

# Disciplinary Committee

Date: 28 April 2021

**FIFA**<sup>®</sup>

Sent to:  
Santos FC  
c/o Mr Luiz Roberto Martins Castro  
lr@mcma.com.br

C.C:  
CBF - Brazilian Football Association, FC Barcelona

## Notification of the grounds of the Decision

Ref FDD-7636

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 11 March 2021.

The CBF - Brazilian Football Association (in copy) is kindly requested to forward this decision to Santos FC.

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

Fédération Internationale de Football Association

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# Decision of the FIFA Disciplinary Committee

passed on 11 March 2021

**DECISION BY:**

**Mr. Charlie Cuzzetto, Canada**

**ON THE CASE OF:**

**Santos FC**

(Decision FDD-7636)

**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 10 November 2017, the Single Judge of the FIFA Players' Status Committee rendered its decision, by which it rejected the claim of FC Barcelona (hereinafter also as the Claimant) against Santos FC (hereinafter: the Respondent). The grounds of the aforementioned decision were notified to the parties on 4 March 2019.
3. On 25 March 2019, the Claimant lodged an appeal against said decision before the Court of Arbitration for Sport.
4. On 9 December 2020, the Court of Arbitration for Sport issued an award by means of which the decision of the Single Judge of the Players' Status Committee was set aside and, among others, ordered the Respondent to pay the Claimant the following amounts:
  - **EUR 2,900,000** within thirty (30) days from the notification of the arbitral award. Such amount shall accrue interest at a rate of 5% *per annum* in case of failure of payment within the aforesaid time limit;
  - **CHF 12,000** as contribution towards its legal fees and other expenses incurred in connection with the arbitration proceedings.
5. The aforementioned award has not been challenged before the Swiss Federal Tribunal and has therefore become final and binding upon the parties.
6. On 4 February 2021, as the outstanding amounts due to the Claimant were not paid, the latter requested the initiation of disciplinary proceedings against the Respondent. In particular, the Claimant submitted to the secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) a copy of an email sent on 23 December 2020 to the legal representatives of the Respondent, which contained a request for payment of the amounts due together with the bank details in which the remittance was to be made.
7. On 10 February 2021, in light of the foregoing and as the aforementioned amounts were not paid to the Claimant, 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 11 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.

8. On 15 February 2021, the Secretariat granted a deadline extension to the Respondent to provide its position by 23 February 2021.

## **II. RESPONDENT'S POSITION**

9. The position of the Respondent is summarized hereafter. However and for the sake of clarity, this summary does not purport to include every single contention put forth by the Respondent. Nevertheless, the member of the FIFA Disciplinary Committee 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 these arguments in the following outline of his position and in his ensuing discussion on the merits.

10. On 23 February 2021, the Respondent provided its position in relation to the disciplinary proceedings. The arguments brought forward by the Respondent can be summarised as follows:

- The Claimant sent a request for payment with the bank details to the legal representatives of the Respondent that were hired only for the proceedings before the Court of Arbitration for Sport, whom finished their mandate on 9 December 2020;
- The Claimant provided its bank details to the Respondent's in-house counsel on 29 January 2021. Therefore, the time limit stipulated in point 3 of the operative part of the award has not elapsed;
- Based on the above, the Respondent requested to the FIFA Disciplinary Committee to:
  - Close the disciplinary proceedings or dismiss the Claimant's request for imposition of sanctions, or alternatively;
  - Consider that the Claimant has not provided all the necessary banking information to the Respondent, so that no fine should be imposed to the Respondent;
  - To grant the Respondent a final deadline of at least 90 days to settle its debt.

11. 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**

12. 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 award passed by the Court of Arbitration for Sport as well as the potential sanctions resulting therefrom.

## A. Jurisdiction and applicable law of the FIFA Disciplinary Committee

13. 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.
14. 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 award of the Court of Arbitration for Sport, 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).
15. 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.*
16. 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.
17. 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.

18. His jurisdiction being established and the applicable law determined, the Single Judge subsequently turns his attention to the award issued by the Court of Arbitration for Sport on 9 December 2020.

## B. Merits of the dispute

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

19. As already established above, the award of the Court of Arbitration for Sport is final and binding, as neither party has challenged said award before the Swiss Federal Tribunal. Consequently, the Single Judge is not allowed to analyse the case decided by the Court of Arbitration for Sport as to the substance, i.e. to check the correctness of the amount ordered to be paid. The Single Judge has as sole task to analyse whether the Respondent complied with the final and binding award rendered by the Court of Arbitration for Sport.
20. In this respect, the Single Judge notes that the Respondent argues that the Claimant sent on 23 December 2020 a request for payment along with its bank details to an external law firm only, which was hired to help the Respondent's in-house lawyer during the appeal proceedings in front of the Court of Arbitration for Sport, but not to the Respondent.
21. The Single Judge further notes that the Respondent alleges that it was only on 29 January 2021 that it received the claim for payment and the Claimant's bank details. Hence, the thirty days' time limit stipulated in the point 3 of the operative part of the award has not elapsed.
22. Against this background, the Single Judge observes that a member of the external law firm hired by the Respondent replied on 23 December 2020 to the Claimant "*thank you. [we] have forwarded [the Claimant's] e-mail to Santos*". In addition, the Respondent itself acknowledges that on 29 January 2021 it received the Claimant's banking information directly from the latter.
23. Moreover, the Single Judge would like to draw the Respondent's attention to point 3 of the operative part of the award, which clearly states that "*[The Respondent] shall pay [the Claimant] an amount of EUR 2,900,000 (...) within thirty (30) day **from the notification of the present arbitral award***" (emphasis added).
24. In view of the above, the Single Judge can only conclude that, when the disciplinary proceedings were initiated on 10 February 2021 against the Respondent, the latter was already in possession of the Claimant's bank details to which the outstanding amounts were to be paid.
25. Having stated the above, the Single deems it worthwhile to recall that CAS ruled on several occasions that "*the utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the Creditor, and, therefore it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision*"<sup>1</sup>.

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<sup>1</sup> CAS 2013/A/3323; CAS 2015/A/5342; CAS 2016/A/4719

26. However, despite holding the Claimant's bank account details, the Single Judge finds that the Respondent has not settled its debt in accordance with the CAS award and that the arguments put forward cannot serve to justify its failure to pay the amounts to the Claimant as indicated in the said award.
27. In light of all the above, the Single Judge concludes that the Respondent failed to comply with the aforementioned CAS award, and is, consequently, withholding money from the Claimant. As a result, the Respondent is considered responsible of not complying with a financial decision under the terms of art. 15 of the 2019 FDC.
28. In other words, the Single Judge concludes that the Respondent, by its conduct as described above, violated art. 15 of the FDC and should be sanctioned accordingly.

## **II. The determination of the sanction**

29. With regard to the applicable sanctions, the Single Judge observes, in the first place, that the Respondent is a legal person, and as such can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
30. In these circumstances, the Single Judge underlines that the fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 100 and CHF 1,000,000.
31. This being established, it is emphasized that the Respondent withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the amounts due to the Claimant.
32. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regards a fine amounting to CHF 30,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
33. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the Respondent to settle the amounts due to be paid to the Claimant.
34. In accordance with art. 15 par. 1 c) of the FDC, the Respondent 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.
35. For the sake of good order, the Brazilian Football Association is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Respondent. In this respect, and for the sake of clarity, the Brazilian Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Brazilian 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. Santos FC is found guilty of failing to comply in full with the decision passed by Court of Arbitration of Sport on 9 December 2020.**
- 2. The Santos FC is ordered to pay to FC Barcelona as follows:**
  - **EUR 2,900,000 plus 5% interest p.a. as from the due date until the date of effective payment;**
  - **CHF 12,000 as contribution towards the legal fees and other expenses incurred in connection with the arbitration proceedings.**
- 3. The Santos FC is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. 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. The transfer ban will be implemented automatically at national and international level by the Brazilian 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. In addition, 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.**
- 4. The Santos FC is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Mr. Charlie Cuzzetto, Canada**

Disciplinary Committee

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**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.

**NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:**

As a member of FIFA, the Brazilian 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 Brazilian 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.

The Respondent is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment made and to provide the relevant proof of payment. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment received.

**NOTE RELATING TO THE BAN FROM REGISTERING NEW PLAYERS:**

The transfer ban shall cover all men eleven-a-side teams of the Respondent – first team and youth categories –. The Respondent 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 Respondent 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.

**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.