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 27 October 2020, the FIFA Regulatory Enforcement Department transferred a report containing the following case summary:

“The Player was transferred on loan from Zorya to SK Slovan Bratislava, Slovakia (hereinafter, “Slovan”) for the period of 01.02.2019 until 30.06.2019. On 21.06.2019, the loan was extended for the period of 01.07.2019 until 31.12.2019. In both, the original loan agreement and the loan extension agreement an option to buy of EUR 300,000 was stipulated for the permanent transfer of the Player (see clause 2.4 below). On 09.01.2020, Zorya concluded the loan stating that the player and Zorya mutually agreed on an early termination of the player’s employment contract per 31.12.2019. Subsequently, the player transferred permanently to Slovan out of contract and payments. It appears that Zorya may have terminated the employment contract with the Player for the sole purpose of avoiding solidarity payments.”

3. Moreover, said report indicated as *Situation in TMS* the following transfers instructions:
 - *TMS ref. 228151 – On 07.02.2019, Zorya entered a release on loan instruction against a fixed transfer fee of EUR 35,000 and a conditional transfer fee of EUR 15,000. In this instruction, the original loan agreement was uploaded, which under clause 2.4 stipulates an option to buy in the amount of EUR 300,000 for the permanent transfer of the Player from Zorya to Slovan (see clause 2.4 below). No solidarity contribution was declared in this instruction.*
 - *TMS ref. 235083 – On 21.06.2019, Zorya entered a release - loan extension instruction without payments. In this instruction, the loan extension agreement was uploaded which under clause 3 amends the dates of clause 2.4 of the original loan agreement and still stipulates an option to buy in the amount of EUR 300,000 for the permanent transfer of the Player from Zorya to Slovan (see clause 3 below). On 09.01.2020, Zorya concluded this instruction with the following remark in TMS: “The player and his former club mutually agreed an early termination of contract - 31.12.2019”.*
4. More in particular, the TMS report contained a specific reference to the following clauses:

“Reference is made to clause 2.4 of the original loan agreement and clause 3 of the loan extension agreement, which read as follows:

Clause 2.4 of the loan agreement:

2.4. The parties have agreed that under this agreement SK SLOVAN has the right to redeem the rights of the Player on a definitive basis under the following conditions:

2.4.1. SK SLOVAN must not later than June 20, 2019 notify FC ZORYA of the redemption of the rights to register a Player on a definitive basis.

2.4.2 Taking into account the definitive transfer of the player's registration, SKO SLOVAN pays out to FC ZORYA an amount of 300,000 euros (three hundred thousand euros), which is 95% of the total amount of the transfer fee, that is -5% of the solidarity payment is already withheld by SK SLOVAN and the receiving SK SLOVAN will redeem the retained amount and transfer it according to the FIFA Regulations on the status and transfer of players.

Clause 3 of the loan extension agreement:

3. Due to the extension of the loan term, sub-clauses 2.4.1-2.4.3 of clause 2.4 of the LOAN AGREEMENT (with option to buy) from February, 01, 2019 shall be amended as follows:

"2.4.1. SK SLOVAN must no later than December 10, 2019 notify FC ZORYA of the redemption of the rights to register a Player on a definitive basis.

2.4.2. Taking into account the definitive transfer of player's registration, SK SLOVAN pays out to FC ZORYA an amount of 300,000 euros (three hundred thousand euros), which is 95% of the total amount of the transfer fee, that is -5% of the solidarity payment is already withheld by SK SLOVAN and the receiving SK SLOVAN will redeem the retained amount and transfer it according to the FIFA Regulations on the status and transfer of players.

2.4.3. The amount specified in clause 2.4.2 is paid by SK SLOVAN to the FC ZORYA bank account until December 31, 2019."

5. In its report, the FIFA Regulatory Enforcement Department deemed the following aspects as potential violations of the FIFA Disciplinary Code:

- Zorya may have misused TMS by not correctly reflecting the factual situation of the Player's international transfer to Slovan in TMS, and thereby circumventing FIFA's solidarity mechanism, which among others, states under art. 1 of Annexe 5 of the Regulations the following:

"If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. [...]"

- Zorya's explanation for the situation at hand, namely that the Player's employment contract with them was suddenly mutually terminated as Zorya did not "need the Player's services" and instead gave him up without any payments, while having in place a previously negotiated option to buy in the amount of EUR 300,000, seems to

contradict the financial interests of Zorya and the logical business behaviour of a professional football club in general (according to TMS, FC Zorya Lugansk is a category 2 club).

- *This notion is further corroborated by the fact that the wording of clause 2.4 of the original loan agreement seems to indicate that a permanent transfer of the Player was intended from the beginning between the two clubs and this intention was subsequently reiterated in the loan extension agreement after the player was fielded in numerous matches by Slovan.*
 - *Therefore, it might be concluded that TMS may have been misused by both clubs, Slovan and Zorya, for the illegitimate purpose of executing an international transfer disguised as an engage out of contract instruction (without payments) instead of a loan to permanent instruction with payments (i.e. option to buy of EUR 300,000), by illicitly facilitating the termination of the Player's employment contract and thereby circumventing FIFA's solidarity mechanism.*
 - *Based on the arguments above, it appears that Zorya may have failed to declare payments in TMS, in particular, the option to buy the Player for the amount of EUR 300,000 as provided in the original loan agreement and the loan extension agreement in order to permanently transfer the Player to Slovan and by not entering the correct instruction (loan to permanent) in TMS.*
 - *Finally, Zorya did not provide any conclusive evidence (e.g. correspondence, bank statements) that no payment was executed to Zorya in relation to the Player's international transfer to Slovan.*
6. On 2 November 2020, following the investigations conducted by FIFA's Regulatory Enforcement Department (hereinafter, "FIFA Regulatory Enforcement") disciplinary proceedings were opened against FC Zorya Lugansk (hereinafter, "Zorya or "the Respondent") with respect to a potential breach of arts. 1.2, 3.1.1, 4.3, 4.7 and 9.1.2 of Annexe 3 of the Regulations on the Status and Transfer of Players, October 2019 edition (hereinafter: "the RSTP" or "the Regulations").

II. RESPONDENT'S POSITION

7. On 12 October 2020, the Respondent submitted the following response to the FIFA Regulatory Enforcement Department:
- *"[...] 05.07.2018 ROGERIO DA SILVA RAFAEL, citizen of the Federative Republic of Brazil, born on 30.11.1995, and FC Zorya Luhansk have entered into an employment contract for up to 30.06.2021.*
 - *On 01.02.2019, a Loan agreement (with option to buy) was signed between FC Zorya Luhansk, SK SLOVAN and the player with the following conditions:*
 - 1) *transfers on loan for a period starting February, 01, 2019, and ending June 30, 2019;*

- 2) *for a temporary transfer of the player's registration, SK SLOVAN pays to FC Zorya Luhansk a transfer fee of 35,000 euros (thirty-five thousand euros).*
 - 3) *SK SLOVAN has the right to redeem the rights of the Player on a definitive basis under the following conditions:*
 - *SK SLOVAN must no later than June 20, 2019 notify FC Zorya Luhansk of the redemption of the rights to register a Player on a definitive basis.*
 - *Taking into account the definitive transfer of player's registration, SK SLOVAN pays out to FC Zorya Luhansk an amount of 300,000 euros (three hundred thousand euros).*
 - *On 18.03.2019, SK SLOVAN paid FC Zorya Luhansk a transfer fee in the amount of 35,000 euros.*
 - *Due to the player's injury during the loan period, the parties 25.04.2019 signed an Additional agreement No. 1, according to which the loan term the lease has been extended until December 31, 2019 without changing the amount of the transfer payment. Also SK SLOVAN must no later than December 10, 2019 notify FC Zorya Luhansk of the redemption of the rights to register a Player on a definitive basis.*
 - *Within the period established by the Loan agreement dated 01.02.2019 with an Additional agreement No. 1, SK SLOVAN did not notify about its desire to implement the option to buy, therefore on 31.12.2019 the Loan agreement dated 01.02.2019 expired.*
 - *Since the FC Zorya Luhansk did not need the player's services, and the player announced his desire to terminate the employment contract, on 31.12.2019¹ the parties terminated the employment contract by mutual agreement. [...]"*
8. After the opening of the disciplinary proceedings no position was provided by the Respondent.
 9. The more detailed arguments made by the Respondent in support of his written submissions are set out below as far as they are relevant.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

A. Jurisdiction of the FIFA Disciplinary Committee

10. First of all, the FIFA Disciplinary Committee (hereinafter also referred to as the Committee) notes that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
11. Notwithstanding the above and for the sake of good order, the Committee finds it worthwhile to emphasise that, on the basis of art. 53 of the FDC as read together with arts. 25 par. 3, and

¹ The Respondent provided a "termination agreement" dated 31 December 2019

art. 9 of Annexe 3 of the RSTP, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B. Applicable law

12. In order to duly assess the matter, the Committee would like to begin by recalling the content and the scope of the relevant provisions of the October 2019 edition of the RSTP, which is, in the Committee's view, the edition applicable to the present issue:

Annexe 3 of the RSTP

13. Annexe 3 of the RSTP analyses in a very detailed manner the procedure related to international transfers of professional players through TMS.

14. In particular, the following provisions are relevant in the current matter:

Art. 1.2 of Annexe 3: *“TMS is designed to clearly distinguish between the different payments in relation to international player transfers. All such payments must be entered in the system as this is the only way to be transparent about tracking the money being moved around in relation to these transfers. [...]”*

Art. 3.1.1 of Annexe 3: *“Clubs are responsible for entering and confirming transfer instructions in TMS and, where applicable, for ensuring that the required information matches. This also includes uploading the required documents.”*

Art. 4.3 of Annexe 3: *“Clubs [...] must provide the following compulsory data when creating instructions, as applicable:*

– *Instruction type (Engage player or Release player);*

– *[...]*

– *If related to an earlier loan instruction, indication of whether: [...]*

- *the loan is being converted into a permanent transfer [...]*

– *Indication of whether the transfer is being made against any of the following payments:*

- *Fixed transfer fee, including details of instalments, if any*
- *Any fee paid in execution of a clause in the player's contract with his/her former club providing for compensation for termination of the relevant contract*
- *Conditional transfer fee, including details of conditions*
- *Sell-on fees*
- *Solidarity contribution*
- *Training compensation – Payment currency – Amount(s), payment date(s) and recipient(s) for each of the above listed types of payments [...]*

Art. 4.7 of Annexe 3: *“Clubs must declare in TMS any payments made. This also applies to payments made by the player's new club to the player's former club on the basis of*

contractual clauses contained in the player's contract with his/her former club and despite no transfer agreement having been concluded. When declaring the execution of a payment, the club making the payment must upload evidence of the money transfer into TMS."

Art. 9.1.2 of Annexe 3: *"Sanctions may also be imposed on any association or club found to have entered untrue or false data into the system or for having misused TMS for illegitimate purposes."*

15. In other words, TMS is designed to ensure that football authorities have more details available to them on international player transfers. This will increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system.
16. Moreover, TMS aims at clearly distinguishing between the different payments in relation to international player transfers. All such payments must be entered in the system as this is the only way to be transparent about tracking the money being moved around in relation to these transfers. Consequently, the club concerned is required to enter correct information in TMS in the context of an international transfer.

C. Merits of the dispute

I. Issues of review in light of Annexe 3 of the RSTP

17. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular, the documents uploaded into the TMS and the ones gathered during the investigation conducted by the FIFA Regulatory Enforcement in light of the aforementioned provisions.
18. For the sake of good order and as already mentioned above, the Committee notes that it is undisputed that the Player was transferred on loan from the Respondent to SK Slovan Bratislava for the period of 01 February 2019 until 30 June 2019. Additionally, said loan was extended on 21 June 2019 for the period of 01 July 2019 until 31 December 2019.
19. Moreover, the Committee notes that the Respondent alleged that since SK Slovan Bratislava did not implement the option to buy the Player (EUR 300,000), thus the loan agreement expired on 31 December 2019.
20. The Committee further notes that on 9 January 2020, the Respondent concluded the transfer instruction in TMS (ref. 235083) with the following remark: *"The player and his former club mutually agreed an early termination of contract - 31.12.2019"*.
21. In this regard, the FIFA Regulatory Enforcement deems that the Respondent might have misused TMS by not correctly reflecting the factual situation of the player's international transfer from the Respondent in TMS and by that circumventing FIFA's solidarity mechanism.

22. The Respondent on its side contests the above, arguing that the Player's employment contract was mutually terminated, thus the Player was no longer under contract.
23. In this sense, the fact that the Respondent potentially used TMS for illegitimate purposes, in particular to disguise a permanent transfer with payments as an engage permanently (out of contract) instruction in order to avoid the FIFA's solidarity mechanism, is beyond the scope of the present proceedings, as the Committee is not competent to examine disputes of said mechanism.
24. However, the fact that the Respondent may have entered incorrect information in TMS, irrespective of the Respondent's intention, should be examined by the Committee. In this respect, it appears from the TMS report that the Respondent may not have entered the appropriate transfer instruction in TMS, namely "*loan to permanent*", and instead closed the instruction n° 235083 with the remark "*the player and his former club mutually agreed an early termination of contract – 31.12.2019*".
25. In light of the above, the Committee considers that the underlying issue that needs to be analysed is whether the Respondent entered the correct information in TMS when processing the conclusion of the instruction n° 235083.

II. Analysis of the facts in light of Annexe 3 of the RSTP

26. For the sake of good order and as already mentioned above, the Committee notes that it is undisputed that the Player was transferred on loan from the Respondent to SK Slovan Bratislava for the period of 01 February 2019 until 30 June 2019. On 21 June 2019, the loan was extended for the period of 01 July 2019 until 31 December 2019.
27. In this regard, the Committee notes that both agreements contained the option for SK Slovan to buy the Player against a payment amounting to EUR 300,000.
28. The Committee further notes that on 9 January 2020, the Respondent declared in TMS the early termination of the contract with the Player, without enclosing any proof corroborating the said statement.
29. Additionally, the Committee observes that the Respondent stated that "*SK SLOVAN did not notify about its desire to implement the option to buy, therefore on 31.12.2019 the Loan agreement dated 01.02.2019 expired*". However, the Committee cannot find any correspondence in support of this explanation in the case file. If it is true that it was SK Slovan that was to "*notify FC ZORYA of the redemption of the rights to register a Player on a definitive basis*", the Committee is very troubled by the fact that no exchange of correspondences between the two clubs concerning the Player and his future was produced in the present proceedings. The doubts of the Committee are intensified by the fact that for a club that was allegedly no longer interested in the Player, the latter took part in a relatively large number

of matches for SK Slovan. As indicated on the club's website, the Player is regularly fielded in SK Slovan's matches during the 2020/2021 season².

30. With the above in mind, and even assuming that SK Slovan did not activate its purchase option on the player, the Committee struggles to understand the Player's alleged intention to terminate his employment contract early, bearing in mind that he had an employment contract with the Respondent valid until 30 June 2021 (according to TMS).
31. In continuation, the Committee feels that it is highly unlikely that a player with a one-and-a-half-year contract would simply terminate that contract and find himself without a club. The Committee could have understood the Player's wish to terminate his employment contract early, assuming that he had joined a third club. However, the Committee notes, without real surprise, that the Player remained with the club to which he had been loaned, SK Slovan, although the loan had ended, and the latter had allegedly not activated its purchase option.
32. Moreover, the Committee observes that the FIFA Regulatory Enforcement Department had to request the proof of the early termination of the employment contract since the Respondent failed to upload the said document when concluding the loan in TMS on 9 January 2020. In this sense, the Respondent provided the requested proof, allegedly signed on 31 December 2019, only on 12 October 2020.
33. Having said that, the Committee finds it surprising that the second loan agreement expired on 31 December 2019, while the Player and the Respondent agreed to terminate their employment relationship on the same date, but only declared in TMS the termination of the said contract on 9 January 2020 and provided proof of the early termination to the FIFA Regulatory Enforcement Department on 12 October 2020.
34. The timing of the abovementioned events appeared suspicious to the FIFA Regulatory Enforcement Department, a point of view that the Committee also shares. In addition, and as outlined above, the Committee observes that the Respondent did not support its statement, provided to the FIFA Regulatory Enforcement Department only, with any evidence establishing that SK Slovan did not activate its purchase option on the Player. Furthermore, the Respondent decided to remain silent and did not provide any position on the allegations brought against it following the opening of disciplinary proceedings.
35. In view of the passive behaviour of the Respondent, resulting in a lack of cooperation on its part, the Committee considers that the Respondent went against the purpose of TMS as it entered incorrect information and mandatory data when closing the transfer instruction n° 235083 in TMS, in violation of Arts. 3.1.1, 4.3 and 9.1.2 of Annex 3 of the RSTP. In other words, the Committee is comfortably satisfied that the correct transfer instruction that should have been entered was "*loan to permanent*", namely when the new club (where the

² https://en.skslovan.com/players/A-Rafael_Rat227o

player is currently on loan) wishes to engage the player permanently, with the agreement of the former club.

36. In this sense, the arguments of the Respondent, provided only to the FIFA Regulatory Enforcement Department, cannot convince the Committee that the Player and the Respondent suddenly, and with no tangible explanation, decided to terminate the employment contract at the request of the Player.
37. Finally, the Committee, considering that the correct transfer instruction that should have been entered in TMS, "*loan to permanent*", is confident that this permanent transfer was made against payment, i.e. a purchase option of EUR 300,000. This position is reinforced by the attitude of the Respondent, which did not contest the allegations made against it during the disciplinary proceedings and did not rebut the information contained in the TMS report with (tangible) evidence. Consequently, the Committee finds that the Respondent has violated the provisions on "*failure to declare payments in TMS*" enshrined in art. 1.2 and 4.7. of Annexe 3 of the RSTP.

III. The determination of the sanction

38. With regard to the applicable sanctions for the present case, the Committee observes in the first place that the Respondent is a legal person, and as such it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
39. For the sake of good order, the Committee underlines that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 par. 1 of the FDC).
40. As it was established above, the Respondent was found responsible of having infringed several provisions of the RSTP.
41. Taking into account the facts described in the present case, the Committee considers a fine to be the appropriate sanction.
42. With regard to the fine, according to the provisions of art. 6 par. 4 of the FDC, the Committee notes that it may not be lower than CHF 100 and greater than CHF 1,000,000.
43. Taking into consideration all the circumstances of the case, while keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour and that the Respondent has no previous record with regard of violations of the provisions of the RSTP here at stake, the Committee deems a fine of CHF 15,000 to be adequate and proportionate to the offence.
44. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to the Respondent's conduct. In particular, the Respondent is ordered to undertake all

appropriate measures in order to guarantee that the FIFA regulations (in particular the FDC as well as the Regulations and its provisions related to third party influence) are strictly complied with. Should such infringements occur again in the future, the Committee would be left with no other option than to impose harsher sanctions on the Respondent.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The FIFA Disciplinary Committee found the club FC Zorya Lugansk responsible for the infringement of the relevant provisions of the Regulations related to misuse of TMS (art. 3.1.1 and art. 9.1.2 of Annexe 3) and the failure to declare payments in TMS (art. 1.2, art. 4.3, and art. 4.7 of Annexe 3).
2. The FIFA Disciplinary Committee orders the club FC Zorya Lugansk to pay a fine to the amount of CHF 15,000.
3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the club FC Zorya Lugansk is warned on its future conduct.
4. The above fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Pieja

Deputy Chairman of the Disciplinary Committee

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

NOTE RELATING TO THE LEGAL ACTION:

According to 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.