

Disciplinary Committee

Date: 17 May 2021

The FIFA logo is displayed in white capital letters on a dark blue background. A diagonal line cuts across the top-left corner of the page, separating the logo area from the rest of the header.

Sent to:
Shanghai Shenhua FC
c/o Mr Daniel Muñoz
procedures@munozarias.com

C.C:
Chinese Football Association, Mr Enrique Sánchez Flores

Notification of the grounds of the Decision

Ref FDD-7891

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.

The Chinese Football Association (in copy) is kindly requested to forward this decision to the club Shanghai Shenhua FC.

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

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:

Shanghai Shenhua FC

(Decision FDD-7891)

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: the 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 27 February 2020, the Single Judge of the FIFA Players' Status Committee rendered its decision (hereinafter: the FIFA Decision), by which it ordered the club Shanghai Shenhua FC (hereinafter also as the Respondent) to pay the coach Enrique Sánchez Flores (hereinafter: the Claimant) the following amounts:
 - a. **EUR 500,000** as outstanding remuneration, plus 5% interest *p.a.* as from 5 Jul 2019 until the date of effective payment;
 - b. **EUR 12,000,000 and USD 150,000** as compensation for breach of contract, plus 5% interest *p.a.* as from 16 September 2019 until the date of effective payment.
3. Further, the abovementioned decision indicates in point no 4 the following:
 - a. *"The Respondent must provide the Claimant with the relevant tax certificates indicating the specific withholding taxes levied on the amounts paid to the Respondent during the term of the contractual relationship between the parties"* (free translation from Spanish).
4. The grounds of the aforementioned decision were notified to the parties on 28 April 2020.
5. On 17 May 2020, the Respondent lodged an appeal against the FIFA Decision before the Court of Arbitration for Sport (CAS).
6. Following the Respondent's request to withdraw the appeal before the Court of Arbitration for Sport, on 8 March 2021 the CAS issued an award on costs by means of which the appeal made by the Respondent against the FIFA Decision was terminated and removed from the CAS roll.
7. Therefore, the decision of the Single Judge of the FIFA Players' Status Committee dated 27 February 2020 become final and binding upon the parties.
8. On 26 March 2021, as the outstanding amounts due to the Claimant were not paid, the latter requested the initiation of disciplinary proceedings against the Respondent.
9. On the same date, in light of the foregoing and as 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 22 April 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.

II. RESPONDENT'S POSITION

10. 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.
11. On 1 April 2021, the Respondent indicated that in accordance with point 4 of the FIFA Decision, it provided *"the Claimant with the corresponding tax certificate indicating the specific tax withholdings made during the term of the contractual relationship between the parties. The tax certificate is being attached herewith as Annex No. 2"*.
12. As for the amounts to be paid by the Respondent to the Claimant in accordance with the FIFA decision, no position or proof of payment was provided to the Secretariat.
13. 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

14. 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

15. 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.

16. 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).
17. 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.*
18. 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.
19. 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.
20. His jurisdiction being established and the applicable law determined, the Single Judge subsequently turns his attention to the decision issued by the Single Judge of the FIFA Players' Status Committee on 27 February 2020.

B. Merits of the dispute

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

21. As already established above, the FIFA Decision is final and binding, as the Respondent withdrew its appeal before the CAS. 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 sole task to analyse whether the Respondent complied with the final and binding decision rendered by the Single Judge of the FIFA Players' Status Committee.
22. In this respect, the Single Judge acknowledges that the Respondent complied with the point no 4 of the FIFA decision but did not express a position or provided a proof of payment regarding the amounts due to the Claimant within these proceedings.
23. Furthermore, the Single Judge notes that there is no evidence in the case file that the amounts due to the Claimant have been paid. Therefore, the Single Judge concludes that the Respondent has not complied with the abovementioned FIFA Decision, 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.
24. In view of the foregoing, 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

25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.

31. For the sake of good order, the Chinese 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 Chinese Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Chinese 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

- 1. Shanghai Shenhua FC is found guilty of failing to comply in full with the decision passed by the Single Judge of the Players' Status Committee on 27 February 2020.**
- 2. Shanghai Shenhua FC is ordered to pay to the coach Enrique Sánchez Flores as follows:**
 - **EUR 500,000 as outstanding remuneration, plus 5% interest *p.a.* as from 5 July 2019 until the date of effective payment;**
 - **EUR 12,000,000 and USD 150,000 as compensation for breach of contract, plus 5% interest *p.a.* as from 16 September 2019 until the date of effective payment.**
- 3. Shanghai Shenhua 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 Chinese 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. Shanghai Shenhua 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. Carlos Teran, Venezuela

Disciplinary Committee

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

As a member of FIFA, the Chinese 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 Chinese 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 Chinese Football Association of every payment made and to provide the relevant proof of payment.

The Claimant is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese 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.

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.