



Arbitration CAS 2015/A/4246 S.C. FC Steaua Bucuresti & Mirel Radoi v. Union des Associations Européennes de Football (UEFA), award of 30 March 2016

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Admissibility of appeals to the CAS

Dismissal of an appeal due to the late filing of the Statement of Appeal

In cases where it is not clear on which out of two possible dates a Statement of Appeal has been filed and where only filing on the first date would have complied with the deadline to file the Statement of Appeal, the Appellant has to adduce reliable, conclusive and unequivocal evidence that the Statement of Appeal has been filed on the first possible date. Should the evidence available lead to the conclusion that the Statement of Appeal has been lodged on the second possible date the Statement of Appeal has to be considered as inadmissible and the respective appeal dismissed.

I. PARTIES

1. S.C. FC Steaua Bucuresti (“the Club” or “the First Appellant”) is a Romanian professional football club with its registered office in Bucharest, Romania. It is a member of the Romanian Football Federation, which in turn is affiliated to Union des Associations Européennes de Football.
2. Mr Mirel Matei Radoi (“Mr Radoi” or “the Second Appellant”) is an individual employed by the Club. Hereinafter, both the Club and Mr Radoi will be collectively referred to as “the Appellants”.
3. Union des Associations Européennes de Football (“UEFA” or “the Respondent”) is the governing body of European football and has its registered office in Nyon, Switzerland.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and

evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. By way of background, the Sole Arbitrator notes that pursuant to Articles 36 and 40 of the UEFA Club Licensing and Financial Fair Play Regulations (“the Regulations”), it is mandatory that any person appointed to the position of ‘Head Coach’ of a Club competing in the UEFA Champions League needs to be in possession of an appropriate coaching qualification. During the period in question, Mr Radoi formally held the position of Sporting Director at the Club and did not hold any coaching qualifications. The official Head Coach of the Club during the relevant period was Mr Massimo Pedrazzini.
6. On 14 July 2015, during a match against AS Trenčín in the UEFA Champions League second qualifying round, Mr Radoi (acting as the Sporting Director of the Club), gave instructions to the players from the technical area. After the match, Mr Pedrazzini conducted the post-match interview as the Head Coach.
7. On 22 July 2015, during a match against AS Trenčín in the UEFA Champions League second qualifying round, a ‘Mr Dica’ in his capacity as assistant coach gave instructions to players from the technical area up until the 22nd minute of the match. From the 22nd minute onwards, Mr Radoi, again acting as the Sporting Director of the Club, gave instructions to the players from the technical area. After the match, Mr Pedrazzini conducted the post-match interview as the Head Coach.
8. On 29 July 2015, during a match against FK Partizan Beograd in the UEFA Champions League third qualifying round, Mr Radoi (again acting as the Sporting Director of the Club), gave instructions to the players from the technical area throughout the entire duration of the match. After the match, Mr Pedrazzini conducted the post-match interview as the Head Coach.

Proceedings before UEFA

9. On 30 July 2015, the appointed UEFA ethics and disciplinary inspector, Ms Anna Bordiugova (“the Disciplinary Inspector”), submitted a report (“the Report”) which requested that the UEFA Control, Ethics and Disciplinary Body (“the UEFA CEDB”) take the following action:
 - Open proceedings against the Club and Mr Radoi;
 - Confirm that the Club and Mr Radoi knowingly and deliberately violated Articles 4, 6, 39 and 43 of the UEFA Champions League Regulations 2015/16 (“the UCLR”) and Articles 36, 40 and 42 of the Regulations, thereby also committing an offence under Article 11 of the UEFA Disciplinary Regulations (“the DR”);
 - Sanction the Club by imposing a fine of at least EUR 100,000; and
 - Sanction Mr Radoi by imposing a fine of at least EUR 10,000 and suspending him from carrying out any function of a Head Coach, as well as of any coaching staff, until

he fulfils the criteria mentioned in Article 36 of the Regulations (in conjunction with Article 40 (1) (b) of the Regulations).

10. On 2 August 2015, the Club filed a statement in response to this suggesting, *inter alia*, that the Report had not been prepared in accordance with the provisions of the DR (in particular Article 25(5)(b)) and that the evidence provided to the Disciplinary Inspector was not connected to the alleged infringements in the present case. The Club also stated that Mr Radoi was the Sporting Director of the Club and that Mr Pedrazzini was the Head Coach, and that this was correctly identified as such on the official match sheets for the relevant matches. The Club also indicated that Mr Pedrazzini fulfilled his media duties in his capacity as Head Coach at each of the relevant matches. The Club argued that giving instructions to players on the pitch from the technical area is not the absolute competency of the Head Coach and that this was implied in the FIFA laws of the game.
11. In response, UEFA argued, *inter alia*, that UEFA must consider the overall substance of the behaviour of Mr Radoi and not simply his formal title or how he appears on the official match sheet. Based on all the evidence adduced by the Disciplinary Inspector, the UEFA CEDB could only conclude that despite his official title as Sporting Director, Mr Radoi was actually appointed by the Club as Head Coach and knowingly acted in this capacity with Mr Pedrazzini carrying out ancillary media functions which would ordinarily be attributed to a Head Coach.
12. On 13 August 2015, the UEFA CEDB rendered the following decision (“the First UEFA Decision”):
 - “1. Radoi Matei Mirel is banned from carrying out any function of a head coach, as well as of any coaching staff, at UEFA competition matches until he fulfils the criteria contemplated in article 36 in conjunction with Article 40.1.b) UEFA Club Licensing and Financial Fair Play Regulations. In particular, Radoi Matei Mirel shall not seat in the technical area during UEFA competition matches until the above criteria is fulfilled.
 2. To fine FC Steaua Bucuresti € 50’000.
 3. The above fine must be paid into the bank account listed below within 90 days of communication of this decision”.
13. On 17 August 2015, the Club was notified of the First UEFA Decision.
14. On 18 August 2015, the Club requested the grounds of the First UEFA Decision.
15. On 14 September 2015, the Club received the grounds of the First UEFA Decision.
16. On 15 September 2015, the Club declared its intention to appeal the First UEFA Decision in accordance with Article 53(2) DR.
17. On 22 September 2015, the Club sent its grounds of appeal and proof of payment of the procedural fee of EUR 1,000 to the UEFA Appeals Body by registered mail with the Romanian Post Office (“the RPO”).

18. On 23 September 2015, the UEFA Appeals Body issued the following decision (“the Appealed Decision”), which is the subject of the present proceedings before the Court of Arbitration for Sport (“the CAS”):

“The appeal is declared inadmissible. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 13 August 2015 is confirmed”.

19. The Appealed Decision was based on Article 53(3) DR which provided that the Club must file its written grounds of appeal within 5 days of the expiry of the time limit for the declaration of the intention to appeal. Further, under Article 53(4) DR, the appeal fee of EUR 1,000 was payable on submission of the grounds for appeal at the latest. As of 23 September 2015 (*i.e.* the date of the Appealed Decision), more than 5 days after the expiry of the time limit for the declaration of the intention to appeal, no grounds for appeal and no payment had been submitted in accordance with the aforementioned provisions. Accordingly, under Article 53(5) DR, the UEFA Appeals Body had to declare the appeal inadmissible. On the same day, the Appealed Decision was notified to the Club.
20. On 23 September 2015 (*i.e.* the same day), the counsel for the Club and Mr Radoi, Mr Mincu Paul Alexandru, wrote to UEFA stating, *inter alia*, that the Club had in fact submitted all the relevant documents by 22 September 2015. The Club submitted a proof of payment of the procedural fee dated 22 September 2015 and a copy of “*the shipping book for the expedition with the Romanian Post on the same date*”. The Club requested that UEFA remedy the situation by scheduling a hearing date for the appeal to the UEFA Appeals Body, failing which the Club would appeal to the CAS. UEFA did not respond to this letter.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. Either on 5 or 7 October 2015 (the exact date is the main subject of this award on admissibility and will be analysed in detail below), pursuant to Article R47 of the Code of Sports-related Arbitration (“the CAS Code”), the Appellants filed a joint Statement of Appeal against the Appealed Decision at the CAS. The Statement of Appeal contained the following requests for relief:

- “1. To annul de [recte: the] Decision from 23 September 2015 issued by the Appeals Body of UEFA;
2. To refer the case back to the Appeals Body of UEFA for the continuation of the proceedings in the file 28460”.

22. On 14 October 2015, the CAS Court Office wrote to the Appellants requesting that it complete its Statement of Appeal within 3 days of receipt of the letter by submitting the following:

- Nomination of the arbitrator chosen by the Club from the CAS list, unless the Appellants requested the appointment of a sole arbitrator;
- A copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS; and

- Proof of payment of the required fee under Article R64.1 or Article R65.2 of the CAS Code.

The CAS Court Office noted that pursuant to Articles R48 paragraph 3 and R65.2 of the CAS Code, if an appropriate payment was not made within the given deadline, the Statement of Appeal shall be deemed withdrawn.

23. On 15 October 2015, pursuant to Article R51 of the CAS Code, the Appellants filed its Appeal Brief with the CAS Court Office reiterating the 2 requests for relief contained in the Statement of Appeal and also supplementing it with the following:

“Subsidiary to the prayer for relief no 2 and only if CAS will decide to keep the file to rule on the merits of the appeal brought before UEFA, we would like to formulate the prayer for relief no 3 which is similar to the prayers for relief formulated on 22 September 2015, respectively:

3. I. Mainly:

- *to affirm the appeal from 22 September 2015 brought before UEFA Appeal Body;*
- *to reverse the decision from 13.08.2015 issued by UEFA CEDB and dismiss as unfounded the disciplinary proceedings opened against Mr. Mirel Radoi and the club FCSB.*
- *to annul the disciplinary sanction imposed on Mr. Mirel Radoi as well as the fine imposed on the Club FCSB by the decision from 13.08.2015.*

II. Subsidiarily:

- *to affirm the appeal from 22 September 2015 brought before UEFA Appeal Body;*
- *to reverse in part the decision from 13.08.2015, by issuing a warning to Mr. Mirel Radoi, pursuant to art. 6 pt. 2 let. a) of the DR and to reduce the amount of the fine imposed on the Club FCSB to a reasonable threshold, proportionate to the findings of fact, or to issue a warning”.*

24. On 22 October 2015, the CAS Court Office sent UEFA a copy of the Statement of Appeal, the CAS Court Office letter dated 14 October 2015 and the Appellants’ letters dated 15 October 2015 and 16 October 2015. The CAS Court Office informed UEFA that pursuant to Article S20 of the CAS Code, the present arbitration had been assigned to the Appeals Arbitration Division of the CAS and was therefore going to be dealt with according to Article R47 *et seq.* of the CAS Code. The CAS Court Office also informed UEFA that their Answer would be due within 20 days of receipt of the letter.
25. On 29 October 2015, UEFA wrote to the CAS Court Office confirming that it consented to the Appellants’ proposal that the case be submitted to a Sole Arbitrator. They also requested all documents relating to the submission and delivery of the Statement of Appeal, such as post office receipts, delivery envelopes, date stamps etc. UEFA requested that the deadline for submission of its Answer be suspended until such time as this had been provided to them.

26. On 29 October 2015, the CAS Court Office sent all the documents received by the CAS Court Office in relation to the delivery of the Appellants' Statement of Appeal. In the same letter, the CAS Court Office confirmed that UEFA's time limit to file its Answer was suspended until further notice from the CAS Court Office.
27. On 3 November 2015, the Appellants sent a letter to the CAS Court Office, attaching 'proof' that the Statement of Appeal was sent to the CAS on 5 October 2015, *i.e.* the last day of the time limit provided by Article 62 of the UEFA Statutes. Further, the Appellants requested that the CAS provide UEFA with a copy of the envelope with which the Statement of Appeal was received by the CAS.
28. On 4 November 2015, the CAS Court Office forwarded a copy of the envelope which it received from the Appellants with the Statement of Appeal to UEFA and invited UEFA to provide its comments on this by 9 November 2015.
29. On 9 November 2015, UEFA wrote to the CAS Court Office noting that it had received two photocopies of the envelope used to deliver the Appellants' Statement of Appeal to the CAS. The first photocopy which was sent to UEFA by the CAS Court Office on 29 October 2015 showed an envelope bearing two 'date of postage stamps' – one indicating that the envelope was posted on 5 October 2015 (which was crossed out by hand) and another indicating that the envelope was posted on 7 October 2015 (which was not crossed out). The second photocopy, which was provided to the CAS by the Appellants on 3 November 2015 and sent to UEFA on 4 November 2015 showed an envelope containing only one 'date of postage stamp' – indicating that the envelope was posted on 5 October 2015. UEFA stated that it was confused by the existence of two different envelopes and requested the Appellants to provide an explanation on the matter before UEFA had to submit its Answer.
30. On the same day, the CAS Court Office wrote to the Appellants requesting clarification on the issue of the date of the conflicting postage stamps by 13 November 2015. The CAS Court Office confirmed that the time for UEFA to file its Answer remained suspended until further notice.
31. On 13 November 2015, the Appellants wrote to the CAS Court Office requesting an extension of time to respond to the issue of the conflicting dates, as it was waiting for information from the RPO on the issue.
32. On 16 November 2015, the CAS Court Office wrote to UEFA inviting them to file their response to this request for a time extension by noon on 17 November 2015. The time limit for the Appellants was suspended until further notice from the CAS Court Office. On the same day, UEFA responded agreeing to the extension. The CAS Court Office therefore extended the deadline for the Appellants' response to this issue until 20 November 2015.
33. On 20 November 2015, the Appellants filed with the CAS Court Office a copy of their letter to the RPO dated 17 November 2015 and the RPO's response dated 19 November 2015. The response was a handwritten note on the bottom of the Appellants' own letter and did not give a name of the RPO employee who wrote the note. The note confirmed that the correspondence

had been submitted to the RPO on 5 October 2015, however it also stated that they “*do not know whether the stamp with the date of submission was crossed through*”. The CAS Court Office sent a copy of this letter and note to UEFA on 20 November 2015, and invited UEFA to file its response to this by 25 November 2015.

34. On 25 November 2015, UEFA replied to the CAS Court Office stating that they were ready to proceed with preparation of the Answer. On the same day, the CAS Court Office responded stating that the deadline for UEFA would resume upon receipt of its letter.
35. On 1 December 2015, UEFA requested the Sole Arbitrator to terminate the arbitral proceedings due to the Statement of Appeal being filed late. Further, for procedural economy and pursuant to Article R49 of the CAS Code, UEFA requested the Sole Arbitrator to render a preliminary award on this particular issue after both Parties being given an opportunity to address this issue via specific statements. UEFA also requested that the deadline to file its Answer be suspended until this had been decided.
36. On 2 December 2015, the CAS Court Office wrote to the Parties stating that UEFA’s request would be forwarded to the Sole Arbitrator, once one had been appointed, and that in the meantime, the time limit to file the Answer was suspended until further notice.
37. On 7 December 2015, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr. Mark A. Hovell, Solicitor, Manchester, United Kingdom had been appointed as a Sole Arbitrator in this case.
38. On 10 December 2015, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator informing the Appellants that they were granted 10 days to file submissions strictly limited to the admissibility of their appeal.
39. On 21 December 2015, the Appellants wrote to the CAS Court Office stating that the Statement of Appeal had been lodged with the RPO on 5 October 2015, which was the deadline for the submission of the appeal, as evidenced by the letter from the RPO dated 19 November 2015. The Appellant referred to Article R32 of the CAS Code which states that:

“The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location where the notification had to be made, on the last day on which such time limits expire”.
40. On 22 December 2015, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator granting UEFA 10 days to file their response, limited solely to the admissibility of the Statement of Appeal lodged by the Appellants.
41. On 4 January 2016, UEFA filed their preliminary submissions regarding the admissibility of the Statement of Appeal lodged by the Appellants on 5 or 7 October 2015. The submission contained the following prayers for relief:

- *Declaring Appellants’ statement of appeal to the CAS to be inadmissible on the basis that it was not submitted by the relevant deadline;*
 - *Confirming the decision under appeal;*
 - *Bearing in mind that UEFA has more financial resources than the Appellants and the defence of UEFA has been conducted by in-house lawyers, Respondent honestly considers that no contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings must be paid by Appellants”.*
42. On 20 January 2016, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator requesting the following further information from the Appellants, which was to be provided by 29 January 2016:
- *to invite the Post Office Official who replied by handwriting on 19 November 2015 to identify himself;*
 - *to reply on an official Post Office note paper and type out his response;*
 - *to provide an explanation as to why there are two stamps on the shipment containing the statement of appeal;*
 - *to explain why the 5 October 2015 stamp is crossed out; and*
 - *[explain] how the Post Office Official can be certain that the aforementioned shipment was received on 5 October 2015, while the tracking system indicates that it was actually received on 7 October 2015 (see Exhibit 1 to the UEFA submissions on admissibility of 4 January 2016)”.*
43. On 4 February 2016, as it had not received a response from the Appellants yet, the CAS Court Office wrote to the Appellants and provided them with an ultimate deadline of 9 February 2016, and stated that if they did not meet this deadline the Sole Arbitrator would render its decision on the admissibility of the appeal based solely on the Parties’ written submissions and evidence to date.
44. On 10 February 2016, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator stating that as the Appellants had not submitted any further submissions on the questions posed by the Sole Arbitrator on 20 January 2016, the Sole Arbitrator would render a preliminary award on admissibility solely on the Parties’ written submissions and evidence received to date.

IV. SUBMISSIONS OF THE PARTIES REGARDING ADMISSIBILITY

45. The following summary of the Parties’ positions on admissibility is illustrative only and does not necessarily comprise 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.

A. The Appellants' Submissions

46. The Sole Arbitrator notes that the Appellants did not file any responses to the questions he posed on 20 January 2016, despite being granted a number of deadlines and extensions in which to do so.
47. However, the Sole Arbitrator notes that the Appellants have stated in correspondence with the CAS Court Office that the Statement of Appeal was posted to CAS by registered mail on 5 October 2015 (which was the date it was due) and that they had therefore complied with the requirement of Article 62(3) of the UEFA Statutes that the Statement of Appeal be filed within 10 days of receipt of the Appealed Decision.
48. The Appellants rely on the stamp on the envelope dated 5 October 2015 and the handwritten note from a RPO employee dated 19 November 2015 as evidence that the Statement of Appeal was submitted on 5 October 2015.

B. UEFA's Submissions

49. On 4 January 2016, UEFA filed preliminary submissions regarding the admissibility of the Appellants' Statement of Appeal. In this submission, UEFA noted that the Appealed Decision had been notified to the Appellants on 23 September 2015 and that therefore, subject to Article 63 of the UEFA Statutes and Article R32 of the CAS Code, the deadline to lodge the Statement of Appeal with the CAS was 5 October 2015. This was not disputed by the Appellants. Therefore, UEFA stated that the sole question to be addressed in the preliminary award is whether the Statement of Appeal lodged by the Appellants was posted on 5 October 2015 or 7 October 2015 – being the two date stamps on the envelope which delivered the Statement of Appeal to the CAS Court Office. If it was 5 October 2015, then the Statement of Appeal would be admissible whereas if it was 7 October 2015, it would be inadmissible. UEFA's position was that the Statement of Appeal was actually posted on 7 October 2015, and was therefore inadmissible.
50. In relation to the letter submitted by an alleged member of the RPO dated 19 November 2015, UEFA submitted that this document cannot be relied on by the Sole Arbitrator for the following reasons:
 - The alleged date of one of the stamps (5 October 2015) completely differed from the official one given by the tracking service of the RPO – *“the supreme and dedicated national operator in the field of postal services in Romania”*. The evidence of this is explained in further detail below.
 - The response from the alleged member of the RPO did not provide an explanation for why there were two conflicting date stamps, one of which was crossed out by hand.
 - The response was not signed by an identifiable person.
51. UEFA claimed that the two conflicting stamps demonstrate that the documents were actually submitted on 7 October 2015. When this issue was pointed out by UEFA, the Appellants failed

to provide any adequate explanation for why one date was crossed out by hand, despite being granted numerous opportunities by the Sole Arbitrator to do so. Bearing in mind the contents of the letter submitted by the Appellants to the CAS Court Office on 20 November 2015, UEFA claimed that the Appellants deliberately refused to provide the Sole Arbitrator with an explanation in this regard and decided not to comment on this issue, despite being asked to do so.

52. As they were not provided with a sufficient explanation, UEFA carried out its own investigation and found that the RPO had an online tracking service. By using the official label reference code contained on the envelope (RN896647847RO) and searching for this on the RPO's online tracking service, UEFA discovered that the Statement of Appeal was clearly posted on 7 October 2015 at 1.53pm. UEFA provided a screenshot of the search results and invited the Sole Arbitrator to perform the same exercise to discover the results for himself.
53. Further, UEFA looked to its own internal documents (from other unrelated matters) which it had received from Romania to verify the validity of the RPO's online tracking service. UEFA had recently received a number of doping control forms sent by a UEFA Doping Control Office based in Romania. The envelope only contained one date stamp and the relevant official label reference code, when searched on the RPO's online tracking service, clearly corresponded to the same date of the date stamp. UEFA provided the relevant reference numbers and once again invited the Sole Arbitrator to perform the same exercise to discover the results for himself.
54. Given the above, UEFA submitted that it was impossible to conclude that the Appellants' Statement of Appeal was posted on 5 October 2015 and the evidence it submitted to the Sole Arbitrator clearly proved that it was actually instead submitted on 7 October 2015. UEFA reiterated that when invited to comment on this, the Appellants merely relied on the hand written, scribbled note from an unidentifiable person who could not confirm why there were 2 dates. As it was not only unverifiable but also contradictory to the clear evidence obtained on the RPO's online tracking service, UEFA claimed this evidence was not reliable.
55. In light of the above, UEFA stated that the CAS "*would be fully entitled and correct to declare the Appellants' appeal to CAS inadmissible due to the Appellants' failure to respect the relevant ten days deadline for the submission of their statement of appeal to the CAS*".

V. JURISDICTION OF THE CAS

56. Article R47 of the CAS Code provides as follows:

"An appeal against a 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 him prior to the appeal, in accordance with the Statutes or regulations of that body".

57. The jurisdiction of the CAS, which is not disputed, derives from all of the following:

- Article 47 of the UEFA DR, which states:

“The UEFA Statutes stipulate which decisions taken by the disciplinary bodies may be brought before the Court of Arbitration for Sport, and under what conditions”.

- Article 58.7 of the UEFA DR, which states:

“Decisions by the Appeals Body are final, subject to Articles 62 and 63 of the UEFA Statutes”.

- Article 62.1 of the UEFA Statutes which states:

“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.

58. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

59. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

60. The Panel notes that Article 63.3 of the UEFA Statutes stipulates the following:

“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.

61. The Sole Arbitrator notes that the matter at hand is from an UEFA Appeals Body decision. For the purposes of this preliminary award, the Sole Arbitrator is therefore satisfied to accept the various Statutes and Regulations of UEFA as the applicable law, but also the subsidiary application of Swiss law should the need arise to fill any *lacuna* in the various statutes and regulations of UEFA.

VII. ADMISSIBILITY

62. At the outset, the Sole Arbitrator notes that the Appellants did not contest that pursuant to Article 63 of the UEFA Statutes and Article R32 of the CAS Code, the due date for the submission of the Statement of Appeal to the CAS was 5 October 2015. Therefore, the Sole Arbitrator agrees with UEFA’s contention that the sole issue to be determined in this

preliminary award on admissibility is whether the Statement of Appeal was submitted on 5 or 7 October 2015.

Conflicting date stamps – 5 or 7 October 2015?

63. The Sole Arbitrator notes that it is indeed peculiar that a date stamp from the RPO would be crossed out by hand and re-stamped two days later. Further, it is peculiar to see copies of two envelopes supposedly sending the same letter to the CAS.
64. The Sole Arbitrator notes that the evidence submitted by the Appellants to verify that the Statement of Appeal was submitted on 5 October 2015 was one copy of the envelope with two date stamps on it and the hand written note on the bottom of a letter by an unidentified person allegedly representing the RPO. The Sole Arbitrator had doubts regarding the authenticity of this note. It merely stated that the letter was submitted to the RPO on 5 October 2015 without any further evidence or explanation. The Sole Arbitrator gave the Appellants an opportunity to address his concerns when he invited them to answer the questions he posed on 20 January 2016 (listed above). However, the Appellants never answered those questions, despite being given ample opportunity and multiple extensions of time in which to do so.
65. Conversely, UEFA submitted evidence that the documents were, in fact, only posted on 7 October 2015 when they referred to the RPO's online tracking service. The Sole Arbitrator performed the same search UEFA did using the relevant reference number and the search results clearly stated that the documents were posted on 7 October 2015 at 1.53pm – as UEFA had submitted. The Sole Arbitrator also performed the same search on the other Romanian documents which UEFA submitted and the date on the RPO's online tracking service did match the date stamp on the corresponding envelope. This gave the Sole Arbitrator comfort that the RPO's online tracking service could be relied upon as evidence.
66. Accordingly, on balance, the Appellants failed to convince the Sole Arbitrator that the Statement of Appeal was submitted on 5 October instead of 7 October 2015. The evidence submitted to sustain its position is unreliable, unverified, inconclusive, illegible (in some parts) and is far less credible than the independently verifiable evidence from the RPO's online tracking service submitted by UEFA.
67. Therefore, for all the reasons set out above and in the absence of sufficient evidence to the contrary, the Sole Arbitrator concludes that the Statement of Appeal was submitted on 7 October 2015.
68. Finally, the Sole Arbitrator notes that the Appellants appeared to have had issues with the RPO when looking to appeal the First UEFA Decision, so it is surprised that they weren't more careful with their appeal to the CAS.

Conclusion

69. As the deadline for the filing of the Statement of Appeal was 5 October 2015, the conclusion from the above is that the Appeal was filed 2 days late. It follows that pursuant to Article 63 of

the UEFA Statutes and Article R32 of the CAS Code, the Appeal is therefore inadmissible and is dismissed in its entirety.

70. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Statement of Appeal filed by S.C. FC Steaua Bucuresti and Mirel Radoi on 7 October 2015 with respect to the Decision of the UEFA Appeals Body issued on 23 September 2015 is inadmissible, and therefore dismissed.
2. The Decision of the UEFA Appeals Body issued on 23 September 2015 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.