

Disciplinary Committee

FIFA[®]

Date: 31 May 2024

Sent to:

Mr. Matko Mijael Miljevic
c/o Mr. Ariel Reck

Cc:

- Mr. Gerardo Ruben Magdalena
c/o Mr. Manuel Usandizaga
- Argentinian Football Association
- Canadian Soccer Association

Notification of the grounds of the Decision

Ref. no. FDD-17650

Dear Madam, Dear Sir,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 21 March 2024.

The Argentinian Football Association and the Canadian Soccer Association (in copy) are kindly requested to forward this decision to the player Mr. Matko Mijael Miljevic.

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

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Decision of the FIFA Disciplinary Committee

passed on 21 March 2024

DECISION BY:

José Ernesto MEJÍA PORTILLO (Honduras), Member

ON THE CASE OF:

Matko Mijael Miljevic (Argentina)

(Decision FDD-17650)

REGARDING:

Art. 21 of the FIFA Disciplinary Code - *Failure to respect decisions*

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 (**the Committee**) has thoroughly considered 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 14 August 2023, the Court of Arbitration for Sport (**CAS**) ordered the player Mr. Matko Mijael Miljevic (**the Respondent**) to pay Mr Gerardo Ruben Magdalena (**the Claimant**) as follows (Ref. TAS 2022/O/9201 - **the CAS Award**):
 - USD 300,000 plus 5% interest *p.a.* as from 04 May 2022 until the date of effective payment;
 - CHF 3,000 as contribution towards the Claimant's legal costs and expenses incurred in connection with the arbitration proceedings.
3. On 07 December 2023, the Respondent having failed to comply with the aforementioned CAS Award, the FIFA Disciplinary Committee passed a decision (FDD-16615 / **the First Disciplinary Decision**) in which it found the Respondent responsible for failing to comply in full with the CAS Award. In particular, the Respondent was:
 - ordered to pay to the Claimant the amounts mentioned in the CAS Award;
 - granted "*a final deadline of 30 days as from notification of the [First Disciplinary Decision] in which to pay the amount due [to the Claimant]. 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, the present matter will, upon request of [the Claimant], be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed [on the Respondent] for a period of six (6) months*".
 - Ordered to pay to FIFA a fine amounting to CHF 5,000.
4. On 8 December 2023, the First Disciplinary Decision was notified to the parties and none of them requested the grounds of the aforementioned decision.
5. On 21 February 2024, the Claimant informed the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) that no amount had been received from the Respondent. Therefore, the Claimant requested that the case be resubmitted in order to impose a ban on any football-related activity upon the Respondent.
6. On 22 February 2024, based on the above, the Secretariat informed the parties that the present matter would be resubmitted to the FIFA Disciplinary Committee and invited the Respondent to submit his position within a 6-day deadline.

7. On 26 February 2024, the Respondent provided the Secretariat with his position¹. In essence, the Respondent pointed out that all debts have already been settled through payments from MLS and a transfer of rights from his father.

8. On 08 March 2024, upon request of the Secretariat, the Claimant submitted his comments regarding the Respondent's allegations, arguing, *inter alia*, the following:
 - The Respondent should have announced his arguments to the CAS proceedings where he had had the burden of proof to present any evidence in relation to his submissions;
 - CAS recognised a credit in favour of the Claimant and the Respondent's negligence cannot be cured during the present disciplinary proceedings where said final and binding decision is being enforced;
 - Without prejudice to the above, there is no proof on file about the payments received by the company Rubargif Ltd from the Respondent or the MLS;
 - Likewise, the Respondent should try the recognition of the rights of the latter's father in the scope of an ordinary arbitration procedure that would allow to exercise a due process and right to defence of the Claimant;
 - Ultimately, the Claimant highlighted that the FIFA Disciplinary Committee had already found the Respondent responsible for failing to comply with the CAS Award;
 - The possibility to submit allegations within the scope of the present disciplinary proceedings should be based on newly facts between 17 November 2023 and 27 February 2024 (resulting from the FIFA Disciplinary Committee decision which became final and binding under reference). Otherwise, the principle of *res judicata* would be violated.

II. RESPONDENT'S POSITION

9. The position submitted by the Respondent can be summarised as follows:
 - The basis for the present proceedings is the CAS Award. In this regard, the Claimant brought a claim for breach of the intermediation agreement concluded between the parties on 19 July 2021;
 - On the same date (19 July 2021), the Claimant signed another agreement, a rights-sharing agreement with the Respondent's father, Mr. Horacio Gustavo Miljevic, whereby the Claimant acknowledged to the Respondent's father the 50% of all commissions to be received from the abovementioned intermediation agreement **(the Agreement)**;
 - In August 2021, the Respondent signed his contract with the MLS (for the club Montreal);

¹ The position submitted by the Respondent is summarised in the next section.

- In said contract, a commission fee of USD 239,545 was agreed in favour of Mr. Decoud and the company Rubargif LTD, a commission paid by the MLS on behalf of the Respondent;
- In August 2021, the Respondent signed an agreement with Mr. Decoud and Rubargif LTD, whereby the latter acknowledged his debts, plus a commission of USD 85,000 and the payments made by the MLS on behalf of the Respondent;
- The abovementioned documents were not submitted earlier, and, in any event, the Respondent is not asking the FIFA Disciplinary Committee to review a final decision but to consider the sums already paid to Rubargif LTD and Mr. Decoud by the MLS on behalf of the Respondent;
- The CAS Award recognised the partnership between the Claimant, Rubargif LTD and Mr. Decoud;
- The Claimant had an agent's licence and Mr. Decoud did not, which legally explains why one of them was the signatory and the other the collector;
- The Claimant's actions constitute the manoeuvre usually known as "*FRONTING*", where a licensed agent is the formal representative, and an unlicensed person is the real representative and the two form a partnership;
- On 10 February 2024, the Respondent's father transferred all benefits from the "*rights-sharing agreement*" to the Respondent;
- This implies, that the Respondent no longer owes anything to the Claimant;
- Based on the above, the Respondent requested the FIFA Disciplinary Committee to close the present proceedings for the "*full payment*" - the aforementioned 50% commission fees as set-off together with the payments made by the MLS on behalf of the Player - of the amounts established in the CAS Award.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

10. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects of the present matter, namely, its 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

11. 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 FIFA Disciplinary Code (**FDC**).

12. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of arts. 56 and 57 FDC, it was competent to evaluate the present case and to impose sanctions in case of corresponding violations.

13. In addition, and on the basis of art. 51 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.

B. Applicable legal framework

14. With respect to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the Respondent's potential failure to comply with the CAS Award and subsequently, the First Disciplinary Decision, was committed after the entry into force of the 2023 edition of the FDC. In this respect, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2023 edition of the FDC.

15. Having established the above, the Committee wished to recall the content and scope of art. 21 FDC in order to duly assess the case at hand.

16. 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, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS:

a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:

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;

(...)

f) in the case of natural persons, 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 ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed.

(...)"

17. Keeping in mind that the Respondent had already been found responsible for failing to comply with the CAS Award (cf. the First Disciplinary Decision), but seemingly had still failed to comply in full with the CAS Award following the expiry of the final deadline granted pursuant to the First Disciplinary Decision, the Committee pointed out in this respect that art. 21 (1) f) FDC was of particular relevance to its assessment of the present matter.

18. Moreover, for the sake of good order, it is worth emphasizing that in line with art. 57 (1) (h) FDC, cases involving matters under art. 21 FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
19. Finally, the Committee underlined that, equal to the competence of any enforcement authority, it cannot review or modify the substance of a previous decision, which is final and binding, and thus has become enforceable.
20. Its jurisdiction being established, and the applicable law determined, the Committee subsequently turned its attention to the CAS Award.

C. Merits of the dispute

I. Analysis of the facts in light of art. 21 FDC

21. The above having been determined, the Committee remarked that the present disciplinary proceedings concerned the potential failure of the Respondent to comply with i) the CAS Award and; ii) the (subsequent) First Disciplinary Decision by means of which the Respondent was *inter alia* granted a final deadline of 30 days to settle his debt in accordance with the CAS Award.
22. In this context, the Committee reiterated that it was neither allowed to analyse or review the CAS Award, nor the First Disciplinary Decision, as to their respective substances, but that it had as a sole task to analyse if the Respondent had complied with the (final and binding) Award rendered by CAS on 14 August 2023 (and by way of consequence with the order(s) contained in the (final and binding) decision passed by the FIFA Disciplinary Committee on 07 December 2023).
23. The Committee acknowledged the Respondent's submissions, particularly the claim that the proceedings should be closed due to the "*full payment*" of the amount owed. This included 50% of the amount based on the rights sharing agreement between the Claimant and the Respondent's father, whose rights were (allegedly) transferred to the Respondent by his father, and the balance paid by the MLS on behalf of the Respondent to the Claimant's partner(s), *i.e.*, Rugarbif LTD and Mr Decoud.
24. Against this background, the Committee remarked from the documentation at its disposal that, following the First Disciplinary Decision, and, importantly, after the opening of the present disciplinary proceedings, the Respondent had not provided any proof of payment. Similarly, the Claimant had not confirmed receipt of any of the outstanding amount(s) due.
25. Furthermore, the Committee noted that the Agreement was made over a year before the CAS arbitration proceedings began, and the Respondent did not explain why these documents were not presented during the arbitration. Moreover, the Committee noted that the Respondent relied on contractual relationships involving third parties, namely his father, Rubargif LTD and Mr. Decoud, as well as debts and credits arising from these contractual obligations. Furthermore, and as already mentioned, the Committee's sole task is to verify whether the Respondent has complied with the CAS Award and the First Disciplinary Decision by paying the

amounts due to the Claimant. In particular, the Committee considered that the rights and obligations arising from various contractual relationships, as claimed by the Respondent, did not fall within the scope of the present disciplinary proceedings which, for the sake of clarity, involved only the Respondent and the Claimant due to the former's failure to comply with the CAS Award and the subsequent First Disciplinary Decision.

26. In view of the above, the Committee had no other choice but to conclude that the Respondent had failed to pay to the Claimant the outstanding amounts due to it in accordance with the CAS Award and the subsequent First Disciplinary Decision.
27. As a result, the Committee found that the Respondent, by his described conduct(s), was to be considered guilty of persistent failure to comply with (a) financial decision(s) under the terms of art. 21 FDC – specifically, with the CAS Award and subsequently, the First Disciplinary Decision.

II. The determination of the sanction

28. As a preliminary remark, the Committee emphasized that the Respondent had withheld the amount(s) due unlawfully from the Claimant. Even FIFA's (repeated) attempts to urge the Respondent to fulfil his financial obligations had failed to induce him to make payment of the total amounts due.
29. With regard to the applicable sanctions, the Committee observed in the first place that the Respondent is a natural person, and as such was subject to the sanctions described under arts. 6 (1) and 6 (2) FDC.
30. In these circumstances, the Committee next proceeded to recall that on 07 December 2023, by way of the First Disciplinary Decision, the Committee had found the Respondent responsible for the infringement of art. 21 FDC due to his failure to comply with the CAS Award, thereby ordering him to pay the amount(s) due to the Claimant and sanctioning him with a fine of CHF 5,000. Furthermore, and more importantly, the Committee further recounted that the Respondent had been granted a final deadline of 30 days as from notification of the First Disciplinary Decision in which to settle his debt(s) towards the Claimant.
31. By way of continuation, the Committee further noted that the operative part of the First Disciplinary Decision clearly specified that, in line with art. 21 (1) (f) FDC, upon the expiry of the final 30-day deadline and *"in the event of persistent default or failure to comply in full with the decision within the period stipulated, the present matter will, upon request of [the Claimant], be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed [on the Respondent] for a period of six (6) months."*
32. Against this background, the Committee subsequently pointed out that, despite the First Disciplinary Decision, the Respondent had nevertheless (still) withheld the relevant amount(s) due unlawfully from the Claimant – as mentioned, even FIFA's attempts to urge the Respondent to fulfil its financial obligations (towards the Claimant) had failed to induce the Respondent to pay the total amount(s) due within the 30-day deadline granted. As such, the Committee was

settled in its determination that further measures were to be imposed upon the Respondent – the Committee being resolute in this respect, given that, in keeping with the provision(s) of art. 21 (1) (f) FDC and the First Disciplinary Decision, the Respondent had undoubtedly demonstrated “*persistent default or failure to comply in full with the [CAS Award]*” following the expiry of the above-mentioned final granted pursuant to the latter.

33. This being established, for the sake of good order, the Committee recalled once more that art. 21 FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision, in so far that the latter:

- will be fined and will receive any pertinent additional disciplinary measure (lit. a);
- will be granted a final deadline of 30 days in which to pay the amount(s) due (lit. b);
- (in the case of natural persons, as in casu) 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 ban on any football related activity for a specific period may be imposed (lit. f).

34. Therefore, in alignment with the above, taking into account all of the circumstances pertaining to the present case and, in particular, the persistent failure of the Respondent to comply in full with his financial obligations in accordance with the CAS Award as well as his related failure to comply with the First Disciplinary Decision, the Committee determined that, in accordance with point 3. of the First Disciplinary Decision as read together with arts. 6 (2) and 21 (1) (f) FDC, a ban from taking part in any kind of football-related activity was to be imposed upon the Respondent for a period of six (6) months. In particular, the Committee considered that such sanction was to be considered proportionate to the offence(s) committed by the Respondent and justified in view of the circumstances of the case at hand. Indeed, the Committee underscored in this regard, that the facts have shown that the previous disciplinary measures imposed upon the Respondent (pursuant to the First Disciplinary Decision) were insufficient and did not induce the latter to settle his debt(s) towards the Claimant.

35. Further, given the amounts due by the Respondent, the Committee considered that a final deadline of 30 (thirty) days to pay the amount(s) due to the Claimant was to be considered as justified and appropriate in the present case.

36. The Respondent is hereby warned and notified that, in case of default within the period stipulated, the aforementioned ban from taking part in any kind of football-related activity for a period of six (6) months will be automatically imposed against him.

37. Finally, and for the sake of completeness, the Committee recalled, as established by the pertinent jurisprudence of the CAS², that the aforementioned sanction – *a ban from taking part in any kind of football-related activity for a period of six (6) months* – would not affect the Respondent’s fundamental right to freely exercise a profession, i.e. his economic freedom. Indeed, the Committee wished to point out that the Respondent would ‘only’ be prevented

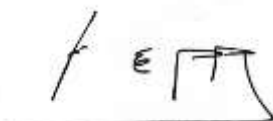
² CAS 2017/A/4947

from taking part in football-related activities for a limited period of time, whilst retaining, in principle, the ability to exercise any other economic activity.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. Mr. Matko Mijael Miljevic is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 14 August 2023 (Ref. TAS 2022/O/9201), as well as with the decision passed by the FIFA Disciplinary Committee on 07 December 2023 (Ref. FDD-16615).**
- 2. Mr. Matko Mijael Miljevic is ordered to pay to Mr. Gerardo Ruben Magdalena as follows:**
 - USD 300,000 plus 5% interest p.a. as from 04 May 2022 until the date of effective payment.**
 - CHF 3,000 as contribution towards his legal costs and expenses incurred in connection with the arbitration proceedings.**
- 3. Mr. Matko Mijael Miljevic is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount(s) due. 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 ban on any football-related activity will automatically be imposed on Mr. Matko Mijael Miljevic for a period of six (6) months.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



José Ernesto MEJÍA PORTILLO (Honduras)

Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes reads together with arts. 52 and 61 of the FDC, 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:

The Respondent, Mr, Matko Mijael Miljevic, is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment made and to provide the relevant proof of payment.

The Creditor, Mr. Gerardo Ruben Magdalena, is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received.

NOTE RELATING TO THE BAN ON ANY FOOTBALL-RELATED ACTIVITY:

The ban covers the participation, in any capacity, in a competition or activity authorised or organised by FIFA or any association, club or other member organisation of an association, or in competitions authorised or organised by any professional league or any international or national-level competition organisation or any elite or national-level sporting activity funded by a governmental agency.

The ban may be lifted upon full payment of the amount(s) due.