

Disciplinary Committee

FIFA[®]

Date: 03 January 2022

Sent to:
South African Football Association
ceo@safa.net; tshikani.baloyi@2018oc.com

C.C
CAF
Ghana Football Association

Notification of the grounds of the Decision

Ref FDD-9623

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the Chairman of the FIFA Disciplinary Committee on 23 November 2021.

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

Yours faithfully,

FIFA



Carlos Schneider
Director of the FIFA Judicial Bodies

Fédération Internationale de Football Association

FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland

Tel: +41 43/222 7777 - Email: Disciplinary@fifa.org

Decision of the FIFA Disciplinary Committee

passed on 23 November 2021

DECISION BY:

Mr. Jorge Palacio, Colombia (Chairman)

ON THE CASE OF:

South African Football Association

(Decision FDD-9623)

REGARDING:

Art. 46 of the FDC - Protests

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 Chairman of the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered 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 14 November 2021, a match was played in Ghana between the representative teams of Ghana and South Africa in the context of the Preliminary Competition of the FIFA World Cup Qatar 2022™, African Zone (**the Match**).

3. Following the Match, the match commissioner mentioned the following in his report (**the MC Report**):

“The South Africans team delegation leader meet me after the match and complain his grievance that he wants the match to be investigated.”

“The only incident is that the South Africans have lodge a complain that they want the match to be investigated in which they will write to CAF and FIFA.”

4. On 15 November 2021, the South African Football Association (**SAFA**) addressed a correspondence to FIFA to “formally record [its] complaint and protest” regarding the Match (**the Protest**). In a separate correspondence sent to FIFA on the same day, SAFA indicated that it “will pay the protest fee of CHF1000 within 72 Hours”.
5. On 16 November 2021, the SAFA contacted FIFA finance and requested the relevant bank account into which the protest fee was to be paid.
6. On 17 November 2021, in view of the foregoing, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) informed the Ghana Football Association (**GFA**) about the Protest lodged by the SAFA in accordance with art. 14 (9) of the Regulations FIFA World Cup 2022™, Preliminary Competition (**FWCQ Regulations**) as well as arts. 46 and 54 of the FIFA Disciplinary Code (**FDC**) and granted it with the opportunity to provide its comments in relation thereto.
7. On 18 November 2021, the SAFA provided additional documents to supplement the Protest.
8. On 19 November 2021, the Secretariat advised the SAFA about the banking details for the payment of the protest fee.
9. On the same day, the SAFA indicated that it “already received the bank details from [FIFA’s] Finance Department” and submitted proof of payment of the protest fee.
10. On 20 November 2021, the GFA submitted its comments with regard to the Protest.

11. On 22 November 2021, the SAFA submitted a further statement.

II. POSITION OF THE PARTIES

A. The Protest

12. The Protest lodged by the SAFA can be summarised as follows:

- i. its *“complaint and protest”* concerns *“the wrongful and unlawful conduct of the match referee and other officials, concerning match fixing, match manipulation including corruption and bribery”* in relation to the Match;
- ii. it *“is a follow up on the complaint which was lodged with the match commissioner by our Head of Delegation, Mr Aubrey Baartman and our Team Manager, Mr Vincent Tseka regarding the conduct of the referee and other match officials during the aforesaid game”*;
- iii. it *“received serious allegations that officials of Ghana Football Associations allegedly travelled to Senegal and met with the referee”*;
- iv. it requests FIFA to investigate:
 - a) *“the match referee and other officials in terms of the provisions of Article 18 of Chapter 2 of the FIFA Disciplinary Code”*;
 - b) *“Mr Michael Osekre, who is allegedly the Chief of Staff at the Ghana Football Association as a person of interest”*.

13. In support of the Protest, the SAFA submitted a *“Technical analysis of refereeing decision”* of the Match.

B. The position of the GFA

14. The GFA mainly argued that the Protest was not properly lodged. Its position can be summarised as follows:

- i. no written protest was submitted to the match commissioner:
 - a) the SAFA failed to lodge a written protest with the match commissioner after the match in question in accordance with art. 14 (2) of the FWCQ Regulations. According to this provision, a protest must be submitted in writing to the match commissioner within two hours of the match in question, followed by a full written report, including a copy of the original protest;

- b) from the file, it is clear that the SAFA only submitted an oral protest to the match commissioner and did not attach a copy of the original protest when it submitted the full written report to FIFA on 15 November 2021.
 - ii. the full written report must be submitted within 24 hours of the end of the match:
 - a) one day after the match, the SAFA stated that it would forward the relevant documents and the detailed complaint within 72 hours;
 - b) however, according to art. 46 (2) FDC, "*the 24-hour deadline cannot be extended*";
 - c) therefore, the above-mentioned statement by SAFA is misplaced and violates the clear provisions of FIFA.
 - iii. non-payment of the protest fee:
 - a) according to art. 46 (3) FDC, the protest fee must be paid at the time the protest is lodged;
 - b) as the SAFA informed FIFA that it would pay the protest fee within 72 hours, it did not pay the protest fee in time.
 - iv. the Protest was unfounded: it had been lodged without evidence or any ground and should therefore be rejected.
- 15. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the parties and in the present decision has only referred to those observations and evidence considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

- 16. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects, namely, its jurisdiction and the applicable law, before entering into the substance of the matter and assessing the Protest.

A. Jurisdiction of the FIFA Disciplinary Committee

- 17. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FDC.
- 18. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of arts. 2, 46 and 53 of the FDC, he is competent to evaluate the present case.

19. Moreover, in line with art. 54 (1) (a) FDC, the present case can be decided by the Chairman ruling alone.

B. Applicable law

20. In order to duly assess the matter, the Committee first emphasised that, given that the Match took place on 14 November 2021, the 2019 edition of the FDC was applicable to the present issue. As such, the Committee considered that both the merits and the procedural aspects of the present case should be covered by said edition of the FDC.

21. In those circumstances, the Committee referred to the relevant provision of the FDC applicable to protests, specifically art. 46, which reads as follows:

1. Associations and their clubs are entitled to lodge protests. Protests must reach the Disciplinary Committee in writing, indicating the relevant grounds, within 24 hours of the end of the match in question.

2. The 24-hour time limit cannot be extended. For the sake of the smooth running of the competition, the corresponding competition regulations may shorten the protest deadline accordingly.

3. The protest fee is CHF 1,000. It must be paid when the protest is lodged and is reimbursed only if the protest is admitted in full.

4. A protest is admissible only if it is based on:

a) an ineligible player's participation in a match as a consequence of that player not fulfilling the conditions defined in the relevant FIFA regulations;

b) an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);

c) an obvious error by the referee as defined in article 9 of this Code, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error.

22. Notwithstanding the above, the Committee recalled that the Preliminary Competition to the FIFA World Cup Qatar 2022™ is also governed by the FWCQ Regulations which “regulate[s] the rights, duties and responsibilities of all associations taking part in the FIFA World Cup 2022™ preliminary competition. The Regulations and all directives, decisions, guidelines and circulars issued by FIFA shall be binding for all parties participating and involved in the preparation, organisation and hosting of FIFA World Cup 2022™ preliminary competition matches.” (art. 1 (3) of the FWCQ Regulations).

23. Subsequently, the Committee referred to art. 14 of FWCQ Regulations related to protests:

1. For the purpose of these Regulations, protests are objections of any kind related to events or matters that have a direct effect on matches organised in the preliminary competition of the

FIFA World Cup 2022™, including but not limited to the state of and markings on the pitch, accessory match equipment, eligibility of players, stadium installations and footballs.

2. Unless otherwise stipulated in this article, protests shall be submitted in writing to the FIFA Match Commissioner within two hours of the match in question and followed up with a full written report, including a copy of the original protest, to be sent by email to the FIFA general secretariat within 24 hours of the end of the match, otherwise they shall be disregarded.

(...)

5. Protests against any incidents that occur during the course of a match shall be made to the referee by the team captain immediately after the disputed incident and before play has resumed, in the presence of the captain of the opposing team. The protest shall be confirmed in writing to the FIFA Match Commissioner by the head of the team delegation no later than two hours after the match.

6. No protests may be made about the referee's decisions regarding facts connected with play. Such decisions are final and not subject to appeal, unless otherwise stipulated in the FIFA Disciplinary Code. The same applies for any potential issue concerning the use of goal-line technology (GLT) and the video assistant referee (VAR) system.

7. If an unfounded or irresponsible protest is lodged, the FIFA Disciplinary Committee may impose a fine.

8. If any of the formal conditions of a protest as set out in these Regulations are not met, such protest shall be disregarded by the competent body. Notwithstanding the above, the FIFA Disciplinary Committee remains competent to prosecute any disciplinary infringement ex officio, as established in the FIFA Disciplinary Code.

9. FIFA shall pass decisions on any protests lodged, subject to the exceptions stipulated in these Regulations, the FIFA Statutes or any other FIFA regulations.

C. Standard of proof

24. Firstly, the Committee recalled that any party claiming a right before FIFA's judicial bodies shall carry the burden of proof of this fact (art. 36 (2) FDC). In particular, the party shall submit all relevant facts and evidence of which it is aware at that time.
25. Secondly, the Committee pointed out that, according to art. 35 (3) FDC, the standard of "*comfortable satisfaction*" is applicable in disciplinary proceedings. According to this standard of proof, the onus is on the sanctioning authority to establish the disciplinary violation to the comfortable satisfaction of the judging body, taking into account the seriousness of the allegation.
26. Having clarified the foregoing, the Committee proceeded to consider the merits of the case.

D. Merits of the dispute

1. Issue at stake

27. The relevant provisions having been recalled, and the above having been established, the Committee acknowledged that the present matter is related to the Match played on 14 November 2021, between the representative teams of Ghana and South Africa, within the context of the Preliminary Competition of the FIFA World Cup Qatar 2022™, African Zone.
28. In those circumstances, the Committee acknowledged that on the day following the Match, *i.e.* on 15 November 2021, the SAFA lodged a protest with respect to the Match. In particular, the Committee duly noted that the Protest is mainly related to *“the wrongful and unlawful conduct of the match referee and other officials, concerning match fixing, match manipulation including corruption and bribery”*.
29. The Committee subsequently considered the submission of the GFA, which, in essence, contested the admissibility of the Protest given that (i) no written protest was submitted to the match commissioner, (ii) the Protest was not lodged in a timely manner and (iii) no protest fee had been paid.
30. Taking into account the foregoing, the Committee deemed that, as a first task, it had to analyze whether the Protest fulfilled the formal requirements as provided for under the applicable provisions of both the FDC and the FWCQ Regulations. Should it be the case, the Committee would then proceed to address the further issues for analysis, specifically the consequences of the Protest.

2. Admissibility of the Protest

31. Summarising the applicable provisions related to protests, the Committee underlined that a protest may only be admissible under the following cumulative conditions:
 - i. from a procedural perspective:
 - a) it must be submitted in writing to the FIFA Match Commissioner within two hours of the match in question (art. 14 of the FWCQ Regulations);
 - b) it must reach the Disciplinary Committee in writing within 24 hours of the end of the match, while including a copy of the original protest (art. 46 (1) and (2) FDC read in conjunction with art. 14 of the FWCQ Regulations);
 - c) a protest fee of CHF 1,000 must be paid *“when the protest is lodged”* (art. 46 (3) FDC);

- ii. as to the merits, if it is based on¹:
 - a) an ineligible player's participation in a match as a consequence of that player not fulfilling the conditions defined in the relevant FIFA regulations;
 - b) an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);
 - c) an obvious error by the referee (such as mistaking the identity of the person penalized) in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error.
32. With the above in mind, and for the sake of completeness, the Committee recalled that art. 14 (8) of the FWCQ Regulations provides that should any of the formal conditions of a protest not be satisfied, such protest shall be disregarded by the competent body.
33. Against such background, the Committee went on to analyse the admissibility of the Protest in light of the above conditions.
34. To begin with, the Committee acknowledged that the match commissioner reported that the head of the South African delegation met him after the Match requesting it to be investigated, further specifying that *"the South Africans have lodge a complain that they want the match to be investigated in which they will write to CAF and FIFA"*.
35. This being said, the Committee pointed out that the SAFA failed to provide a copy of its original protest to the match commissioner, nor evidence that said protest had been submitted in writing to the latter within two hours of the match in question.
36. Given the above, the Committee was of the view that it could not ascertain that the SAFA duly submitted its protest within the deadlines foreseen under art. 14 (3) of the FWCQ Regulations. In other words, the Committee could not establish that the first (cumulative) procedural requirement for a protest to be admissible was actually met.
37. Notwithstanding the above, the Committee subsequently observed that the Protest was received by the Secretariat on 15 November 2021, that is to say within the 24 hour time limit as denoted *supra*.
38. In continuation, the Committee acknowledged that when lodging the Protest before the Disciplinary Committee, the SAFA indicated that it would *"pay the protest fee (...) within 72 Hours"*. Turning its attention to the proof of payment provided by the SAFA, the Committee noticed that the protest fee appeared to have been paid on 19 November 2021.

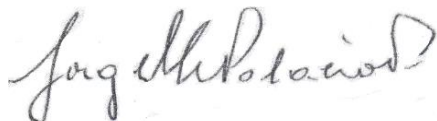
¹ Cf. art. 46 (4) FDC. It is also to be noted that, in line with art. 14 (6) of the FWCQ Regulations, no protests may be made about the referee's decisions regarding facts connected with play. Such principle is also embed in art. 9 FDC (*"Decisions taken by the referee on the field of play are final and may not be reviewed by the FIFA judicial bodies"*).

39. In this regard, the Committee highlighted that the provisions of the FDC related to the payment of the protest fee are clear and leave no room for interpretation: the protest fee must be paid “*when the protest is lodged*” (art. 46 (3) FDC), *i.e.* “*within 24 hours of the end of the match in question*” (art. 46 (1) FDC). In particular, the Committee emphasized that such time limit cannot be extended (art. 46 (2) FDC).
40. Consistently with the above, the Committee was satisfied that the SAFA failed to pay the protest fee within the 24-hour time limit. As a matter of fact, such payment was made on 19 November only, *i.e.* more than 96 hours after the end of the match, thus undoubtedly outside the deadlines foreseen under art. 46 FDC.
41. In view of the foregoing, the Committee pointed out that, as the protest fee had not been paid in a timely manner, the third (cumulative) procedural requirement for a protest to be admissible was also not met.
42. In conclusion, the Committee affirmed that two out of the three conditions for a protest to be admissible from a procedural perspective had not been met. As such, the Committee stressed that it had no other option but to consider the Protest to be inadmissible.
43. As a result, the Committee concluded that (i) the protest lodged by the SAFA shall be disregarded, and (ii) further considerations as to the merits of the case would not be required.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

To declare the protest lodged by the South African Football Association on 15 November 2021 inadmissible.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr. Jorge Palacio

Chairman of the Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

This decision can be contested before the FIFA Appeal Committee (art. 57 FDC). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. Reasons for the appeal must then be given in writing within a further time limit of five (5) days, commencing upon expiry of the first time limit of three (3) days (art. 56 (4) FDC). The appeal fee of CHF 1,000 is payable on the submission of the appeal brief at the latest (art. 56 (6) FDC).