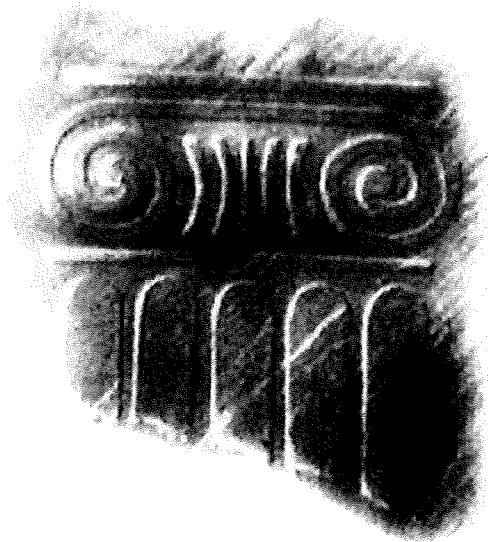


TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Shahrkhodro Football Club, Iran

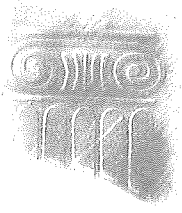
v.

FIFA, Switzerland

&

Myroslav Slavov, Austria

CAS 2021/A/7756 - Lausanne, January 2022



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2021/A/7756 Shahrkhodro Football Club v. FIFA & Myroslav Slavov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Jan Räker, Attorney-at-Law, Stuttgart, Germany

in the arbitration between

Shahrkhodro Football Club, Mashhad, Islamic Republic of Iran
Represented by its CEO Mr Javad Vathankhah

- Appellant -

v.

Fédération Internationale de Football Association (FIFA), Zürich, Switzerland
Represented by Mr Miguel Liétard Fernandez-Palacios, Director of Litigation
and Ms Erika Urbina, FIFA Litigation Department

- First Respondent -

and

Myroslav Slavov, Vienna, Austria

- Second Respondent -

I. PARTIES

1. Shahrkhodro Football Club (the “Appellant”, “Shahrkhodro” or the “Club”) is an Iranian football club and a member of the Football Federation Islamic Republic of Iran, which is in turn affiliated to FIFA.
2. FIFA is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.
3. Mr Myroslav Slavov (the “Player”) is a Ukrainian football player who is currently residing in Vienna, Austria.
4. The Appellant and the Respondents are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the 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, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
6. On 23 January 2020, the Club and the Player concluded an employment agreement (the “Agreement”) under which a legal conflict arose, within which the Player filed a claim against the Club at the FIFA Dispute Resolution Chamber (the “FIFA DRC”).
7. On 10 December 2020, the FIFA DRC rendered its decision (the “Appealed Decision”), the operative part of which reads as follows:

“1. The claim of the Claimant, Myroslav Slavov, is partially accepted.

2. The Respondent has to pay to the Claimant the following amounts:

- USD 50,000 as outstanding remuneration.

- USD 350,000 as compensation for breach of contract without just cause.

3. Any further claim lodged by the Claimant is rejected.

4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.

5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

6. *In the event that the amount due, plus interest as established above is not paid by the Respondent within 45 days, as from the notification by the of the relevant bank details to the Respondent, the following consequences shall arise:*

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

2. *In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.”*

8. On 2 February 2021, the FIFA DRC notified the grounds of the Appealed Decision to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. On 16 February 2021, the Club sent a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision via e-mail.

10. On 22 February 2021, the CAS Court Office sent a letter to the Club, reminding it that in accordance with Article R48 para. 1 of the CAS Code of Sports-related Arbitration (the “Code”) shall contain the name and the full address of the Respondent(s). In light of the fact that the Statement of Appeal only contained the e-mail address of the Player, the CAS Court Office requested the Club to complete its appeal by providing the CAS Court Office with the full postal address of the Player, failing which the CAS Court Office would not proceed.

11. By letter also dated 22 February 2021, the Club provided the CAS Court Office with the postal address of the Player.

12. On 24 February 2021, the CAS Court Office sent a letter to the Club, noting that the original copies of the Statement of Appeal had not yet reached the CAS and accordingly requested the Club to provide proof for having sent the Statement of Appeal by courier. The CAS Court Office further reminded the Club that the deadline pursuant to Article R51 of the Code for the filing of the Appeal Brief was not suspended.

13. On 27 February 2021, the Club in response to the above-mentioned request sent to the CAS Court Office an otherwise blank sheet which contained a reproduction of a label displaying the address of FIFA.

14. By letter of 1 March 2021, the CAS Court Office advised the Club that pursuant to Article R31 of the Code, the Statement of Appeal shall be delivered to the CAS Court

Office, and not to FIFA. The CAS Court Office further stated that the provided document cannot serve as a proof of filing, as it only contained an address and not the date of sending, a stamp and a tracking number. The CAS Court Office exceptionally granted the Club a further deadline until 2 March 2021 to provide a proof of sending by courier, failing which the CAS Court Office shall not proceed. The CAS Court Office further reminded the Club that the deadline pursuant to Article R51 of the Code for the filing of the Appeal Brief was not suspended and that failure to meet the deadline shall lead to the consequence that the Appeal shall be deemed withdrawn.

15. On 3 March, the Club in response to the further request of the CAS Court Office sent to the CAS Court Office a document which contained two tables. In the first table there are three lines, the first of which contains text in Arabic lettering. The second and third lines partly contain numbers, with both lines containing the information “2021/02/22” in the first column. In the third column of the second line, highlighted by an apparently added circle in red lining, one can find the information “RH903405962IR”, which can also be found in a text field above the first table, where this information was equally highlighted by a red circle. The second table on the document contains four lines, of which again the first contains text in Arabic lettering. The further lines contain Arabic numbers and Latin lettering. In the second line, the following content was manually highlighted by red circles: “Receive Item from Customer (Otb)” in the second column and “2/21/2021 12:45:11 PM” in the third column. On the bottom of the page a signature was added and a stamp reading “Mashhad Foreign Post”. Neither the letter nor the attached document contained any further explanations or translations.
16. By letter dated 4 March 2021, the CAS Court Office informed FIFA and the Player of the Club’s Appeal and the further correspondence between the CAS Court Office and the Club. The CAS Court Office alerted the Appellant that it shall file the Appeal Brief with CAS or, in the alternative, declare that the Statement of Appeal shall be considered the Appeal Brief within the deadline provided for in Article R51 of the Code by courier in at least seven copies or, alternatively, uploaded on the CAS E-filing platform. The CAS Court Office further noted that the Appellant had requested to submit the case to a Sole Arbitrator and requested the Respondents to state whether they agree to the appointment of a Sole Arbitrator.
17. On 8 March 2021, the CAS Court Office sent a letter to the Club, stated that it had not yet received any communication from the Club in regard of the Appeal Brief, which should have been filed to the CAS Court Office by 5 March 2021. The CAS Court Office granted the Club a deadline of three days to advise the CAS Court Office of whether it had filed its Appeal Brief within the prescribed deadline and to provide the CAS Court Office with according proof, either in English language or translated into English language.
18. On 09:41 AM on the same day, 8 March 2021, the CAS Court Office received an email from the Club, in which the Club pointed to an e-mail allegedly sent by the Club to the CAS Court Office on 5 March 2021, to which a letter, also dated 5 March 2021, had been attached in which the Club requested an extension of its deadline to file the Appeal

Brief and in which the Club stated that, should such request not be granted, the Statement of Appeal shall be considered the Appeal Brief.

19. The CAS Court Office subsequently informed the Parties about the Club's reply and informed the Club that the deadline to file the Appeal Brief was extended by 10 days. The CAS Court Office further requested FIFA and the Player to state whether they agree with an additional extension of the Club's deadline for filing the Appeal Brief by another four days.
20. By letter dated 8 March 2021, the Player informed the CAS Court Office that he agreed with the appointment of a Sole Arbitrator but that he did not agree with a further extension of the Club's deadline to file the Appeal Brief. The Player further stated that he objected to the admissibility of the Appeal, given that the Statement of Appeal was filed to the CAS Court Office by e-mail only.
21. By letter dated 9 March 2021, FIFA requested to be excluded from the procedure as the present procedure exclusively relates to a dispute between the Club and the Player which does not concern FIFA and in which FIFA only acted as the competent deciding body of the first instance in a horizontal procedure.
22. By letter of the same day, the CAS Court Office invited the Club to provide its position regarding FIFA's request by 12 March 2021. Furthermore, the CAS Court Office informed the Parties that any issue related to the admissibility of the Appeal would have been referred to the President of the CAS Appeals Arbitration Division for a decision.
23. On 12 March 2021, the Club stated that it considered FIFA as one of the Parties to the dispute and therefore requested the continuation of the procedure based on the Respondents mentioned in the Statement of Appeal.
24. On 15 March 2021, FIFA sent a letter to CAS, in which FIFA objected to the admissibility of the Appeal because both the Statement of Claim and the Appeal Brief were not filed in time. FIFA further stated that to the best of its knowledge, the Statement of Appeal was not delivered to FIFA.
25. In a further letter from the same day, FIFA informed the CAS Court Office that it agreed with the reference of the matter to a Sole Arbitrator.
26. By letter dated 16 March 2021, the CAS Court Office invited the Club to comment on the objections raised by FIFA and the Player by 18 March 2021.
27. On 18 March 2021, the Club filed its Appeal Brief by e-mail.
28. On 23 March 2021, the CAS Court Office sent a letter to the Parties, noting that it had not received any comments from the Club on the admissibility objections and that it had not yet received the original copies of the Appeal Brief.
29. On 27 March 2021, the Club sent a letter dated 23 March 2021, in which it apologized for its previous silence and rejected the objections against the admissibility of the

Appeal. In support of its position, the Club attached various documents which were translated into English language: A confirmation of the National Post Company of Iran that a parcel with the tracking number RH903405962IR was received on 21 February 2021 and delivered to its (unnamed) recipient in Switzerland on 18 March 2021, a tracking overview for a parcel with said tracking number which corresponds with the afore-mentioned dates, a receipt of the National Post Company for the receipt of a parcel with the afore-mentioned tracking number on 21 February 2021 and text boxes containing the message headers for an e-mail sent to the e-mail address of CAS on 8 March 2021 and 16 February 2021 respectively.

30. On 30 March 2021, the Club sent a further letter, containing two documents which appear to show the header and the message header information of an e-mail sent to the CAS Court Office and the Player on 5 March 2021.
31. On 31 March 2021, the CAS Court Office invited the other Parties to comment on the documents provided by the Club within seven days.
32. By letter of 7 April 2021, FIFA expressed that it maintained its stance that the present procedure should be terminated due to the Appellant's failure to file its Statement of Appeal and Appeal Brief on time. It further confirmed once more that it had not received any parcel from the Appellant and it finally pointed to various cases of omissions and late replies of the Appellant in the current procedure.
33. On 12 April 2021, the CAS Court Office sent a letter to the Parties, noting that it still had not received the original version of the Appeal Brief, received by e-mail on 18 March 2021, and requested the Club to file a certified and translated proof of sending of the Appeal Brief by courier by 15 April 2021, as otherwise the procedure would be terminated.
34. On the same date, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division decided to refer any issue related to the sole arbitrator, once appointed.
35. On 21 April 2021, the CAS Court Office informed the Parties that it had received the original version of the Appeal Brief by courier. It further informed the Parties that the enclosed waybill document indicated 18 March 2021 as the day of dispatch while the tracking information available online indicated 8 April 2021 as the day of dispatch.
36. On 11 May 2021, FIFA sent a letter to the CAS Court Office requesting the bifurcation of the present proceedings in order for the Sole Arbitrator to render a preliminary award on the admissibility of the Appeal.
37. On 17 May 2021, the CAS Court Office informed the Club and the Player of such request and invited them to comment on it by 19 May 2021. None of the Appellant and the Player filed comments in this regard.
38. On 2 June 2021, in accordance with Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office

informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Dr Jan Räker, Attorney-at-law in Stuttgart, Germany.

39. On 30 August 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant FIFA's request for the bifurcation of the procedure and that the Sole Arbitrator shall accordingly issue a preliminary or, depending on the Sole Arbitrator's decision, a final award on the admissibility of the Appeal.

IV. SUBMISSIONS OF THE PARTIES

40. The following summary of the Parties' positions is illustrative and does not necessarily include 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.

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

- The Club validly filed the Appeal by e-mail to the CAS Court Office on 16 February 2021.
- The Club also sent the Statement of Appeal via courier within the applicable deadline.
- The Club filed on 5 March 2021, within the applicable deadline for the filing of the Appeal Brief, a request to extend such deadline, which was granted.
- The Club further filed the Appeal Brief within the applicable new deadline on 18 March 2021, both by e-mail and by courier.
- The Appeal shall therefore be admissible.

42. FIFA's submissions, in essence, may be summarised as follows:

- The grounds of the Appealed Decision were notified to the Club on 2 February 2021. According the deadline to file the Statement of Appeal expired on 23 February 2021 and the deadline to file the Appeal Brief was 6 March 2021.
- The Appellant however failed to send the Statement of Appeal to the CAS on time. In line with Article R31 of the Code any submissions must be sent by courier. The Appellant however failed to send the Statement of Appeal to the CAS by courier, but instead only submitted it by e-mail on 16 February 2021, which is insufficient for a valid submission under the Code.
- As far as the Appellant seems to claim that it sent the original version of the Statement of Appeal to FIFA instead to CAS, FIFA assures that such parcel to the best of its knowledge never arrived at FIFA.

- Therefore, in line with Article R48 of the Code the CAS shall not proceed with the current procedure already for this reason.
 - Furthermore the deadline to file the Appeal Brief expired on 6 March 2021. The request to extend that deadline was however only sent on 9 March 2021, i.e. after the expiry of the deadline. In support, FIFA points to the fact that even on the screenshot provided by the Appellant to demonstrate its timely request for an extension of the deadline, such e-mail is indicated as having been sent on 8 March 2021, which would also be late already. Therefore, the Appellant failed to file the Appeal Brief on time and neither declared in due time that the Statement of Appeal shall be considered the Appeal Brief.
 - Therefore, in line with the decision in the case CAS 2014/A/3482, CAS should declare in accordance with Article R51 of the Code that the Appeal is considered withdrawn.
 - FIFA further asserts that there is a discrepancy between the dates in the documentation for the sending of the Appeal Brief by Courier.
 - FIFA finally points to the fact, that the Appellant on multiple opportunities failed to meet the deadlines for replies and the provision of evidence which reveals the Appellant's trend to disrespect CAS' deadlines.
43. The Player's submissions, in essence, may be summarised as follows:
- The Appellant filed its Statement of Appeal by e-mail only. This is contrary to Article R31 of the Code, which stipulates that the Statement of Appeal must be filed by courier delivery to the CAS Court Office, failing which the CAS shall not proceed.
 - The Player therefore requests CAS to immediately terminate this Appeal, subject to its inadmissibility.

V. JURISDICTION

44. Article R47(1) of the 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.”

45. The jurisdiction of CAS derives from Article 58(1) of the FIFA Statutes (2019 Edition), as it determines that “[a]ppeals 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”. The

Appealed Decision was issued by the FIFA DRC, which is one of FIFA's legal bodies and the jurisdiction of CAS is not contested by any party.

46. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

47. In light of the objections raised by the Respondents against the admissibility of the Appeal, the following two issues require the attention of the Sole Arbitrator:

a. Was the Statement of Appeal filed properly and on time? And

b. If so, was the Appeal Brief filed properly and on time?

A. Was the Statement of Appeal filed properly and on time?

48. For the Statement of Appeal, Article R49 of the 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. [...]”

49. Regarding the formal requirements for the submission of a Statement of Appeal, Article R31 of the Code provides as follows:

“[...] The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit, as mentioned above.

Filing of the above-mentioned submissions by electronic mail is permitted under the conditions set out in the CAS guidelines on electronic filing.

The exhibits attached to any written submissions may be sent to the CAS Court Office by electronic mail, provided that they are listed and that each exhibit can be clearly identified; the CAS Court Office may then forward them by the same means. Any other communications from the parties intended for the CAS Court Office or the Panel shall be sent by courier, facsimile or electronic mail to the CAS Court Office.”

50. The Club sent the Statement of Appeal to the CAS Court Office by e-mail on 16 February 2021.
51. As mentioned in Article R31 of the Code, this is admissible, provided “*that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit*”.
52. As the Appealed Decision was notified to the Club on 2 February 2021, the deadline to file the Statement of Appeal, in accordance with Article R49 of the Code, expired on 23 February 2021. Therefore, the Statement of Appeal should, according to Article R31 of the Code, have been filed to the CAS Court Office by courier or have been uploaded to the CAS e-filing platform by 24 February 2021 at the latest. However, up until today and uncontested between the Parties, the Club neither filed the Statement of Appeal to CAS by courier, nor did the Club file the Statement of Appeal via upload to the CAS e-filing platform.
53. The Club contends that it did file the Statement of Appeal on 16 February 2021. The Club does not specify whether it considers the submission of the Statement of Appeal by e-mail alone as sufficient. Such opinion would in any event however contradict the clear wording of Article R31 of the Code, which provides that a filing of a submission by e-mail is only valid, if the additional prerequisite of a timely filing also by courier or upload to the CAS e-filing platform is also met. The filing of the Statement of Appeal by e-mail on 16 February 2021 was therefore not sufficient to meet the requirements for a valid submission of a Statement of Appeal under the Code.
54. Any other interpretation would be “*contra verba legis*”, which, as the Sole Arbitrator on the case CAS 2014/A/3482, para. 36, duly noted, “*would require legitimate reasons because it would endanger highly protected interests of a procedural order, that is the predictability of legal decisions and the equality of the parties (cf. amongst others the decision of the Federal Tribunal BGer 4A_600/2008, issued on 20 February 2009, consideration 4.2.1.3).*”
55. The Club also contends that it also sent the Statement of Appeal by courier, however without explicitly specifying when and to whom. In Particular, the Club never claimed to have filed the Statement of Appeal by courier to the CAS Court Office. In line with the evidence provided by the Club, the Sole Arbitrator is led to assume that the Club claims to have sent the Statement of Appeal by courier on 21 February 2021 to FIFA.
56. The evidence provided by the Club mainly consists of a document in which the reception of a parcel on 21 February 2021 is confirmed by a post office at the seat of the Club, which in accordance to the further documentation was delivered to an unnamed recipient on Switzerland on 19 March 2021. It further consists of an address label displaying the address of FIFA.
57. The Sole Arbitrator notes that FIFA claims that to the best of its knowledge no Statement of Appeal in this matter was ever received by FIFA.

58. Examining the evidence, the Sole Arbitrator firstly notes that the reception of the Statement of Appeal was not confirmed by FIFA. Given that FIFA has no economic interest in the outcome of the present procedure and even requested to be removed from the procedure, arguing that it should not be a party to an Appeal rendered against a decision rendered by a FIFA body in a horizontal dispute between the Club and the Player, the Sole Arbitrator sees no reason to question such assertion.
59. Secondly, the Sole Arbitrator notes that the official documents provided by the Club do not name any recipient of the respective parcel, but only its country of residence, which is Switzerland. However, the indication of Switzerland as the parcel's destination does not prove that it was delivered to FIFA as in fact it could have been served to any address in Switzerland. Such document could therefore only serve to prove delivery of the Statement of Appeal to FIFA in combination with further evidence supporting such claim.
60. However, the Sole Arbitrator notes that no such evidence was presented. The label indicating the address of FIFA is just that, a label. The mere reproduction of such label does neither indicate that it was attached to a letter or parcel of the Club, nor does it serve as evidence for the content of such letter, nor does it serve as evidence that a letter or parcel bearing such label was ever sent, let alone before 24 February 2021. The documents provided by the Club further do not suffice to prove that the parcel contained the Club's Statement of Appeal in the current matter.
61. The Sole Arbitrator therefore concludes that the evidence provided by the Club may serve to prove that a parcel was sent to Switzerland on 21 February 2021, but that it does not serve to prove the filing of the Statement of Appeal or the filing of such parcel to FIFA.
62. Therefore, the Sole Arbitrator holds that the Club failed to demonstrate that it filed the Statement of Appeal by courier to either the CAS Court Office or to FIFA.
63. Accordingly, the Sole Arbitrator shall not have to discuss the merits of the position taken by the Sole Arbitrator in the case CAS 2011/A/2567, who held that under certain circumstances it could exceptionally be considered as sufficient to meet the formal requirements under Article R31 of the Code if an Appellant sends a submission to FIFA instead of the CAS Court Office by mistake, see CAS 2011/A/2567, paras. 76ff. In the present case, the Sole Arbitrator holds that Statement of Appeal was sent neither to FIFA nor to the CAS Court Office by courier.
64. The Sole Arbitrator therefore holds that the Statement of Appeal was not filed in line with the requirements laid down in Article R31 of the Code, which leads to the inadmissibility of the Appeal.
65. In coming to such conclusion, the Sole Arbitrator also considered if such result would constitute excessive formalism. However, the Sole Arbitrator recalls that formal requirements for the filing of an appeal against legal awards serve the legal security, given that the omission to file an appeal in due time render the respective award final and binding. Accordingly, strict requirements are applicable for appeal procedures, in

respect of deadlines, in respect of the identity of possible applicants and in respect of form. The provision, that an appeal cannot be filed by a simple e-mail, i.e. one that does not contain a valid electronic signature, inter alia ensures that the sender of an appeal document is indeed the sender which is indicated as the appellant in the respective document and also factors in that e-mails can, in respect of their content, their timing and their involved persons, easily be forged. The Code does however not force a prospective appellant to revert to hand-signed paper documents, but also allows for an electronic filing of a submission. However, in line with the requirements for safeguarding the integrity of each submission in CAS procedures, the use of the e-filing platform of CAS is made subject to the fulfilment of the CAS guidelines on electronic filing, which the Club failed to respect. The respective provision in the Code therefore serves a valid purpose by reasonable means, which cannot be considered excessive formalism.

66. Finally, the Sole Arbitrator find further comfort in the jurisprudence of the Swiss Federal Tribunal, which in turn referring to other decisions of CAS and the Swiss Federal Tribunal, provided as follows, as cited by CAS 2020/A/7266, para. 70:

« 6.3. Selon la jurisprudence relative à l'art. 29 al. 1 Cst., il y a excès de formalisme lorsque des règles de procédure sont conçues ou appliquées avec une rigueur que ne justifie aucun intérêt digne de protection, au point que la procédure devient une fin en soi et empêche ou complique de manière insoutenable l'application du droit (ATF 142 I 10 consid. 2.4.2; 132 I 249 consid. 5 p. 253).

6.4. Le Tribunal fédéral a déjà eu l'occasion de préciser que le TAS ne faisait pas montre d'un formalisme excessif en sanctionnant par une irrecevabilité le vice de forme que constituait l'envoi d'une déclaration d'appel par simple télécopie (arrêt 4A_690/2016, précité, consid. 4.2).

Il l'a encore rappelé tout récemment, dans un arrêt rendu en 2018, en soulignant que, si l'art. R31 al. 3 du Code permet de déposer par avance une déclaration d'appel par télécopie, la validité de ce dépôt est toutefois subordonnée à la condition que l'écriture soit aussi transmise par courrier le premier jour ouvrable suivant l'expiration du délai applicable. En d'autres termes, on ne saurait reléguer l'exigence du dépôt d'une déclaration d'appel par courrier au rang de simple formalité administrative (arrêt 4A_238/2018, précité, consid. 5.6).

6.5. Appliqués aux circonstances du cas concret, ces principes permettent d'écarter le reproche de formalisme excessif formulé par le recourant. Ce dernier a en effet reconnu s'être contenté de transmettre son mémoire d'appel par simple télécopie, sans le déposer également par courrier le premier jour ouvrable suivant l'échéance du délai applicable, ce qui, au regard de l'art. R31 al. 3 du Code et de la jurisprudence susmentionnée, suffit à sceller le sort du présent recours. C'est le lieu de rappeler en outre que le recourant avait été expressément rendu attentif à la nécessité d'adresser son

mémoire d'appel par courrier, ainsi que le démontre le passage mis en exergue par le TAS dans son courrier électronique du 20 juillet 2018 (cf. ci-dessus, B.b). Quoi qu'en dise le recourant, la transmission du mémoire d'appel par courrier ne constitue pas une simple formalité, mais bel et bien une condition de validité du dépôt de cette écriture.

[...] » (SFT 4A_556/2018, consid. 6.3-6.5)

Which can be freely translated into English as follows:

“6.3. According to the case law relating to art. 29 para. 1 Cst., excess of formalism occurs when procedural rules are designed or applied with a rigor that no interest worthy of protection justifies, to the extent that the procedure becomes an end in itself and prevents or unsustainably complicates the application of the law (ATF 142 I 10 para. 2.4.2; 132 I 249 para. 5 p. 253).

6.4. The Federal Tribunal has already had the opportunity to state that the CAS did not show excessive formalism in sanctioning with inadmissibility the formal defect constituted by the sending of a statement of appeal by simple fax (judgment 4A_690 / 2016, cited above, para. 4.2).

It reiterated this again recently, in a judgment rendered in 2018, stressing that, while art. R31 al. 3 of the Code allows a statement of appeal to be filed in advance by fax, the validity of this filing is, however, subject to the condition that the submission is also sent by mail on the first working day following the expiry of the applicable time limit. In other words, the requirement to file a statement of appeal by mail cannot be relegated to the rank of a mere administrative formality (judgment 4A_238 / 2018, cited above, para. 5.6).

6.5. Applied to the circumstances of the specific case, these principles make it possible to rule out the reproach of excessive formalism formulated by the appellant.

The latter in fact admitted that he had contented himself with transmitting his appeal brief by simple fax, without also filing it by mail on the first working day following the expiry of the applicable deadline, which, in view of art. R31 al. 3 of the Code and of the aforementioned case law, is sufficient to seal the fate of this appeal. It should also be recalled that the Appellant was expressly made aware of the need to send his appeal brief by mail, as demonstrated by the passage highlighted by the CAS in its email of July 20, 2018 (see above, Bb). Whatever the appellant may say, the transmission of the appeal brief by mail is not a mere formality, but indeed a condition for the validity of the filing of such submission.” (translation also derived from CAS 2020/A/7266, para. 70)

B. Legal Consequence

67. It follows that the appeal is not admissible. The matter whether the Appeal Brief was filed properly and on time shall no longer need to be examined, neither are the merits of the Appeal. The present award shall therefore not be provisional, but final.

VII. COSTS

68. Article R64.4 of the Code provides as follows:

“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.”

69. Article R64.5 of the CAS Code reads as follows:

“In the arbitral award, the Sole Arbitrator 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 Sole Arbitrator 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 Sole Arbitrator shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

70. In view of the outcome of these proceedings, in particular that the appeal is inadmissible, the Sole Arbitrator considers it reasonable and fair that the costs of these arbitration proceedings, to be determined and communicated to the parties by the CAS Court Office, shall be fully borne by the Appellant.
71. In addition, pursuant to Article R64.5 of the CAS Code and in consideration of the outcome of the proceedings, the financial resources of the Parties and the circumstance that none of the Respondents was represented by an external counsel, the Sole Arbitrator rules that each Party shall bear its own costs incurred in connection with the present proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Shahrkhodro Football Club on 16 August 2021 against FIFA and Myroslav Slavov with respect to the decision rendered by the FIFA Dispute Resolution Chamber on 2 February 2021 is inadmissible.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 2 February 2021 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 Shahrkhodro Football Club.
4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 17 January 2022

THE COURT OF ARBITRATION FOR SPORT


Dr Jan Raker
Sole Arbitrator