

Date: 02 July 2021

Sent to:
Wydad Athletic Club
c/o Sport and Law
s.sportandlaw@gmail.com

C.C:
Moroccan Football Association, Mr Souleymane Sissoko

Notification of the grounds of the Decision

Ref. FDD-8193

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 3 June 2021.

The Moroccan Football Association (in copy) is kindly requested to forward this decision to Wydad Athletic Club.

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

Yours faithfully,

FIFA

A handwritten signature in black ink, appearing to be 'C. Schneider', is written over a light blue horizontal line.

Carlos Schneider
Head of the FIFA Disciplinary Department

Decision of the FIFA Disciplinary Committee

passed on 3 June 2021

DECISION BY:

Mr. Yasser Al-Misehal, Saudi Arabia

ON THE CASE OF:

Wydad Athletic Club

(Decision FDD-8193)

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 FIFA Disciplinary Committee has thoroughly considered in its 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 19 September 2018, the Appeal Committee of the Moroccan Football Association confirmed a decision passed by the National Dispute Resolution Chamber of the Moroccan Football Association dated 25 May 2018, by means of which ordered the club Wydad Athletic Club (hereinafter: *the Respondent*) to pay the player Souleymane Sissoko (hereinafter: *the Claimant*) the amount of DHS 9,500.
3. On 22 October 2018, the Claimant lodged an appeal before the Court of Arbitration for Sport (CAS) against the decision passed on 19 September 2018 by the Appeal Committee of the Moroccan Football Association.
4. On 8 April 2021, the CAS issued an award which annulled the decision passed by the Appeal Committee of the Moroccan Football Association on 19 September 2018 and ordered the Respondent to pay the Claimant the following amounts:
 - **DHS 239, 996** as outstanding remuneration, plus 5% interest *p.a.* as from 26 October 2017;
 - **DHS 1,466,667** as compensation, plus 5% interest *p.a.* as from 26 October 2017;
 - **CHF 5,000** as contribution towards his legal fees within the arbitration proceedings.
5. The aforementioned CAS award was not challenged before the Swiss Federal Tribunal.
6. On 10 May 2021, as the outstanding amounts due to the Claimant by the Respondent were not paid, the Claimant requested the initiation of disciplinary proceedings and for sanctions to be imposed upon the Respondent for failure to comply with the CAS Award dated 8 April 2021.
7. On 14 May 2021, in light of the foregoing, and as the aforementioned amount was 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 3 June 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.

II. RESPONDENT'S POSITION

8. 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 FIFA Disciplinary Committee has thoroughly considered in its 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 their positions and in their ensuing discussion on the merits.
9. On 18 May 2021, Wydad Athletic Club provided its position, which may be summarized as follows:
 - The Respondent alleges that the CAS award was not final and binding when the disciplinary proceedings were opened, i.e. the CAS award was notified per mail to the Respondent on 30 April 2021, thus on 31 May 2021 became enforceable (cf. art R59 of the Code of Arbitration for Sport), and the Claimant requested to enforce the award on 10 May 2021;
 - Moreover, the Respondent argues the FIFA Disciplinary Committee competence to deal with the present matter since the proceedings of the CAS award started in 2018, i.e. before the FDC 2019 edition, thus the FIFA Disciplinary Committee is not competent to deal with the case because it is a CAS award within the context of an ordinary proceedings (even though it is an appeal of a national DRC of a member association);
 - In light of the above, the Respondent requested to dismiss the claim.
10. 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 DISCIPLINARY COMMITTEE

11. 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

12. 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.
13. 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, she 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).

14. 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.

15. 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.
16. 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.
17. His jurisdiction being established and the applicable law determined, the member of the Committee subsequently turns his attention to the ordinary award issued by the Court of Arbitration for Sport on 8 April 2021.

B. Merits of the dispute

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

18. As already established above, the award of the Court of Arbitration for Sport is final and binding since neither party challenged the 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 aforementioned final and binding CAS award.

19. In this respect, the Single Judge takes note that the Respondent argues that the aforementioned CAS award was not final and binding at the moment of the initiation of the present disciplinary proceedings' request made by the Claimant, i.e. on 10 May 2021.
20. In light of the Respondent's argument, the Single Judge wishes to analyze the pertinent provision of Swiss Law concerning this particular topic in so far as they are relevant to the submissions of the Respondent.
21. To that end, the Single Judge recalls that CAS arbitration proceedings are governed by Chapter 12 of the Swiss Private International Law Act (PILA)¹ which provides that, as the seat of CAS tribunals is in Lausanne, setting aside proceedings against CAS awards may only be filed before the Swiss Federal Tribunal. In accordance with art. 190 PILA, an arbitral award can be set aside on certain specific grounds - the only grounds permitted being those as provided under art. 190 par. 2 PILA.
22. Moreover, the Single Judge observes that said provision in par. 1 states:

"The award is final from the time when it is communicated"

23. Furthermore, the Single Judge notes that in accordance with art. 103 par. 1 of the Bundesgerichtsgesetz² (BBG), the filing of an action to set aside a CAS award does not stay the enforcement of said award. The Single Judge remarked, however, that it is possible to request a stay of enforcement by seeking to obtain an order granting suspensive effect.
24. Finally, and according to what is on file, the Single Judge duly takes note that the Respondent nor the Claimant has requested a suspensive effect to the Swiss Federal Tribunal. Therefore, and according to the above, the aforementioned CAS award became final and binding to the parties on 8 April 2021, at the time it was communicated by email. However, the Single Judge wishes to point out that even in the case that the aforementioned CAS award was communicated by mail to the Respondent on 30 April 2021, as it alleges, it became final and binding before the opening of the present disciplinary proceedings, i.e. 14 May 2021.
25. In light of the above, the Single Judge finds that the arguments raised by the Respondent have to be rejected.
26. Having examined the first argument of the Respondent, the Single Judges then observe that the former alleges that the aforementioned CAS award was rendered in the context of an ordinary

¹ If at least one of the parties had neither its domicile nor its habitual place of residence in Switzerland at the time when the arbitration agreement was entered into (art. 176 par.1 PILA).

² The Federal Supreme Court Act

proceedings, which started in 2018, and thus the FIFA Disciplinary Committee is not competent to deal with the present case based on art. 72 par. 2 of the FDC.

27. In this regard, the Single Judges wishes to recall the content and scope of the article 72 par. 2 of the FDC:

“Disciplinary measures for failure to respect a final CAS decision rendered in the context of ordinary proceedings shall be imposed provided that the respective CAS procedure has started after the entry into force of this Code”.

28. In this respect, the Single Judge wishes to analyze whether the aforementioned CAS award was rendered in the context of ordinary arbitration proceedings or appeal arbitration proceedings.
29. In this sense, the Single Judge wishes to recall the content and scope of the Code of Sports-related Arbitration, in particular, the Single Judge observes that article R27 states:

“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)”.

30. Having said that, the Single Judge duly takes note, according to what is on file, that the CAS award passed on 8 April 2021 was rendered in the context of an appeal made against a decision passed by the Appeal Committee of the Moroccan Football Association. As such, and according to the abovementioned article, the Single Judge deems that the aforementioned CAS award was rendered in the context of an appeal arbitration proceedings. Therefore, it falls under the content and scope of the art. 15 of the FDC and art. 72 par. 2 does not apply to the case at hand.
31. Under these circumstances, the Single Judge deems that the arguments raised by the Respondent could not justify the fact that the amounts due to the Claimant in accordance with the award issued by the Court of Arbitration for Sport on 8 April 2021 have not been paid.
32. 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 Claimant. As a result, the Respondent is considered responsible of not complying with a financial decision under the terms of art. 15 of the 2019 FDC.
33. 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

34. 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.
35. 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.
36. This being established, it is emphasized that the Respondent withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the amounts due to the Claimant.
37. 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 20,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
38. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the Respondent to settle the amounts due to be paid to the Claimant.
39. 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.
40. For the sake of good order, the Moroccan 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 Moroccan Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Moroccan Football Association fail to automatically implement said sanction and provide the Secretariat with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

IV. DECISION

- 1. Wydad Athletic Club is found responsible for failing to comply in full with the award passed by Court of Arbitration for Sport on 8 April 2021.**
- 2. Wydad Athletic Club is ordered to pay to the player Souleymane Sissoko as follows:**
 - DHS 239,996 as outstanding remuneration, plus 5% interest p.a. as from 26 October 2017;**
 - DHS 1,466,667 as compensation, plus 5% interest p.a. as from 26 October 2017;**
 - CHF 5,000 as contribution towards the arbitration proceedings.**
- 3. Wydad Athletic 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 Moroccan 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. Wydad Athletic Club is ordered to pay a fine to the amount of CHF 20,000. 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 Moroccan 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 Moroccan 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 Moroccan 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 Moroccan 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.