CAS 2021/A/7937 Al Arabi Sports Club v. Fédération Internationale de Football Association (FIFA) & Sérgio Dutra Junior

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Frans M. **de Weger**, Attorney-at-Law, Haarlem, the Netherlands

in the arbitration between

Al Arabi Sports Club, Doha, Qatar

Represented by Mr Nilo Effori, Attorney-at-Law, London, United Kingdom

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios and Ms Erika Urbina, Litigation Department, Zurich, Switzerland

First Respondent

&

Sérgio Dutra Junior, Brazil

Represented by Mr Breno Costa Ramos Tannuri, São Paulo, Brazil

Second Respondent

I. PARTIES

1. Al Arabi Sports Club (the "Club" or the "Appellant") is a professional football club based in Doha, Qatar. The Club is affiliated to the Qatar Football Association (the "QFA") which in turn is affiliated with the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association ("FIFA" or the "First Respondent") is the global governing body of football with its registered office in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

3. Sérgio Dutra Junior (the "Player" or the "Second Respondent") is a professional football player of Brazilian nationality, born on 25 April 1988.

4. FIFA and the Player are jointly referred to as the Respondents.

5. The Club and the Respondents are jointly referred to as the Parties.

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the award only refers to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.

A. Proceedings before the FIFA DRC

7. On 9 May 2019, the FIFA Dispute Resolution Chamber (the "FIFA DRC") decided that the Club had to pay to the Player, within 30 days as from the date of notification of the relevant decision, the amount of EUR 300,000 plus interest at a rate of 5% *p.a.* until the date of effective payment, as follows:

   a. As from 1 February 2016, on the amount of EUR 100,000;

   b. As from 1 March 2016, on the amount of EUR 100,000; and

   c. As from 1 April 2016, on the amount of EUR 100,000.

8. Furthermore, the Club had to pay to the Player, within 30 days as from the date of notification of the relevant decision, the amount of EUR 4,725,000 as compensation for breach of contract (the "FIFA DRC Decision").

9. The grounds of the FIFA DRC Decision, which were requested by the Club, were communicated to the Player and the Club on 2 October 2019.

B. First proceedings before the CAS

10. Following the notification of the grounds, both the Player and the Club lodged appeals before the CAS against the FIFA DRC Decision (registered under CAS 2019/A/6533 & 6539).

11. On 14 December 2020, CAS rejected the Club's appeal and issued an award (the "CAS Award"); however, it partially upheld the Player's appeal. Therefore, point 3 of the FIFA DRC Decision was amended as follows:

"*Club Al Arabi S.C. shall pay to Mr. Sergio Dutra Junior an amount of EUR 6,000,000, plus 5% interest p.a. as from 4 April 2016 until the date of effective payment.*"

12. The Club was also ordered to pay to the Player the amount of CHF 7,000 as a contribution towards his legal costs and expenses incurred in connection with the arbitration proceedings.

C. Proceedings before the FIFA Disciplinary Committee

13. On 29 January 2021, the secretariat to the FIFA Disciplinary Committee (the "FIFA Secretariat") opened disciplinary proceedings against the Club as a result of having failed to pay the amounts established in the CAS Award. Additionally, the FIFA Secretariat informed the Club that the case would be submitted to the FIFA Disciplinary Committee (the "FIFA DC") on 25 February 2021, and invited the Club to provide its position.

14. Despite being informed that the FIFA DC would take a decision based on the documents in its possession, the Club failed to submit any statement or pay the outstanding amounts due.

15. On 25 February 2021, the FIFA DC rendered a decision (the "Appealed Decision") and decided as follows:

"*1. Al Arabi SC is found guilty of failing to comply in full with the decision passed by the Court of Arbitration for Sport on 14 December 2020.*

2. The Al Arabi SC is ordered to pay to Sérgio Dutra Junior as follows:

- *Outstanding remuneration in the amount of EUR 300,000, plus interest as [sic] the rate of 5% p.a. until the date of effective payment, as follows:*

  - *As from 1 February 2016, on the amount of EUR 100,000;*
  - *As from 1 March 2016, on the amount of EUR 100,000;*
  - *As from 1 April 2016, on the amount of EUR 100,000;*

- *EUR 6,000,000, plus 5% interest p.a. as from 4 April 2016 until the date of effective payment;*

- *CHF 7,000 as a contribution towards the expenses incurred in connection with the arbitration proceedings.*

3. *The Al Arabi SC 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 Qatar 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 Al Arabi SC is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 30 days of notification or the present decision.*"

16. The findings of the Appealed Decision were notified to the Club on 1 March 2021.

17. The Club requested the grounds of the Appealed Decision on 8 March 2021, which were notified on 20 April 2021.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 4 May 2021, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles 57 and 58 of the FIFA Statutes, Article R47 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code") and Article 49 of the FIFA Disciplinary Code (2019 edition) (the "FDC").

19. On 6 May 2021, the CAS Court Office acknowledged receipt of the Statement of Appeal, initiated the present arbitral proceedings and invited the Second Respondent to file a letter of representation. In the same letter, the Respondents were asked to state whether they agreed to the Appellant's 30-day extension request of the time limit to file its Appeal Brief.

20. On 7 May 2021, FIFA objected to the 30-day extension request by the Club to file its Appeal Brief as it considered it excessive, especially when the Club's prayers for relief focussed on the proportionality of a disciplinary sanction and considered that the suggested extension was disproportionate.

21. On 10 May 2021, the Player informed the CAS Court Office that he agreed with the Club's extension request only due to the consequences of the COVID-19 pandemic.

22. On 11 May 2021, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Club's request for an extension of the time limit to file its Appeal Brief was partially granted. The Club was invited to file its Appeal Brief on or before 25 May 2021.

23. On 21 May 2021, the CAS Court Office acknowledged the receipt of the Club's Appeal Brief filed on the same day via E-filing.

24. On 30 June 2021, the Second Respondent filed his Answer.

25. On 12 July 2021, FIFA in turn filed its Answer.

26. On 13 July 2021, the Parties were invited to inform the CAS Court Office by 20 July 2021 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

27. On the same day, the Club and the Player notified the CAS Court Office they preferred for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

28. On 14 July 2021, FIFA informed the CAS Court Office that in view of the detailed written submissions filed by the Parties, FIFA was of the opinion that holding a hearing was not necessary.

29. On the same day, the Parties were advised that the Sole Arbitrator considered himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.

30. On 27 July and 2 August 2021, the Appellant and the Respondents respectively returned duly signed copies of the Order of Procedure to the CAS Court Office.

IV. SUBMISSIONS OF THE PARTIES

31. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's position

32. On 21 May 2021, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code, submitting the following requests for relief:

"*The Club respectfully requests that the CAS makes the following orders:*

(a) to the present appeal to be admissible;

(b) to uphold the Appeal, set aside and replace the Decision of the FIFA DC of 25 February 2021 by sanctioning the Club to pay a fine of CHF 5,000;

(c) to set aside and replace the Decision of the FIFA DC of 25 February 2021 by giving the Appellant a period of 90 days to settle the amount stated in point 2 of the findings of the FIFA Disciplinary Committee Decision;

(d) to set aside and replace the Decision of the FIFA DC of 25 February 2021 by not applying automatically the transfer ban on the Appellant;

(e) to set aside and replace the Decision of the FIFA DC of 25 February 2021 by giving the Appellant the number of points to be deducted in case this sanction is to be applied

(f) an order for the Respondents to bear the entire costs of these arbitration proceedings;

(g) an order for the Respondents to bear the entire costs of the Appellant's legal costs and expenses with the present arbitration proceedings in an amount to be determined when requested by the CAS;"

33. The Appellant's submissions, in essence, may be summarised as follows:

- Firstly, Article 6.3 and Article 24 of the FDC are cited and reference is made to Swiss law which upholds to the maximum the principle of proportionality, as most systems of law including sports and the CAS do (CAS 2005/C/976 & 986). Whether or not a particular sanction is proportionate depends on the particular circumstances of the case at hand.

- In the present case, the deadline to pay and the sanctions imposed to the Appellant are disproportionate considering that:

  a) The deadline of 30 days to pay: even stated in the Article 15 of the FDC, the period of just 30 days as a way to enable the Club to gather the funds to pay an amount around EUR 7,500,000 is unrealistic. The Appellant is still affected by the COVID-19 pandemic and the financial resources have been difficult to obtain. It is a totally different scenario from previous years, when the two parties litigated before the CAS.

  b) The fine of CHF 30,000: although the Appellant does not dispute the Respondent's right to seek penalties before the FIFA DC as a way to reach its goal (i.e. being paid), the amount of CHF 30,000 as a fine is way higher than in previous cases in which the amounts due were higher.

  c) The transfer ban: a transfer ban, either nationally or internationally, as a first time penalty is also disproportionate to the amount owed. Furthermore, the Appellant has also been imposed a fine of CHF 30,000 on top of the transfer ban, and supplementary deduction of points and relegation to a lower division.

Hence the immediate application of the transfer ban would not be proportionate and appropriate.

d) The individual sanction being capable of achieving the envisaged goal: out of two primary sanctions (i.e. the fine and the ban on registering new players) and further deductions of points and relegation to a lower division imposed by the decision of the FIFA DC, either one alone is enough to compel the Appellant to pay its debts since it is the Club's interest to keep functioning normally and any extra fines greatly affect its solvency capacity; therefore, FIFA did not need to apply all of them at once.

e) The constraints which the affected person will suffer as a consequence of the sanction being justified by the overall interest in achieving the envisaged goal: in the case at hand, the affected party (i.e. the Club) is risking being put out of business for the sanctions imposed by the Appealed Decision, which certainly does not justify the overall interest in achieving the envisage goal.

f) However, the power of FIFA to apply disciplinary sanctions is inherent and may vary within a previously established range pursuant to the articles of the FDC, which means that FIFA does have the power (and certainly the obligation) to adjust the "penalty to fit the crime" on a case by case basis, which includes not only choosing the type of sanction but also the degree that each sanction should be applied, especially during this time of a worldwide pandemic.

g) Furthermore, we are dealing with a first sanction and the Appellant is in a precarious financial condition and needs to be able to continue to function at the same time that it pays its debts.

h) Hence, the FIFA DC had a larger range of possibilities to sanction the Appellant, including the possibility of imposing a smaller fine on it.

i) The Club is not trying to deviate from its obligation to pay, nor eliminating the consequences of the delay in paying its debt, but rather requesting that the sanctions imposed in the decision of the FIFA DC be proportionate, especially due to the COVID-19 pandemic. In other words, by scaling down the sanctions imposed by the Appealed Decision, FIFA and/or the CAS would still be protecting the rights of the Second Respondent at the same time that they would be enabling the Appellant to better comply with the payment since the financial situation of the Club really is precarious (aggravated by the COVID-19 pandemic) but, the Club is stone by stone trying to fix it.

➢ Further to this, the Swiss Federal Tribunal (the "SFT") has decided that, on those cases where the likelihood of the debtor to comply with the sanction is not realistic, establishing a third, complementary sanction (i.e. the deduction of points and relegation to a lower division must be considered as excessive (see SFT 4A_558/20111; the "Matuzalem case"). The Matuzalem case can be compared to the case at hand.

- Also, pursuant to Articles 42-44 of the Swiss Code of Obligations (the "SCO"), which apply to the present proceedings, the Court has the discretion to estimate the damage and the compensation to a party, i.e. the CAS has the power to scale down the penalties imposed by the FIFA DC taking into account the particular circumstances of the case at hand.

- Last, but not least, the unknown number of points to be deducted leaves the Club without the right to be heard and possibly have a say in case such deduction of points will be proportional or not. Therefore, CAS shall order FIFA to amend its decision and states the number of points which shall be deducted in case such sanction is be applied.

B. The First Respondent's position

34. On 12 July 2021, the First Respondent filed its Answer including its Exhibits in accordance with Article R31 of the CAS Code, submitting the following requests for relief:

"*In view of all the above, FIFA requests the Sole Arbitrator:*

a. To reject the Appellant's appeal in its entirety;

b. To confirm the decision FDD-7585 rendered by the member of the FIFA Disciplinary Committee on 25 February 2021;

c. To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure."

35. The submissions of the First Respondent, in essence, may be summarised as follows:

Article 15 FIFA Disciplinary Code – Failure to respect decisions

- It is worth noting from the outset that the SFT has deemed that the system of sanctions established in this provision for the event of non-compliance with FIFA's decisions or those of CAS, is lawful (see SFT 4P.240/2006).

- To impose any possible disciplinary sanction on a natural and/or legal person as provided for under Article 15 FDC, the main question to be answered by the FIFA DC – and now by the Sole Arbitrator – is limited to the fact of whether or not the financial amounts as defined in the final and binding CAS Award, have been paid to the party claiming them, namely the creditor and/or FIFA (as the case may be), or if for a certain reason the outstanding amount is not due anymore.

- As a general principle, in order to be able to assess the issue of whether or not the financial amounts as defined in the decision had been paid to the creditor and/or FIFA, or for a certain reason the outstanding amount is no longer due, the FIFA DC has to – and can only – take into consideration the facts arising after the date on which the relevant decision has been rendered. Any other consideration would fall

out the scope of the disciplinary proceedings under Article 15 FDC (see CAS 2016/A/4910; CAS 2017/A/5597; CAS 2018/A/5915).

- Despite having managed to delay the payment, the Appellant failed to comply with the CAS Award. For this reason, the Appellant was duly informed of the opening of the disciplinary proceedings on 29 January 2021 and was invited, once again, to pay the amounts due or otherwise the case would be submitted to the FIFA DC. In short, since the notification of the findings of the FIFA DRC Decision and until the filing of FIFA's Answer, the Appellant has had at least 795 days (and counting) to settle its debt with the Player. At no moment did the Appellant show any serious willingness to comply with its financial obligations.

- In sum, it is without a doubt that the FIFA DC correctly applied Article 15 FDC to the facts at its disposal in the case at stake; in particular, considering that the Appellant had breached said article by not complying with the final and binding CAS Award. Consequently, the FIFA DC imposed disciplinary measures on the Appellant (i.e. a fine and, additionally and subject to the persistent payment failure within the period of grace, a transfer ban).

Proportionality

a) The fine

- As a consequence of the outstanding amount due, the FIFA DC considered that in the present case a fine in the amount of CHF 30,000 is appropriate and proportionate.

- In order to be more specific in support of concerning the Appealed Decision's compliance with the principle of proportionality as well as the FIFA DC's longstanding practice, several decisions (non-exhaustive list) were passed in cases in which similar outstanding amounts were due and in which the same fine of CHF 30,000 was imposed:

CAS Award	**Case Number**	**Outstanding amount**	**Fine**
2017/A/5253	160475	CHF 1,909,146	CHF 30,000
2017/A/4939	160191	CHF 1,576,150	CHF 30,000
2017/A/5401	170318	CHF 1,505,786	CHF 30,000
2018/A/5657	171068	CHF 2,692,814	CHF 30,000
2018/A/5864	180196	CHF 3,875,450	CHF 30,000
2018/A/5915	180547	CHF 6,852,693.61	CHF 30,000
n/a	190127	CHF 1,556,950	CHF 30,000

- These decisions, which only constitute a small sample of cases, clearly demonstrate that the Appealed Decision was passed in accordance with the overriding principle of proportionality as well as in line with the FIFA DC's practice.

- For the sake of good order, it must be emphasised that CAS already confirmed that a fine imposed on a club which is "*equal to fines imposed on other clubs for very similar violations*" cannot be considered "*disproportionate in view of the FIFA Disciplinary Committee's longstanding practice*" (CAS 2016/A/4595).

- Furthermore, even if the above proof would still not convince the Sole Arbitrator, it is recalled that according to the consistent jurisprudence of CAS, "*CAS panels shall give a degree of deference to decisions of sports governing bodies in respect of proportionality of sanctions and shall only review the decision if it is considered evidently and grossly disproportionate to the offence (e.g. CAS 2016/A/4595 Al Ittihad Saudi, FIFA, CAS 2009/A/1817 & CAS 2009/A/1844 et al)*". Thus, we can conclude that the fine is not grossly disproportionate to the offence committed and the Sole Arbitrator shall apply a degree of deference to the FIFA DC's decision and confirm the fine of CHF 30,000.

- With respect to the Appellant's allegation that "[t]*he amount of CHF 30,000 as a fine is way higher than previous cases which higher amounts imposed by FIFA*", the above table demonstrates that this is simply not true. Such statement becomes particularly malicious when it is considered that the Appellant was already imposed the same fine by CAS when the amount due was lower than in this case (CAS 2017/A/5401).

b) The potential transfer ban

- With respect to the imposition of the transfer ban on the Appellant, FIFA refers to the content of FIFA Circular no. 1681 dated 11 July 2019, in which the new FDC was introduced.

- It is enough to read Article 15 of the FDC to notice that the first sanction in the event of failure to comply with a CAS award is a transfer ban until the complete amount is paid (which has been considered by CAS to be a more lenient first sanction that the deduction of points (CAS 2020/A/6755)). The Appellant cannot allege ignorance of the regulations.

- In any case, FIFA recalls that the transfer ban provided in the Appealed Decision constitutes a statutory time limit, so there is no room to deviate from it, even if the Appellant does not agree with it. Moreover, such sanction is adequate and necessary to the situation of the Appellant.

- CAS already confirmed that in order to determine if a sanction is to be considered proportionate, "*various benchmarks seem appropriate: the gravity of the illegal act [...]; the power to dissuade the offender from repeating the same illegality in the future; the importance of the rule of law that is being protected*". In particular, these three "benchmarks" are the ones "*that most legal orders agree between them that*

must anyway be accounted for when measuring a "proportional" sanction" (CAS 2014/A/3793).

- FIFA is convinced that imposing a ban until the payment of the amounts contained in the CAS Award is an appropriate, necessary and proportionate sanction.

- Consequently, it is worth recalling, that according to Article 8 Swiss Civil Code (the "SCC") it is the Appellant's duty to objectively demonstrate the existence of an alleged fact. Since the latter has been unable to do so, FIFA is of the opinion that the Sole Arbitrator should not take into consideration such argument.

- Furthermore, CAS jurisprudence has stated that a transfer ban may entail some financial benefits to the debtors (i.e. saving and earning money in order to restructure its balance sheets). Thus, the transfer ban clearly does not cause the club to go out of business.

- *Ad abundantiam,* it should also be clarified that such potential transfer ban does not impinge the Appellant's rights. FIFA underlines that the transfer ban foreseen in the Appealed Decision will only apply if the Appellant fails to pay the outstanding amount within the granted period of grace.

- The Appellant claims with respect to the imposition of a fine and a transfer ban that "*either one alone is enough to compel the Appellant to pay its debts since it is the Club's interest to keep functioning normally*". If this statement is true, then why is the Appellant so worried about the potential transfer ban? According to this remark, the fine is more than enough to pressure the Appellant to comply with the CAS Award within the granted deadline, meaning that the transfer ban would not be triggered and rendering the Appellant's arguments regarding the transfer ban completely meaningless.

- Furthermore, in another unsuccessful attempt to rebut the proportionality of the sanctions, the Appellant has the audacity to say that "*[w]e are dealing with a first sanction [...]*" when this is simply not true.

c) The period of grace of 30 days

- Firstly, it is underlined that the 30-day period of grace is a statutory time limit, so there is no room to deviate from it, even if the Appellant does not agree with it.

- Moreover, this period constitutes an advantage towards the Appellant because this is nothing else than an embargo period before a further sanction (*in casu*, the transfer ban) is implemented. Additionally, the Appellant failed to establish why it needs 60 more days, particularly when it is recalled that the Appellant has been illegally withholding the creditor's money for at least 796 days (at the time of filing FIFA's Answer) without showing any serious willingness to pay it.

- Furthermore, the existence of the COVID-19 pandemic is a public and well-known fact, the mere occurrence of this does not imply per se the impossibility of fulfilling obligations.

- Besides, FIFA highlights that the Appellant failed to comply with its financial obligations towards the Player since 2016 (i.e. long before the COVID-19 outbreak). Lastly, FIFA published a document concerning COVID-19 Regulatory Issues in April 2020 stating that no exceptions will be granted from the obligation to comply with financial obligations. In this regard, FIFA will continue to apply Article 15 FDC in the event of failure to respect these decisions.

- With respect to the principle of *pacta sunt servanda*, Article 2 SCC and CAS jurisprudence, the sole fact that the Appellant may be undergoing financial problems – which was not demonstrated by any means – does not exonerate it from its obligations to pay the outstanding amounts owed to the Player.

d) Other irrelevant allegations of the Appellant

- The Appellant has attempted to decontextualize the Matuzalem case when comparing it to the situation at hand. Not only the Appellant is not a natural person, but also the amount in question is considerably lower than the amount due in the Matuzalem case. Obviously, the situation is not comparable to the matter at stake since the sanction imposed on the Appellant does not prevent the Appellant from continuing its football activity or from obtaining any sort of income.

- Furthermore, the Appellant has relied on Articles 42 to 44 SCO. However, this is incorrect. The present appeal is not a case in which the damage suffered by a party or the compensation to be paid is decided.

- Finally, FIFA must emphasise that the deduction of points or the relegation would only be imposed in case of continuous failure to respect the CAS Award and would be subject of a new decision from the FIFA DC before which the Appellant would be given a right to be heard. In other words, it is incorrect to say that the Appellant has been imposed "*a third, complementary sanction*".

C. The Second Respondent's position

36. On 30 June 2021, the Second Respondent filed his Answer together with its Exhibits in accordance with Article R31 of the CAS Code, submitting the following requests for relief:

"*In view of the above, the Player herein submits to the attention of the CAS Panel, the following requests for relief:*

FIRST – To set aside the Appeal Brief in full;

SECOND – To confirm that the Player has no standing to be sued by the Appellant in relation to the Appealed Decision.

THIRD – To confirm the terms and conditions of the Appealed Decision in full;

FOURTH – To order the Appellant to pay the full amount of the CAS arbitration costs relating the present dispute at the end of the ongoing arbitration; and

FIFTH – To order the Appellant to also pay a contribution towards the legal costs, fees and other related expenses of the Player regarding the ongoing matter, in the forms of CHF 5,000."

37. The submissions of the Second Respondent, in essence, may be summarised as follows:

In general

- The party having standing to be sued in matters covered by Article 75 SCC is – according to the Swiss legal doctrine – "only" the association. Pursuant to this, the appeal cannot be directly primarily against the members of the association.

- Article 75 SCC applies to decisions made by an association under specific conditions. In this respect, a dispute between two association members (i.e. two football clubs) is not a dispute appealable under Article 75 SCC since the sports association (i.e. FIFA) is not acting in a matter concerning its relationship to one of its members, but rather as a first-instance body.

In this case

- It becomes undisputed that under Swiss law and the long-standing understanding of CAS, an entity has standing to be sued, only if something is sought from it and it is personally obliged by the "*disputed right*" at stake.

- In the case at hand, even though the Player for obvious reasons is interested in the outcome of these proceedings, he was not a direct party to the FIFA proceedings leading to the Appealed Decision, which the Appellant herein challenges.

- In fact, the FIFA proceedings simply had the purpose to ensure the commitment of the Appellant as a debtor towards the Player as a creditor and to sanction the Appellant for not complying with the referenced CAS Award.

- The proceedings before the FIFA DC had, therefore, the intention to protect primarily an essential interest of FIFA, namely the full compliance with decisions rendered by CAS within a procedural legal framework, which its members agreed and developed.

- In essence, it means that the purpose of the Appealed Decision and of the appeal filed in front of CAS against it, regards only the existence of a disciplinary infringement by the Appellant and the power of FIFA to sanction it.

- There is no manner to consider the Player as "*the passive subject*" of the claim submitted by the Appellant before CAS by way of an appeal against the Appealed

Decision. Moreover, there is no element or concern in the Appealed Decision regarding the rights of the Player.

- In continuation, the Player has no power whatsoever to sanction the failure of the Appellant to comply with the CAS Award. Within these circumstances, it is clear that the Player does not have any standing to be sued and cannot as such be identified as a respondent in the present arbitration.

- Furthermore, it is necessary to bear in mind that the burden of proof to demonstrate that the aforementioned elements, which set aside any eventual possibility of the Player having standing to be sued were somehow not applicable to the case at hand rested on the Appellant, which – *data venia* – failed to do in its appeal.

- Indeed, it is important to stress that the Appellant failed to provide any sort of position during the investigation phase conducted by the FIFA DC and the Single Judge of the FIFA DC having rendered the Appealed Decision.

- Moreover, the Appeal Brief filed by the Appellant before CAS relies, basically, on the proportionality of the sanctions imposed by the Single Judge of the FIFA DC, with no mentioning whatsoever of the Player.

- Hence, the conclusion is that the Player in these appeal proceedings has no standing to be sued, as he neither was a party to the first instance proceedings at the FIFA level nor may be considered to have any part of or influence over the disciplinary power of FIFA, which is the subject of the appeal in this matter.

V. JURISDICTION

38. Article R47 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

39. The jurisdiction of CAS derives from Article 57(1) of the FIFA Statutes (2021 edition) which reads:

"*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*"

40. Further to this, the jurisdiction follows from Article 49 FDC:

"*Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes.*"

41. The jurisdiction of CAS is not disputed by the Parties.

42. The jurisdiction is further confirmed by the Order of Procedure duly signed by the Parties.

43. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

44. Article R49 of the CAS Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

45. The Sole Arbitrator notes that pursuant to Article 57(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

46. In accordance with Articles R47 and R48 of the CAS Code, the Club filed its Statement of Appeal on 4 May 2021, which is within the 21 days deadline. The Statement of Appeal complied with the other conditions set out at Article R48 of the CAS Code.

47. Therefore, the appeal was timely submitted and is admissible.

VII. APPLICABLE LAW

48. Article R58 of the CAS Code provides more specifically the following:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

49. Article 56(2) of the FIFA Statutes reads as follows:

> "*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

50. The Sole Arbitrator notes that the FIFA Regulations, in particular the FDC (2019 edition), are applicable, with Swiss law applying to fill in gaps or *lacuna* within those regulations.

51. In the context of the present dispute, Article 6 par. 3 FDC is relevant for the dispute, which provisions provides:

> "*1. The following disciplinary measures may be imposed on natural and legal persons:*
>
> *a) warning;*
> *b) reprimand;*
> *c) fine; [....].*
>
> *3. The following disciplinary measures may be imposed on legal persons only:*
>
> *a) transfer ban; [....].*
>
> *4. Fines shall not be less than CHF 100 or more than CHF 1,000,000.*
>
> [....]
>
> *6. The disciplinary measures provided for in this Code may be combined.*"

52. Further to this, Article 15 FDC was specifically applied. Paragraph one of such provision reads as follows:

> "*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.* [....]."

VIII. MERITS

A. Introduction

53. The object of the present dispute is the Appealed Decision, whereby the FIFA DC ordered the Club to pay the amounts due under the CAS Award, granting a final deadline of 30 days as from notification of the Appealed Decision in which to settle said amount, by absence of which a transfer ban will be implemented automatically. Further to this, the Club was ordered to pay a fine in the amount of CHF 30,000, for failure to comply with the CAS Award. The Club challenges the Appealed Decision and requests it to be set aside for reason that the sanctions are disproportionate, more specifically, that the deadline to pay and the sanctions imposed to the Club are disproportionate; FIFA defends the Appealed Decision and asks the Sole Arbitrator to confirm it. Similarly, the Second Respondent also asks the Sole Arbitrator to dismiss the appeal, but based on the fact that it has no standing to be sued in relation to the Appealed Decision. The Second Respondent did not raise any other arguments next to the issue of standing to be sued.

54. As to the position of the Second Respondent that is has no standing to be sued, and for the avoidance of any doubt, the Sole Arbitrator emphasises that the question of standing to be sued (similar as to the standing to appeal (or to sue)) is – according to settled jurisprudence of the CAS (see, *inter alia*, CAS 2009/A/1869; CAS 2013/A/3140; and CAS 2015/A/4131) and the Swiss Federal Tribunal (the "SFT") (see SFT 128 II 50, 55) – a question related to the merits of the case. Accordingly, the Sole Arbitrator finds that the issue of the Second Respondent's lack of standing to be sued does not necessarily have to be addressed first. Indeed, an arbitral tribunal is free to determine how to address the sequence of the different substantive questions at stake in legal proceedings. The Sole Arbitrator notes that this approach is consistent and in line with CAS jurisprudence (see, *inter alia*, CAS 2016/A/4903, CAS 2020/A/7092 and CAS 2020/A/7280-7298).

55. Therefore, and against the above legal background of the Sole Arbitrator's freedom to address the sequence of the different substantive questions at stake in legal proceedings, in the next paragraphs the Sole Arbitrator will proceed directly to the question whether the sanctions as ordered in the Appealed Decision are disproportionate, more specifically, if the deadline to pay and the sanctions imposed to the Club are disproportionate, at the same time noting that it is undisputed between the Parties that the underlying CAS Award which the Club failed to comply with was final and binding and that the Club has not paid the amounts due under that Award.

56. In the next paragraphs the Sole Arbitrator will address the arguments in more detail in light of the main issue in the present arbitration of whether the sanctions imposed by the FIFA DC in the Appealed Decision should be amended for being disproportionate.

B. The Main Issues

Preliminary remarks

57. As a first point of departure, the Sole Arbitrator wishes to stress that Article 15 FDC provides FIFA with a clear legal basis to sanction a club that failed to pay another club a sum of money following an instruction to do so by the FIFA DRC. The Sole Arbitrator finds that Article 15 par. 1 FDC clearly sets out the legal framework applicable in the event of a club's failure to comply with payment obligations set by a body of FIFA. It therefore enables the Club to foresee the potential consequences of failing to comply with a decision passed by FIFA. It is clear, so the Sole Arbitrator finds, that under Article 15 FDC, a club that is obliged to comply with a FIFA decision may be subject to a number of measures, such as fines, point deductions, transfer bans, etc., in the event it disregards a decision ordering it to pay an amount of money to another club: in other words, the FIFA regulations clearly indicate not only the existence of a violation, but also the various kinds of sanctions (see CAS 2018/A/5900 and CAS 2018/A/5663).

58. In addition, the Sole Arbitrator remarks that the FIFA DC's system of sanctions, and its proceedings, have been confirmed by the SFT as being lawful (*e.g.*, decision of 5 January 2007, 4P.240/2006) and represents a fundamental feature of the FIFA regulatory framework, as it reinforces the obligations of the (direct and indirect) members of FIFA to abide by the decisions passed by its bodies: a club disrespecting an obligation can clearly expect that a sanction be imposed on it as a result of its behaviour.

59. As a second preliminary remark, the Sole Arbitrator notes that there is an established line of CAS jurisprudence which states that sanctions imposed by the FIFA DC can only be amended by a CAS panel if the sanction(s) concerned is (are) evidently and grossly disproportionate to the offence. Accordingly, the Sole Arbitrator wishes to lay emphasis on the fact that he could, therefore, only grant the Club the requests for relief, as quoted above, if he considers the sanctions imposed by the FIFA DC to be "*evidently and grossly disproportionate to the offence*" (see, *inter alia*, CAS 2009/A/1817, CAS 2009/A/1844, CAS 2014/A/3562, CAS 2015/A/4271 and CAS 2016/A/4595).

60. As a third remark at the outset of the merits, the Sole Arbitrator notes that the principle of proportionality implies that there must be a reasonable balance between the kind of the misconduct and the sanction. To be observed, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate, a measure must not exceed what is reasonably required in the search of the justifiable aim (see, *in particular*, CAS 2005/C/976&986, §§ 139-140, citing CAS precedents, legal doctrine and relevant Swiss jurisprudence).

61. Finally, the Sole Arbitrator wishes to refer to Article 8 of the SCC, according to which "[u]*nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*". By the same token, also in light of the burden of proof (which also derives from Article 8 SCC) as established

in Article 36(2) of the FDC, following which "[a]*ny party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact*", it is clear to the Sole Arbitrator that the burden of proof in the present arbitration therefore falls on the Club.

The arguments

62. Dealing now with the Club's arguments, the Sole Arbitrator will first focus on the Club's argument that the deadline of 30 days to pay the amount of EUR 7,500,000 is unrealistic, also in light of the COVID-19 pandemic and the precarious financial situation of the Club. In this regard, the Sole Arbitrator first notes that the Club's position is seriously undermined by the fact that more than 2 years have elapsed since the FIFA DRC Decision. In addition, the CAS Award was issued on 14 December 2020, without any payment – not even partially – being made to the Second Respondent whatsoever. Therefore, the Club's failure to pay the outstanding amount to date seriously weakens the Club's position regarding proportionality and its request for leniency, as will also be further discussed below. Instead, it is clear to the Sole Arbitrator that the Club has demonstrated no intention whatsoever of meeting its debts to its creditors, also bringing in mind that the Club did not participate in the FIFA disciplinary proceedings leading to the Appealed Decision. In this regard, and to avoid misunderstanding, the 30 day-deadline also clearly derives from the FIFA regulations, in particular Article 15 of the FDC. As such, the Sole Arbitrator does not see reason to decide that the 30 days are unrealistic.

63. The Sole Arbitrator must also disregard the Club's alleged potentially precarious financial situation. In fact, despite alluding to being in a difficult financial situation, the Sole Arbitrator emphasises that the Club did not submit a single piece of evidence to support this assertion. Following Article 8 SCC, as quoted above, the Club bears the burden of proof in establishing its allegedly difficult financial situation – and the Sole Arbitrator considers that the Club clearly failed to meet that burden. The Sole Arbitrator finds that in the absence of any evidence to support its position, the Club's claims regarding its financial position must be disregarded. In any event however, CAS jurisprudence (see, for example, CAS 2013/A/3358, CAS 2018/A/5779, and the SFT decision of 5 January 2007, 4P.240/2006) is also clear on this matter that, in general, a difficult financial situation is no valid reason for a club to fail to pay the debts it has.

64. The Sole Arbitrator is also fully aware of the negative consequences of the COVID-19 pandemic. However, in the present case it concerns outstanding amounts as from 2016, which were therefore due long before the pandemic started. Further to this, it is also not enough to simply refer to the COVID-19 pandemic, but the Club, also here, at the least, had to substantiate with documentary evidence that this pandemic seriously affected its financial situation and that, consequently, it was not able to pay the Second Respondent. However, the Club did not substantiate this, at all, and so these Club's arguments must be rejected.

65. As to the argument of the Club that the fine of CHF 30,000 is "*way higher than previous cases which higher amounts imposed FIFA*", as referred to above, also here the Sole Arbitrator notes that this was not substantiated by the Club, at all, and therefore the Club fails to meet the burden of proof as laid down in Article 8 SCC. Instead, the Sole

Arbitrator takes note of the table of precedents that was submitted by FIFA (see above para. 35), which clearly demonstrates that a fine of CHF 30,000 in case of continued non-compliance with a FIFA decision related to clubs where amounts due were comparable, or even lower, does not deviate from the standard practice of the FIFA DC.

66. As to the fine, the Club also argues that the FIFA DC could have imposed a "*smaller fine*". However, the Sole Arbitrator does not find a CHF 30,000 fine to be disproportionate considering it amounts to approximately 0.4% of the amount owed to the Second Respondent (taking into account the amounts as ordered by the FIFA DC, even disregarding the amounts of interest to be paid over these outstanding amounts). Also here the Sole Arbitrator takes note of the table of precedents that was submitted by FIFA. As confirmed by CAS jurisprudence, a fine imposed on a club "*equal to fines imposed on other clubs for very similar violations*" cannot be considered disproportionate (CAS 2016/A/4594), and the Sole Arbitrator notes that also a fine amounting to more than 4% was not considered as disproportionate by CAS panels in previous CAS cases (see, *inter alia*, CAS 2018/A/5551; and also CAS 2016/A/4719).

67. In this respect, it also makes sense to the Sole Arbitrator that FIFA places a strong emphasis on the value of the outstanding debt when determining the appropriate sanction(s), which is also confirmed in CAS jurisprudence following which the outstanding amount of debt does, in fact, provide the most logical nexus between the severity of the violation committed and the sanctions to be imposed (see, *inter alia*, CAS 2018/A/5663). In fact, the correlation between the "*outstanding amounts due*" and the measure of the sanction satisfies the principles of predictability, equal treatment and procedural fairness: any club could expect in good faith that the more severe its violation, the more severe the sanction that it might be subjected to (see, *inter alia*, CAS 2018/A/5900 and CAS 2018/A/5551), considering that the fine of CHF 30,000 falls within the scope allowed by FIFA's regulations, in particular Article 6(4) of the FDC.

68. In fact, as the Panel rightly considered in CAS 2018/A/5900, the FIFA DC would be accused of unequal treatment if it did not look to apply a measure of consistency in its sanctioning. Therefore, the Sole Arbitrator considers that taking the amount of the unpaid debt in the CAS Award into account is a sensible and logical approach to follow.

69. Once again, the Club bears the burden of proof that a smaller fine would be justified. However, the Sole Arbitrator concludes that the Club has failed to meet its burden.

70. Accordingly, the Sole Arbitrator considers the fine levied in the Appealed Decision to be appropriate and proportionate to this particular case and, consequently, the Club's request for the fine levied in the Appealed Decision should be reduced is so rejected.

71. Considering the Club's argument that the transfer ban as a first penalty is also disproportionate to the amount owed, also here the Sole Arbitrator does not follow the Club's reasoning. Firstly, to avoid misunderstanding, the transfer ban will only apply if the Club fails to pay the Second Respondent the amounts due under the Appealed Decision within the period of 30 days. In fact, only upon expiry of this final deadline of 30 days, a transfer ban will be pronounced until the complete amount due is paid. Put differently, it is in the hands of the Club to avoid a transfer ban by paying the amount

that has already been due for several years, as set out above, and such sanction does not apply yet and the Club can so still avoid such sanction (see, *inter alia*, CAS 2018/A/5838).

72. Further to this, the FIFA Disciplinary Committee was fully entitled to pronounce such (conditional) sanction, also in combination with any other sanctions, as the possibility for the imposition of a transfer ban also follows from the regulations, more specifically Article 15 FDC, similar as to the fact that the ban will be implemented automatically, without a further formal decision, which also clearly derives from the Appealed Decision. In this regard, the Sole Arbitrator does not want to leave unmentioned that also CAS jurisprudence is clear as it confirmed that the imposition of a transfer ban until the complete payment due is considered adequate (see, *inter alia*, CAS 2020/A/7186). The Sole Arbitrator finds it to be within the FIFA DC's power, based on the applicable FIFA regulations, to decide as it did: to impose a (conditional) transfer ban if debts would not be made within the regulatory period of 30 days, which, as outlined in FIFA Circular no. 1681, has shown to be an effective instrument (see CAS 2020/A/6755).

73. The Sole Arbitrator is fully aware that a transfer ban will have serious consequences. However, as set out above, such ban can still be avoided. Moreover, the Club did not substantiate, at all, which effects a transfer ban will have on the Club. In fact, it only stated that it "*is risking being put out of business*". Therefore, also here the Club fails to comply with Article 8 SCC and it should at least have submitted proof in this respect, which it failed to do. Moreover, as FIFA rightly stated, any transfer ban would only affect the Club's ability to register new players and not selling players in order to clear its debts (see, *inter alia*, CAS 2020/A/7383, CAS 2020/A/7378 and CAS 2020/A/7255). In other words, even in case of a transfer ban the Club can still generate transfer fees.

74. Further to this, similar as to the transfer ban which will so only be imposed in case the amount if not paid within a period of 30 days, any deduction of points and a relegation to a lower division may only 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 reasons, as clearly follows from the Appealed Decision. Differently put, also here, it is in the hands of the Club to avoid any further sanctions, noting at the same time that the FIFA regulations, in particular Article 6 para. 6 of the FDC, provide that disciplinary measures may be combined, which is also supported in, and can be derived from, the CAS jurisprudence (see, *inter alia*, CAS 2012/A/2740).

75. The Club's reference to the Matuzalem case will also not be of assistance. Indeed, as FIFA also rightly considered, the Matuzalem case is not comparable to the case at hand, and the Club is decontextualizing the Matuzalem case. In fact, Matuzalem was a player, the amount that was due in the Matuzalem case was significantly higher, and the Club is still continuing its football activities, all contrary to the situation with Matuzalem.

76. In relation to the Club's argument that the FIFA DC "*does has the power (and certainly the obligation) to adjust the "penalty to fit the crime" on a case by case basis which includes not only choosing the type of sanction but also the degree that each sanction should be applied*", the Sole Arbitrator notes that several options were at the disposal of the FIFA DC pursuant to Article 15 para 1 FIFA DC and that its decision to opt for a

conditional transfer ban and a fine in the amount of CHF 30,000 should not be considered as disproportionate, also having mind, as set out above, that this approach indeed appears to have been FIFA DC's general practice and also follows from the FDC.

77. As to the Club's request for leniency in terms of milder sanctions, the Sole Arbitrator finds that there is no reason to amend the Appealed Decision in this respect, also not in accordance with Article 42-44 SCO. The Sole Arbitrator emphasises that the only task of the Sole Arbitrator in the present arbitration is to analyse whether or not the Club respected and fulfilled the FIFA DRC Decision, not to analyse its content (see, *inter alia*, CAS 2012/A/3032), which has been acknowledged in a number of CAS decisions (see, *inter alia*, CAS 2008/A/1610, CAS 2013/A/3326, CAS 2013/A/3380 and CAS 2017/A/4271). Accordingly, the only issue to be resolved in the present arbitration is whether or not the Appealed Decision should be amended for being disproportionate, which is not the case, as set out above. Consequently, any request for leniency is dismissed and such request, based on the Articles 42-44 of the SCO, will be rejected.

78. On balance, the Sole Arbitrator finds that there is a reasonable balance between the misconduct of the Club and the sanctions imposed. As a matter of fact, the measure taken by the FIFA DC is capable of achieving the envisaged goal, which measure is also necessary to reach the envisaged goal, and the constraints which the Club will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, the Sole Arbitrator finds that the sanctions imposed do not exceed what is reasonably required in the search of the justifiable aim in this case.

79. Finally, also the request made by the Club that the CAS shall order FIFA to amend its decision and should state the number of points that shall be deducted in case such sanction will be applied, must be dismissed. Also here, the Sole Arbitrator recalls that any such sanctions may only 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 reasons, as set out above. As such, it is not only subject to non-payment of the amounts due within the period of 30 days, and so conditional, as set out above, but the word "may" makes it not even certain that such extra sanctions will be imposed on the Club. Therefore, the Sole Arbitrator sees no reason to accept this request to order FIFA to state the numbers of points that may (or not) be deducted.

80. Consequently, and having carefully considered all the arguments of the Club, the Sole Arbitrator finds that the Appealed Decision is not invalid and that the disciplinary sanctions imposed on the Club by the FIFA DC are not disproportionate. Against the above background, also in light of CAS jurisprudence, the Sole Arbitrator finds that there is no reason to amend the sanctions imposed by the FIFA DC as the sanctions concerned are not evidently and grossly disproportionate to the offence. To the contrary, the sanctions under review, so the Sole Arbitrator finds, seem to be fully proportionate.

C. Conclusion

81. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator dismisses the Appeal by the Club in its entirety and upholds the Appealed Decision as issued by the FIFA DC.

82. Given the Sole Arbitrator's findings on the issue of whether the sanctions imposed by the FIFA DC in the Appealed Decision should be amended for being disproportionate which is now denied, the Sole Arbitrator does not consider it necessary to make a final determination as to the other substantive issues that are at stake under the merits, i.e. the standing to be sued issue as was raised by the Second Respondent, as referred to above.

83. Any further claims or requests for relief are dismissed.

IX. COSTS

84. The Sole Arbitrator notes that, although these proceedings are of a disciplinary nature, Article R65 of the CAS Code is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature Accordingly, Article R64 CAS Code shall apply.

85. Article R64.4 of the CAS Code provides that:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

86. Article 64.5 of the CAS Code provides that:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

87. In light of the outcome of these proceedings, notably the fact that the appeal is dismissed in its entirety, the Sole Arbitrator finds that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the Appellant.

88. Furthermore, in consideration of the outcome of the proceedings, that FIFA did not need to use external counsel and no hearing was held, the Sole Arbitrator rules that the Club Al Arabi S.C. is ordered to pay to the Second Respondent an amount of CHF 3'000 (three thousand Swiss francs) as a contribution towards his legal costs and expenses incurred in connection with the present proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Arabi Sports Club against the decision rendered by the FIFA Disciplinary Committee on 25 February 2021 is dismissed.

2. The decision issued on 25 February 2021 by the FIFA Disciplinary Committee is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by Al Arabi Sports Club.

4. Club Al Arabi S.C. is ordered to pay to Mr Sérgio Dutra Junior an amount of CHF 3'000 (three thousand Swiss francs) as a contribution towards his legal costs and expenses incurred in connection with the present proceedings.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 30 September 2021

THE COURT OF ARBITRATION FOR SPORT

Frans M. **de Weger**
Sole Arbitrator