

Disciplinary Committee

Date: 08 April 2021

FIFA[®]

Sent to:
Zamalek Sports Club
admin@zamalek.sc;
amir.mortada@zamalek.sc

C.C:
EFA - Egyptian Football Association,
Mr Benjamin Acheampong
c/o Professional Footballers Association of Ghana

Notification of the grounds of the Decision

Ref FDD-7567

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 25 February 2021.

The EFA - Egyptian Football Association (in copy) is kindly requested to forward this decision to Zamalek Sports Club.

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 25 February 2021

DECISION BY:

Mr. Gudni Bergsson, Iceland

ON THE CASE OF:

Zamalek Sports Club

(Decision FDD-7567)

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 16 August 2019, the FIFA Dispute Resolution Chamber dismissed the claim lodged by the player Mr Benjamin Acheampong (hereinafter also as Creditor) against Zamalek Sports Club (hereinafter: the Respondent). The grounds of the aforementioned decision were notified to the parties on 9 January 2020.
3. On 24 January 2020, the Creditor lodged an appeal against said decision before the Court of Arbitration for Sport.
4. On 8 December 2020, the Court of Arbitration for Sport issued an award by means of which it set aside the DRC decision and ordered the Respondent to pay Mr Benjamin Acheampong the following amounts:
 - **USD 169,303** as outstanding remuneration, with interest at 5% *p.a.* as follows:
 - USD 35,171 as from 2 August 2017 until 28 December 2017;
 - USD 30,915 as from 29 December 2017 until the date of effective payment;
 - USD 64,516 as from 16 June 2018 until the date of effective payment;
 - USD 645 as from 1 July 2018 until the date of effective payment;
 - USD 645 as from 1 August 2018 until the date of effective payment;
 - USD 72,582 as from 2 August 2018 until the date of effective payment.
 - **USD 787,308** as compensation for breach of contract, with 5% interest *p.a.* as from 7 August 2018 until the date of effective payment; and,
 - **CHF 10,000** as a contribution towards his 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 10 December 2020, the Professional Footballers Association of Ghana, on behalf of the Creditor, requested the Respondent to pay the outstanding amounts into the bank account belonging to “Mr Benjamin Acheampong”.
7. On 11 and 25 January 2021, as the outstanding amounts due to the Creditor were not paid, the latter requested the initiation of disciplinary proceedings against the Respondent.

8. Additionally, the correspondence dated 10 December 2020 sent by the Professional Footballers Association of Ghana, on behalf of the Creditor, was sent in copy to the Respondent in the abovementioned communications.
9. On 26 January 2021, in light of the foregoing and as the aforementioned amounts were not paid to the Creditor, 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 February 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.
10. On 8 February 2021, the Professional Footballers Association of Ghana, on behalf of the Creditor, sent a reminder to the Respondent to pay the outstanding amounts into the bank account belonging to “*Mr Benjamin Acheampong*”.

II. RESPONDENT’S POSITION

11. 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.
12. On 1 February 2021, the Respondent informed the Secretariat that Mr Nader Al-Sayed, on behalf of the Creditor, signed a settlement agreement and provided the following documentation:
 - a. An undated “*authorization*” granted by the Creditor to Mr Nader Al-Sayed;
 - b. A settlement agreement dated 30 December 2020, allegedly notarized by the Egyptian Football Association and signed by Mr Nader Al-Sayed on behalf of the Creditor;
 - c. A copy of an acknowledged receipt of a cheque in the amount of USD 25,000 received by Mr Nader Al-Sayed on behalf of the Creditor.
13. On 3 February 2021, the Creditor strongly contested the allegations of Mr Nader Al-Sayed and informed the secretariat that he never granted any authorization nor that “*such payment plan has ever been concluded*”.
14. On 8 February 2021, the Respondent reiterated its position expressed in its letter dated 1 February 2021, provided additional documentation with regard to the intermediary’s service

between the Creditor and Mr Nader Al-Sayed, and requested to close the case as a result of the conclusion of the settlement agreement. Finally, it pointed out that any dispute related to said settlement agreement should be referred to the Dispute Resolution Chamber.

15. On 24 February 2021, the Professional Footballers Association of Ghana submitted a letter along with “a handwriting expert report” dated 18 February 2021 to prove that Mr Benjamin Acheampong did not “authorise the settlement agreement” and that the relevant documents provided by the Respondent “are forged”.
16. 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

17. 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

18. 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.
19. 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).
20. 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.

21. 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.
22. 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.
23. 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 8 December 2020.

B. Merits of the dispute

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

24. 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.
25. In this respect, the Single Judge notes that the positions of the Respondent and the Creditor with regard to the settlement agreement are completely opposed.
26. On the one hand, the Respondent submits that it has entered into a settlement agreement with Mr Nader Al-Sayed, the alleged legal representative of the Creditor, and that any claims arising from this agreement should be referred to the FIFA Dispute Resolution Chamber.

27. In particular, the Respondent relies on a “*Contract of Agent As of Season of 2020/2021*” seemingly signed and finger printed by the Creditor on 28 December 2020. According to the said contract, “*the Agent / NADER ELSAYED IBRAHIM has exclusive rights to negotiate, settle, sign, reconcile and schedule to reduce or receive [the Creditor’s amounts] on [his] behalf cash or checks or any legal means in the Case 2020/A/6727 VS Zamalek (...)*”.
28. On the other hand, the Creditor states that “*no such payment plan has ever been concluded*” with the Respondent nor was any authorisation given to Mr Nader Al-Sayed.
29. In light of the foregoing, the Single Judge first observes from the case file that the legal representative of the player during the procedure before the FIFA Dispute Resolution Chamber was the Professional Footballers Association of Ghana, while in front of CAS, the Creditor was represented by Mr Mario Flores. However, the Single Judge notes that the Professional Footballers Association of Ghana acted again as the legal representative of the Creditor during the present disciplinary proceedings.
30. Secondly, the Single Judge takes note that the amounts due under the CAS award dated 8 February 2021 total almost USD 1,000,000. As such, it is very unlikely that the Creditor would have agreed to enter into a settlement agreement where he would only receive a quarter of the amounts to which he was entitled.
31. Thirdly, the Single Judge notes that 10 December 2020, following the notification of the CAS, the Professional Footballers Association of Ghana immediately provided the Respondent with the bank details of the Creditor. The same banking information was provided to the Respondent on 11 and 25 January 2021, and 8 February 2021, subsequent to the conclusion of the “*Contract of Agent*” allegedly entered into on 28 December 2020.
32. In this sense, the Single Judge is of the opinion that it was the duty of the Respondent to contact the Creditor directly, or alternatively FIFA, to ensure that it was negotiating with the right representative of the Creditor. This is especially true since the Ghana Professional Footballers Association represented the Creditor before the FIFA Dispute Resolution Chamber, and once the CAS proceedings were completed, contacted the Respondent again in order to provide it with the Creditor's bank details. In other words, the Respondent should have been suspicious that the Creditor suddenly changed his representative and agreed to receive his money by another means despite the fact that three weeks earlier he had provided the Respondent with his personal bank details through another representative, namely the Ghana Professional Footballers Association.
33. Finally, the Single Judge recalls that the Creditor has facilitated a “*handwriting expert report*”, according to which the Creditor did not sign the “*authorization*” document provided by the Respondent. Moreover, the Creditor has strongly contested having authorized Mr Nader Al-Sayed to act as his legal representative, with the corollary that no settlement agreement could be concluded on his behalf.

34. In view of the above, the Single Judge is comfortably satisfied that the Creditor did not authorize Mr Nader Al-Sayed to act on his behalf, so that the settlement agreement allegedly concluded by the latter and the Respondent cannot bind the Creditor.
35. Therefore, the Single Judge deems that the arguments raised by the Respondent could not justify the fact that the amounts due to the Creditor in accordance with the award passed by the Court of Arbitration for Sport on 8 December 2020 have not been paid.
36. In light of all the above, the Single Judge concludes that the Respondent failed to comply with the aforementioned award, and is, consequently, withholding money from the Creditor. 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.
37. 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

38. 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.
39. 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.
40. This being established, it is emphasized that the Respondent withheld the amounts unlawfully from the Creditor. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the amounts due to the Creditor.
41. 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.
42. 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 Creditor.
43. 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.
44. For the sake of good order, the Egyptian 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 Egyptian Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Egyptian 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. **Zamalek Sports Club is found guilty of failing to comply in full with the award passed by the Court of Arbitration for Sport on 8 December 2020.**
2. **The Zamalek Sports Club is ordered to pay to Mr Benjamin Acheampong as follows:**
 - **as outstanding remuneration in the amount of USD 169,303 with interest at 5% p.a. as follows:**
 - **USD 35,171 as from 2 August 2017 until 28 December 2017;**
 - **USD 30,915 as from 29 December 2017 until the date of effective payment;**
 - **USD 64,516 as from 16 June 2018 until the date of effective payment;**
 - **USD 645 as from 1 July 2018 until the date of effective payment;**
 - **USD 645 as from 1 August 2018 until the date of effective payment;**
 - **USD 72,582 as from 2 August 2018 until the date of effective payment.**
 - **as compensation for breach of contract in the amount of USD 787,308 with 5% interest p.a. as from 7 August 2018 until the date of effective payment;**
 - **CHF 10,000 as a contribution towards his legal fees and other expenses.**
3. **The Zamalek Sports Club 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 Egyptian 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 Zamalek Sports Club 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. Gudni Bergsson, Iceland

Disciplinary Committee

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

As a member of FIFA, the Egyptian 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 Egyptian 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 Egyptian 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 Egyptian 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.