

Disciplinary Committee

FIFA[®]

Date: 29 July 2021

Sent
FC Astana

C.C:
Kazakhstan Football Federation, Mr. Laszlo Kleinheisler

club@fcastana.kz; prokopets@silalawyers.com; fedotov@silalawyers.com

Notification of the grounds of the Decision

Ref. FDD-8096

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 03 June 2021.

The Kazakhstan Football Federation (in copy) is kindly requested to forward this decision to the club FC Astana.

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 3 June 2021

DECISION BY:

Mr. Yasser Al-Misehal, Saudi Arabia

ON THE CASE OF:

FC Astana

(Decision FDD-8096)

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 25 February 2020, the Dispute Resolution Chamber decided that the Club FC Astana (hereinafter also referred to as: *'the Respondent'*) had to pay to the player Laszlo Kleinheisler (hereinafter also referred to as: *'the Claimant'*) compensation for breach of contract in the amount of EUR 940,500.
3. The terms of the decision of the Dispute Resolution Chamber were duly communicated to the parties on 10 March 2020, whilst the grounds of said decision were notified on 19 May 2020.
4. Following the notification of the grounds, the Respondent lodged an appeal before the Court of Arbitration for Sport (CAS), which issued a Consent Award on 27 January 2021 (hereinafter also referred to as: *'the CAS Award'*).
5. In this respect, the CAS ruled as follows: -

"1. The Panel, with the consent of the Parties, hereby ratifies the Settlement Agreement executed by the Football Club Astana, Mr. Laszlo Kleinheisler and NK Osijek S.D.D. on 26 November 2020 and incorporates its terms into this consent award.

2. The terms of the Settlement Agreement dated 26 November 2020 replace the Decision of the Single of the Judge Dispute Resolution Chamber passed on 25 February 2020, which is left without effect.

3. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement executed by the Parties on 26 November 2020.

4. The costs of the arbitration, to be determined by the CAS Court Office, shall be borne by the Football Club Astana as established in the Settlement Agreement.

5. Football Club Astana shall make a contribution of EUR 32,335.00 towards the legal costs of Mr. Laszlo Kleinheisler as established in the Settlement Agreement.

6. All other and further claims or prayers for relief are dismissed."

6. In this regard, the Settlement Agreement dated 26 November 2020 ratified pursuant to the CAS Award (hereinafter also referred to as: *'the Settlement Agreement'*), read as follows: -

"(...) The parties wish to settle this dispute once and for all under the following terms:

1. [Football Club Astana] consents to owing an amount of € 800,000.00 net (in words: Euros Eight Hundred Thousand) to the [Player Mr. Laszlo Kleinheisler], which will be paid in three instalments as follows:

a) The first instalment of € 150,000 (in words: Euros One Hundred and Fifty Thousand) is due to be paid immediately, but no later than by December 1st, 2020.

b) The second instalment of € 325,000 (in words: Euros Three Hundred and Twenty-Five Thousand) is due to be paid on April 15th, 2021.

c) The third and final instalment of € 325,000 (in words: Euros Three Hundred and Twenty-Five Thousand) is due to be paid on June 15th, 2021.

2. The [Player Mr. Laszlo Kleinheisler] will instruct [Football Club Astana] in writing in regards to the account in which to receive the aforementioned payments. If the [Football Club Astana] will not receive such a written instruction prior to the due date, [Football Club Astana] will make the payments to the following account of the [Player Mr. Laszlo Kleinheisler]:

(...)

3. Should [Football Club Astana] be in default with one of the above-mentioned payments for more than three banking days, the remaining amount becomes due immediately.

4. [Football Club Astana] will pay to the [Player Mr. Laszlo Kleinheisler] together with the third and final instalment a contribution to the [Player Mr. Laszlo Kleinheisler's] legal fees amounting to EUR 32,335.00 € (in words: Euros Thirty-Two Thousand and Three Hundred and Thirty-Five). The [Football Club NK Osijek S.D.D.] waives a possible contribution towards its legal costs.

5. [Football Club Astana] waives all its claims against the [Player Mr. Laszlo Kleinheisler] and the [Football Club NK Osijek S.D.D.] especially but not limited to the counterclaim brought forward during the DRC proceedings, whether due or not due, whether known or unknown.

6. [Football Club Astana] will bear all costs of the CAS arbitration proceedings, including but not limited to the cost of the consent award. Should either [Player Mr. Laszlo Kleinheisler] or the [Football Club NK Osijek S.D.D.] be burdened with any court costs arising out of appeal proceedings, [Football Club Astana] will indemnify them.

7. Once the consent award has been paid in full, the [Football Club NK Osijek S.D.D.] waives all possible claims it may have concerning a possible refund of costs against [Football Club Astana] and the [Player Mr. Laszlo Kleinheisler].

8. This Settlement Agreement settles the aforementioned dispute between the parties once and for all.

9. The Parties hereby request the CAS to include the present Settlement Agreement in a Consent Award, confirming all the above terms and charging the costs of the CAS procedure on [Football

Club Astana], *whit each Party bearing its own costs, with the exception of the payment obligation set out in Para. 4 above.*"

7. No challenge was lodged before the Swiss Federal Tribunal against the aforementioned CAS Award.
8. On 27 April 2021, as the Claimant had only received a partial payment of EUR 150,000 from the Respondent corresponding to the first instalment as established in the CAS award, the legal representative of the Claimant requested the initiation of disciplinary proceedings and for sanctions to be imposed upon the Respondent for failure to comply in full with the CAS Award dated 27 January 2021.
9. On 3 May 2021, in light of the foregoing, and as the amounts as established above were not paid to the Claimant, the Secretariat to the FIFA Disciplinary Committee (hereinafter also referred to as: *'the Secretariat'*) opened disciplinary proceedings against the Respondent. In this regard, the Respondent was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 20 May 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 FIFA Disciplinary Committee would take a decision based on the documentation in its possession, should the Respondent fail to submit its position by the specified deadline.
10. On 4 May 2021, the legal representative of the Respondent requested an extension of the time limit within which to submit its position.
11. On the same date, the Secretariat granted an extension of six (6) days to the Respondent, and therefore invited the Respondent to submit its position to the Secretariat by 15 May 2021 at the latest. In addition to the former, the parties were also informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 3 June 2021.
12. No position was provided by the Respondent.

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In view of the circumstances of the present matter, the Single Judge decided to first address the procedural aspects of the present matter, namely, his jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with the CAS Award as well as the potential sanctions resulting therefrom.
- A. Jurisdiction of the FIFA Disciplinary Committee**
2. First of all, the Single Judge noted that at no point during the present proceedings did the Respondent challenge his jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).

3. Notwithstanding the above and for the sake of good order, the Single Judge found it worthwhile to emphasize that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Single Judge may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

B. Applicable legal framework

4. With regard to the matter at hand, the Single Judge pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the CAS Award, was committed after the 2019 FDC entered into force. As a result, he deemed 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*").
5. Having established the above, the Single Judge wished to recall the content and scope of art. 15 of the FDC in order to duly assess the case at hand.
6. According to this provision:
 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.*
7. Moreover, for the sake of good order, it is worth emphasizing that in line with art. 54 par. 1 h) of the 2019 FDC, cases involving matters under art. 15 of the aforementioned code may be decided by one member of the Disciplinary Committee alone, acting as a single judge, as in the present case.
8. Finally, the Single Judge emphasized that, equal to the competence of any enforcement authority, he cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable.

9. His jurisdiction being established and the applicable law determined, the Single Judge subsequently turned his attention to the Consent Award issued by the Court of Arbitration for Sport on 27 January 2021.

C. Merits of the dispute

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

10. The above having been established, the Single Judge once again recalled that as no challenge was lodged before the Swiss Federal Tribunal against the aforementioned CAS Consent Award, which is enforceable.
11. In view of what has been explained above, the Single Judge is not allowed to analyse the case decided by the Court of Arbitration for Sport as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Respondent complied with the enforceable award rendered by CAS on 27 January 2021.
12. In these circumstances, the Single Judge observed that the Claimant has confirmed receipt of payment of EUR 150,000 only from the Respondent.
13. In this context, the Single Judge likewise observed that the Respondent has not provided proof of any further payment(s). Neither has the Claimant confirmed receipt of any of the still outstanding amounts in the course of the present disciplinary proceedings.
14. Against this background, the Single Judge concluded that the Respondent had failed to pay to the Claimant the full outstanding amounts due to it in accordance with the CAS Award and was therefore in breach of art. 15 FDC.
15. As a result, the Respondent is considered guilty of non-compliance with a financial decision under the terms of art. 15 of the FDC.

II. Summary

16. In view of the foregoing, the Single Judge concluded that the Respondent, by its conduct as described above, violated art. 15 of the FDC.
17. Therefore, the Single Judge considered that the Respondent is to be sanctioned for the abovementioned violation.

III. The determination of the sanction

18. With regard to the applicable sanctions, the Single Judge observed in the first place that the Respondent is a legal person, and as such could be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

19. In these circumstances, the Single Judge underlined 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.
20. This being established, it is emphasized that the Respondent withheld 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 total amounts due.
21. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regarded a fine amounting to CHF 25,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
22. In application of art. 15 par. 1 b) of the FDC, the Single Judge considered a final deadline of 30 days as appropriate for the amounts due to be paid to the Claimant.
23. 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 amounts due are paid. 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.
24. For the sake of good order, the Kazakhstan Football Federation 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 Kazakhstan Football Federation is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Kazakhstan Football Federation fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee 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.

III. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. FC Astana is found responsible for failing to comply in full with the award passed by the Court of Arbitration for Sport on 27 January 2021.**
- 2. FC Astana is ordered to pay to the Player Mr. Laszlo Kleinheisler as follows:**
 - EUR 800,000 as per the terms of the Settlement Agreement dated 26 November 2020.**
 - EUR 32,335 as a contribution towards the legal costs of Mr. Laszlo Kleinheisler as established in the Settlement Agreement.**

In particular, the Player Mr. Laszlo Kleinheisler only received a partial payment of EUR 150,000 from FC Astana.

- 3. FC Astana 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 Kazakhstan Football Federation 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. FC Astana is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr. Yasser Al-Misehal, Saudi Arabia

Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 64 par. 5 of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

As a member of FIFA, the Kazakhstan Football Federation 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 Kazakhstan Football Federation 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 Kazakhstan Football Federation 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 Kazakhstan Football Federation 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 Claimant 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.