



**Arbitration CAS 2015/A/4179 Club Royal Wahingdoh FC v. Othello Baneï, award of 2 May 2017**

Panel: Prof. Petros Mavroidis (Greece), President; Judge James Murphy (USA); Mr Georg von Segesser (Switzerland)

*Football*

*Disciplinary sanction for failure to comply with a FIFA DRC Decision*

*Naming of the right respondent in case of challenge of a FIFA DC*

*Conditions for the standing to be sued according to CAS jurisprudence*

*Final character of a FIFA DRC decision and de novo review by a CAS Panel*

1. The FIFA DC imposes sanctions on a club for failing to comply with a FIFA DRC Decision and thereby violating Article 64 of the FIFA Disciplinary Code. When the appellant challenges a FIFA DC decision but directs it against another party as respondent, and not the FIFA, there is an issue with the proper respondent having legal standing to be sued. The prerequisite of the standing to be sued is to be treated as an issue of merits, and not as a question for the admissibility of the appeal. This entails that should the party that was named as respondent be the wrong respondent, the appeal would still be admissible but without merits.
2. A party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it before the CAS. FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA and FIFA's members, i.e. the full compliance with the rules of the association and/or with the decisions rendered by FIFA's decision-making bodies. As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party for failing to comply with a previous FIFA decision, only FIFA has standing to be sued, but not the (previously) opposing party in the original dispute before the competent FIFA bodies such as the FIFA Dispute Resolution Chamber. Consequently, an appeal against a decision of the FIFA Disciplinary Committee must be directed against FIFA, that is, the body that has the power to impose and enforce disciplinary sanctions on clubs that have contravened Article 64 of the FIFA Disciplinary Code.
3. For a CAS panel to have the power to review *de novo* the dispute or to remand the case, the appealed decision must be final, otherwise, the procedure before FIFA is not deemed to have been completed. If the FIFA DRC decision is not considered as final, because the grounds of the decision have not been communicated to the appellant, then CAS cannot intervene before the end of the procedure before the FIFA instances.

## I. THE PARTIES

1. The Appellant, the Club Royal Wahingdoh Football Club (the “Royal Wahingdoh FC”), is an Indian professional football club registered with the All India Football Federation and playing in the I-League (the professional football league organized under the auspices of the India Football Federation).
2. The Respondent, Mr Othello Banei is a professional football player of Liberian nationality.

## II. FACTUAL BACKGROUND

3. On 12/18 August 2011, Royal Wahingdoh FC and Mr. Othello Banei entered into a professional player contract. The Parties disagree on which is the genuine version of the contract and its content as to its duration and financial terms. This contract was terminated on 31 May 2012 under circumstances disputed amongst the Parties regarding whether it had expired or whether it had been terminated, and regarding outstanding financial obligations upon termination.
4. Mr. Othello Banei lodged a complaint before the FIFA Dispute Resolution Chamber (the “FIFA DRC”) through a set of letters sent in July and August 2012, claiming, *inter alia*, the payment of outstanding remuneration and payment of compensation for breach of contract.
5. Royal Wahingdoh FC did not participate in the resulting proceedings before the FIFA DRC. During the proceedings, all correspondence in connection with the matter was sent to Royal Wahingdoh FC via the All India Football Federation (the “AIFF”). According to Royal Wahingdoh FC, it never received any correspondence from AIFF in that regard including the complaint of Mr. Othello Banei. Royal Wahingdoh FC further submits that FIFA never requested the AIFF to provide it with a valid and direct fax number of Royal Wahingdoh FC before 13 March 2014.
6. On 18 March 2014, the FIFA DRC issued a decision (the “FIFA DRC Decision”) which ruled that:

*“1. The claim of the Claimant, Othello Banei, is partially accepted.*

*2. The Respondent, Royal Wahingdoh Football Club, is ordered to pay to the Claimant outstanding remuneration in the amount of Indian Rupees (INR) 499,920 within 30 days as from the date of notification of this decision.*

*3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of INR 1,200,000 within 30 days as from the date of the notification of this decision.*

*4. In the event that the above-mentioned amounts due to the Claimant are not paid by the Respondent within the stated time limit, interest at the rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.*

5. *Any further claim lodged by the Claimant is rejected.*
6. *The claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received”.*
7. On 31 March 2014, the FIFA DRC Decision was communicated to the Parties and in particular directly to the Club (not through the AIFF) without grounds. According to its final dispositions, the Parties could request the grounds of the decision within ten (10) days from receipt of notification of the findings of the decision, failing which it would become final and binding, as the parties would be deemed to have waived their right to file an appeal as per Art. 15 of the Rules Governing the Procedures of the Player’s Status Committee and the Dispute Resolution Chamber and as restated at the end of the FIFA DRC Decision.
8. On 10 April 2014, FIFA received an undated letter from Royal Wahingdoh FC acknowledging receipt of the FIFA DRC Decision, stating that *“The grounds of taking such decision are completely unknown to us as this is the first correspondence we are receiving either from FIFA, or the Claimant, towards any alleged employment related dispute”*. In the same letter, Royal Wahingdoh FC contested having any pending financial- or other contractual obligations towards Mr. Othello Banei and, therefore, requested FIFA to *“stay and reconsider this decision”*.
9. On 25 April 2014, the FIFA DRC replied to Royal Wahingdoh FC stating that it was surprised by the content of this letter. It maintained that all prior correspondence in connection with the matter had been sent to the AIFF. This, it claimed, was standard practice, since the address of Royal Wahingdoh FC was unknown to it. Consequently, and since the AIFF had been duly notified of the correspondence, and the statutory deadlines to appeal had lapsed, Royal Wahingdoh FC could not contest the DRC Decision anymore.
10. On 3 May 2014, Royal Wahingdoh FC sent another letter to FIFA stating that it received copies of the FIFA communications to the AIFF for the first time on 1 May 2014, acknowledging however that the correspondence might have been misplaced following a change in the club’s management. It further stated that it became aware of the complaint only in December 2013 via email and telephone and that it had never received a reasoned decision. Royal Wahingdoh FC alleged that the contract upon which the FIFA DRC Decision was based was fraudulently forged by Mr. Othello Banei to mislead the FIFA DRC and, requested again that the FIFA DRC re-examine the matter. FIFA claimed that it only partially received this correspondence.
11. By letter dated 3 July 2014, Mr. Othello Banei requested the FIFA DRC to submit the case to the FIFA Disciplinary Committee (the “FIFA DC”) for a formal decision, given Royal Wahingdoh FC’s non-compliance with the FIFA DRC Decision.
12. By letter dated 4 August 2014, FIFA informed Royal Wahingdoh FC that the case would be transferred to the FIFA DC in case it did not comply with the FIFA DRC Decision.
13. By a letter received on 13 August 2014 by FIFA, Royal Wahingdoh FC stated that it did not *“feel obligated to pay any form of compensation to Othello Banei”* because the latter would have *“presented*

*a fraudulent contract and made a false claim*”, and attached a full copy of its 3 May 2014 letter and other documents.

14. On 15 August 2014, the FIFA informed the Parties that the file would be forwarded to the FIFA DC.
15. On 18 February 2015, as it had still not paid the amount ordered in the FIFA DRC Decision, the FIFA DC Secretariat opened disciplinary proceedings against Royal Wahingdoh FC.
16. On 17 March 2015, the FIFA DC Secretariat urged for the final time Royal Wahingdoh FC to pay by 2 April 2015, and informed it that the case would be submitted to the FIFA DC on 16 April 2015.
17. On 23 March 2015, Royal Wahingdoh FC replied to the FIFA DC Secretariat, reiterating that it did not owe money to Mr. Othello Banei, and that the dispute before the FIFA DRC was based on a forged contract submitted by Mr. Banei. Royal Wahingdoh FC further stated that it was not in a position to address the issue simply because it was not aware of it as it had no fax line due to local telecom issues and, that as soon as the AIFF reached out to them in December 2013 via telephone call, they reacted and submitted all documentation from their end.
18. Royal Wahingdoh FC submitted no further correspondence to the FIFA DC.
19. On 16 April 2015, the FIFA DC issued a decision (the “**FIFA DC Decision**”) which ruled that:

*“1. The Club Royal Wahingdoh FC is pronounced guilty of failing to comply with the decision passed by the Dispute Resolution Chamber judge on 18 March 2014 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*

*2. The club Royal Wahingdoh FC is ordered to pay a fine to the amount of CHF 5,000. The fine is to be paid within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. [...], with reference to case no. 150127 cea.*

*3. The club Royal Wahingdoh FC is granted a final period of grace of 30 days as from notification of the present decision in which to settle its debt to the creditor, Mr Othello Banei.*

*4. If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that three (3) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee.*

*5. If the club Royal Wahingdoh FC still fails to pay the amount due even after deduction of the points in accordance with point III.4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor’s first team to the next lower division.*

6. *As a member of FIFA, the All India Football Federation is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the All India Football Federation does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*

7. *The costs of these proceedings amounting to CHF 1,000 are to be borne by the club Royal Wahingdoh FC and shall be paid according to the modalities stipulated under point III.2. above.*

8. *The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 13 August 2015, Royal Wahingdoh FC filed a Statement of Appeal with the CAS against the FIFA DC Decision and the FIFA DRC Decision, pursuant to the Code of Sports-related Arbitration (2013 edition) (the “Code”), and paid the CAS Court Office fee. Royal Wahingdoh FC submitted the following requests for relief:

*“III. Request for Relief*

- i. Set aside the Primary and Secondary Impugned Order [FIFA DC Decision and FIFA DRC Decision] which place reliance on forged contract of employment submitted by the Respondent;*
- ii. Suspend Respondent for the next 24 matches or 24 months for committing the serious act of forgery and extend the said sanction world-wide under Article 19 read with Article 136 of the disciplinary code; and*
- iii. Impose heavy costs on Respondent for committing the act of fraud on the relevant forums”.*

21. In its Statement of Appeal, Royal Wahingdoh FC designated Mr James Michael Murphy, Judge in the USA, as arbitrator.

22. On the same date, Royal Wahingdoh FC submitted an Application to Stay the Execution of the FIFA DC Decision and of the FIFA DRC Decision, and submitted the following request for relief:

*“In view of what has been stated above the Appellant requests for the following reliefs:*

- a. Stay Execution of Decision 150127 PST IND ZH, by the FIFA Disciplinary Committee dated 16.04.2015*
- b. Stay Execution of Decision Decision [sic] dated 18.03.14 passed in ICA 12-02469 by the Dispute Resolution Chamber Judge, FIFA”.*

23. On 20 August 2015, the CAS Court Office received payment of the Court Office fee set forth by Articles R48 para. 2 and R64.1 of the Code.

24. On 25 August 2015, Royal Wahingdoh FC submitted its Appeal Brief and submitted the following request for relief:

*“VI. Request for Relief*

*59. Set aside the Primary and Secondary Impugned Order [FIFA DC Decision and FIFA DRC Decision] which place reliance on forged contract of employment submitted by the Respondent;*

*60. Suspend Respondent for the next 24 matches or 24 months for committing the serious act of forgery and extend the said sanction world-wide under Article 19 read with Article 136 of the disciplinary code;*

*61. Impose heavy costs on Respondent for committing the act of fraud on the relevant forums; and*

*62. In alternate, refer the dispute back to the DRC for considering the evidence that has been produced by the Appellant in the present proceedings to pass an informed decision”.*

25. Upon being informed by the CAS Court Office about the filing of a statement of appeal against the FIFA DC Decision and the FIFA DRC Decision, on 27 August 2015 FIFA sent a letter to the CAS Court Office, which was communicated to the Parties whereby it:

- informed CAS that, as the appeal was not directed against FIFA, it renounced its right to intervene in the arbitration proceeding before CAS.
- also highlighted that FIFA disciplinary proceedings are to be distinguished from proceedings before the FIFA DRC or the FIFA Player’s Status Committee. In line with the longstanding CAS jurisprudence, should a party lodge an appeal against a decision of the FIFA DC, said appeal should be directed against FIFA, which is the proper opposing party in such disciplinary related proceedings and the only party having standing to be sued, but not against the previously opposing party in a financial case before the competent FIFA bodies. FIFA indicated that as a consequence, should such appeal not be directed against FIFA, it should be rejected as CAS cannot review decisions of FIFA first instance bodies.
- further indicated that FIFA DC’s sole task is to analyse if the debtor complied with the final and binding decision subject to enforcement and not to review or modify the substance of that previous decision.
- finally stated that the FIFA DRC Decision had long become final and binding and that therefore, any request for relief sought in that respect shall also be dismissed.

26. On 31 August 2015, Mr. Othello Banei designated Dr. Georg von Segesser, Attorney-at-law in Zurich, Switzerland, as arbitrator.

27. On 16 September 2015, Mr. Othello Banei filed an email answering to the Appeal Brief (the “Answer”) wherein he challenged the allegations put forward by Royal Wahingdoh FC

concerning his forgery of documents, as well as other related factual allegations. Mr Othello Banei did not formulate a request for relief.

28. On 1 October 2015, the CAS Court Office informed the Parties that the Panel appointed to decide the case was now constituted of Mr. Petros C. Mavroidis, Professor of Law at Neuchâtel, Switzerland (President), Mr. James Michael Murphy, Judge in Spokane, USA, and Dr. Georg von Segesser, Attorney-at-law in Zurich, Switzerland (Arbitrators), and communicated the Notice of Formation of a Panel together with copies of the Acceptances and Statement of Independence forms signed by the arbitrators.
29. On 1 October 2015, Royal Wahingdoh FC submitted three emails to the CAS Court Office with additional CAS case law in support of its arguments. On the same day, the CAS Court Office acknowledged receipt of these emails and requested the Parties to refrain from producing unsolicited submissions unless it is requested by the Panel, (Art. R56 of the Code)
30. On 9 October 2015, the Panel issued an Order on Request for a Stay, pursuant to Royal Wahingdoh FC's Request. The Order decided that:  
  
*"1. The application for a stay filed by Club Royal Wahingdoh FC on 13 August 2015, in the matter CAS 2015/A/4179 Club Royal Wahingdoh FC v. Othello Banei, is dismissed.*  
  
*2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".*
31. On 21 January and 10 February 2016 respectively, both parties signed the Order of Procedure.
32. On 26 January 2016, the hearing in this matter was held at the CAS headquarters in Lausanne, Switzerland. The Parties had agreed for the hearing to be held simultaneously via Skype teleconferencing.
33. Prof. Petros C. Mavroidis (President), Dr. Georg von Segesser (Arbitrator) and Mr. Fabien Cagneux (CAS Counsel) were present at the CAS premises.
34. Mr. James Michael Murphy (Arbitrator), Mr. Hervé Le Lay (*ad hoc* Clerk) and Mr. Parinay Deep Shah (Counsel for the Appellant) participated to the hearing via Skype teleconferencing connection.
35. The Respondent did not attend the hearing, neither physically nor via Skype teleconferencing. The Panel notes that the Respondent had been duly notified of the date and time of the hearing, venue and connection details. On 28 December 2015, the CAS Court office informed the Parties that the hearing would be held on 26 January 2016 at 7 AM (CET, central European time) at the CAS premises in Lausanne and that upon request of the Parties the Panel had decided that it would also be held by Skype teleconferencing, and requested that the Parties provide the names of persons attending the hearing and their Skype details in order to organise the Skype test. On 11 January 2016, the Respondent informed the CAS Court Office that he was willing to attend the hearing via Skype and provided the details of his Skype account. Following notice from the CAS Court Office dated 11 January 2016 and reminder dated 14

January 2016 made to both Parties, a Skype connection test was conducted on 18 January 2016 at 10 AM (CET). The Appellant participated to the test. Respondent did not participate despite various attempts from CAS Court Office to contact him.

36. Attempts to connect with Respondent were made repeatedly before and during the hearing, in vain. As a result, and pursuant to Art. R57 para. 4 of the Code, the hearing took place without Respondent's participation.
37. The Panel therefore unanimously agreed that the Respondent's Answer would constitute the totality of his claims and arguments.
38. At the end of the hearing, following a specific request by the Panel to this effect, the Appellant expressed its full satisfaction with the manner that the whole process had been conducted, reaffirming that due process had been observed, and that its right to be heard had been fully respected.

#### **IV. ARGUMENTS OF THE PARTIES**

39. This summary only mentions the Parties' key arguments to support their claims. The Panel examined thoroughly the entirety of the file and has taken into account all arguments and exhibits submitted during the written and the oral phase of the proceedings, including those not mentioned in this award.
40. The written and oral arguments of the Appellant may be summarized as follows:
  - The FIFA DRC Decision never became final. Royal Wahingdoh FC never received the grounds of the decision despite its request to that end in due time to FIFA. By requesting the grounds of the FIFA DRC Decision in its letter of 10 April 2014 to FIFA, Royal Wahingdoh FC expressed its wish to challenge that decision. As it never received the grounds of the DRC Decision, Royal Wahingdoh FC was never in a position to appeal it and the time limit for appeal never started to run. The DRC Decision therefore never became final.
  - The FIFA DC Decision must be set aside on the grounds that it seeks to execute the FIFA DRC Decision, which had never become final and binding as a disciplinary action under Article 64 of the FIFA Disciplinary Code is only admissible where the decision at stake has become final.
  - The FIFA DRC Decision and the FIFA DC Decision rest on wrong factual documents as the employment contract submitted by Mr Othello Banei before the FIFA DRC is a forged document which fraudulently misled the DRC. The forgery is evidenced by discrepancies with respect to dates of commencement and end of the contractual relationship and by incoherence regarding the amount due to Mr Othello Banei in the contract he submitted. Consequently, as per the principle "*fraus omnia corrumpit*" which has



been accepted by Swiss law, the FIFA DRC Decision and FIFA DC Decision are vitiated and must be set aside.

- As a consequence of Mr. Othello Banei's fraud, he must be held liable to pay a fine and suspended for at least six matches with world-wide effect as per Articles 2, 61 and 136 of the FIFA Disciplinary Code.
- Royal Wahingdoh FC's right to be heard has not been complied with in the proceedings leading to the FIFA DRC Decision. Royal Wahingdoh FC was not notified of the proceedings before the FIFA DRC and did not receive any document related to these proceedings before April 2014. The FIFA DC disregarded all documents submitted by Royal Wahingdoh FC in order to deny Mr. Othello Banei's allegations and also failed to recognize Royal Wahingdoh FC's right to be heard. Royal Wahingdoh FC did bring to DRC's notice through a letter received by FIFA on 10 April 2014 that it had never received any relevant document and the only communication it had received regarding the proceedings was through an email in December 2013. The FIFA DRC delegated its obligation to notify Wahingdoh FC to the AIFF yet FIFA DRC remained ultimately responsible for ensuring that the party effectively receives notifications.

41. The written arguments of the Respondent may be summarized as follows:

- By sending its letter of 27 August 2015, FIFA has "*constructively become a party to the present proceedings*".
- The contract submitted by the Player to the FIFA DRC was not forged. This contract was signed without the presence of witnesses, as only Mr. Banei and Wahingdoh FC's President were present at the signing. A copy was only handed to Mr. Banei when the Superintendent of Police and Foreigners Registration Office, as well as the Bank and internet company requested it in order to allow Mr. Banei to register as a resident in Shillong, India, and to open a bank account and internet contract. It is the very same contract submitted to the FIFA which was submitted to the Police.

## V. DISCUSSION

### V.1 Jurisdiction of the CAS

42. Article R47 of the Code provides as follows:

*"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes of regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said-related body.*

*An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance”.*

43. In its Statement of Appeal, Royal Wahingdoh FC relied on Articles 66 and 67 of the FIFA Statute, Articles 22 and 24 of the FIFA Regulations on the Status and Transfer of Players and Article 34 of the FIFA Disciplinary Code, which grant a right of appeal to the CAS. The jurisdiction of the CAS was not contested by the Respondent and was confirmed by the signature by both parties of the Order of Procedure. The CAS accordingly has jurisdiction over the appeal against the FIFA DC Decision and the FIFA DRC Decision.

## **V.2 Admissibility**

44. The Appellant filed its Statement of Appeal within 21 days of receipt of the FIFA DC Decision. In addition, none of the Parties contested the admissibility of the appeal. It follows that the appeal was filed in due time and is admissible.

## **V.3 Applicable Law**

45. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

46. Pursuant to Article 66 para. 2 of the FIFA Statutes (2015 edition), “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”. As a consequence, the FIFA regulations will be applied primarily, and Swiss Law shall apply on a subsidiary basis.
47. The Appellant cited without further comment Article 66 para. 2 of the FIFA Statutes under the section “Jurisdiction” of its Appeal Brief and submitted arguments under FIFA regulations and Swiss law. The Respondent did not make any comment regarding applicable law.
48. FIFA regulations and Swiss law are therefore applicable to the dispute.

## **V.4 Merits**

49. The Appellant challenges the FIFA DC Decision, but directed it against Mr Banei as Respondent, and not the FIFA or the specific FIFA body that had issued the contested decision. The Panel believes there is an issue with the proper respondent having legal standing to be sued.

50. Pursuant to the well-established jurisprudence of the CAS, echoing the jurisprudence of the Swiss Federal Tribunal on this issue, the prerequisite of the standing to be sued is to be treated as an issue of merits, and not as a question for the admissibility of the appeal (e.g. CAS 2008/A/1639; CAS 2012/A/3032). This entails that should the Player be the wrong respondent, the appeal would still be admissible but without merits.
51. The FIFA DC Decision has been issued by the FIFA DC and imposes sanctions on the Appellant for failing to comply with the FIFA DRC Decision and thereby violating Article 64 of the FIFA Disciplinary Code. The issues addressed by the Appellant in its briefs and oral pleadings address alleged deficiencies in the manner in which the dispute was handled by the FIFA DC. In particular, following a question from the Panel during the hearing, that, the Appellant stated what was at stake was the manner in which the FIFA DC handled evidence adduced before it, and that the aggrieved deficiencies with regard to the procedure were not directed against the Respondent.
52. Pursuant to the jurisprudence of the CAS, a party has standing to be sued (*“légitimation passive”*) in CAS proceedings only if it has some stake in the dispute because something is sought against it before the CAS (e.g. CAS 2014/A/3831; CAS 2014/A/3850). CAS jurisprudence has further established that FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA and FIFA’s (direct and indirect) members, *i.e.* the full compliance with the rules of the association and/or with the decisions rendered by FIFA’s decision-making bodies. As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party for failing to comply with a previous FIFA decision, only FIFA has standing to be sued, but not the (previously) opposing party in the original dispute before the competent FIFA bodies such as the FIFA Dispute Resolution Chamber. Consequently, it is well established that an appeal against a decision of the FIFA Disciplinary Committee must be directed against FIFA, that is, the body that has the power to impose and enforce disciplinary sanctions on clubs that have contravened Article 64 of the FIFA Disciplinary Code. (e.g. CAS 2007/A/1367; CAS 2012/A/3032).
53. *In casu*, the FIFA DC Decision imposes a sanction against the Appellant, Royal Wahingdoh FC. The legal situation of the Respondent, Mr Othello Banei, that is, his balance of rights and obligations, is not affected by the FIFA DC Decision. The Respondent simply submitted a complaint before the FIFA DRC in order to claim payments relating to the contractual obligations that the Appellant had assumed *vis-à-vis* him by signing a contract. The FIFA DC Decision, against which the Appellant is complaining about, is not even an automatic consequence of the original proceedings. Had the Appellant complied with the FIFA DRC Decision, the matter would not have been brought before the FIFA DC to seek enforcement of the FIFA DRC Decision.
54. Under the circumstances, the Panel considers that, in light of the claims made to CAS in the present dispute, the appeal was wrongly directly against Mr Othello Banei instead of FIFA. Mr Othello Banei has no legitimacy to act as the Respondent in the present dispute, the object of which is the dissatisfaction of the Appellant with the conduct of specific FIFA bodies. The Respondent should have been FIFA itself. Yet, FIFA has not been identified as Respondent

in this proceeding before CAS by the Appellant, neither in its Statement of Appeal, nor in the Appeal Brief.

55. In addition, the present appeal is lodged in the context of disciplinary proceedings and must thus be directed against the federation as the proper respondent which rendered the decision that is subject to an appeal (i.e. FIFA). The player who requested the initiation of disciplinary proceedings cannot be the proper respondent.
56. Finally, the argument that FIFA joined the proceedings when submitting its letter of 27 August 2015 does not hold. The object of such letter was precisely to submit that the appeal should be rejected because it was wrongly directed against the Player when the proper respondent in disciplinary proceedings should have been FIFA.
57. Accordingly, the Panel finds that the Appellant erred in filing the appeal with respect to the FIFA DC Decision against Mr Othello Banei, as Mr Banei lacks standing to be sued in connection with the present case.
58. Consequently, the Panel holds that the appeal from the Appellant against the FIFA DC Decision should be dismissed.
59. It follows that the Panel does not need to address the other arguments and claims raised by the Appellant in order to challenge the FIFA DC Decision.
60. The Appellant also challenges the FIFA DRC Decision and seeks that sanctions be imposed on the Respondent, and in the alternate that the dispute be remanded to the FIFA DRC.
61. As per Art. R57 of the Code, the Panel has indeed the power to decide *de novo* on the dispute subject of the appealed decision as well as to send the dispute back to the first instance jurisdiction, which would be the FIFA DRC in the matter at hand, whenever appropriate.
62. The main claim of the Appellant is that it was not given the opportunity to present its case before the FIFA DRC so that the latter failed to entertain some important arguments that could, in its view, have resulted in a different decision.
63. The Appellant argued that its letter dated 10 April 2014 to the FIFA, whereby it stated that *"the grounds of taking such a decision are completely unknown to us"*, in a context where indeed the full decision had not been communicated to the Appellant by FIFA, amounts to an informal request to obtain the grounds of the FIFA DRC Decision. Yet, the FIFA did not treat his letter as a request to this effect, and, therefore, in fact considered that no request to obtain the grounds of the decision had been received within 10 days of receipt of notification of the findings of the FIFA DRC Decision. Consequently, in FIFA's understanding of the situation, the FIFA DRC Decision had become final and binding on the Parties. The Parties had implicitly waived their right to file an appeal (Art. 15 of the Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber and as restated at the end of the FIFA DRC Decision).

64. The Panel is of the opinion that the Appellant's argument has some merits and that to interpret the letter of 10 April 2014 otherwise would be over formalistic (see regarding the absence of formalistic requirement regarding requests for grounds of FIFA body decisions: CAS 2009/A/1956).
65. Yet, for the Panel to have the power to review *de novo* the dispute or to remand the case, the appealed decision must be final, otherwise, the procedure before FIFA is not deemed to have been completed. The Panel takes the view that it cannot proceed and examine *de novo* the dispute before it. If the FIFA DRC Decision is not considered as final, because the grounds of the Decision have not been communicated to the Appellant, then CAS cannot intervene before the end of the procedure before the FIFA instances.
66. If however, on the other hand, the FIFA DRC Decision was accepted as final, then the Appellant would not be capable of appeal as, by not validly requesting the grounds for the decision within 10 days of the notification of the findings of the FIFA DRC Decision, the Appellant would be deemed to have waived its right to appeal and in any event, the appeal would be suffer from the same vice already earmarked in the first ground for relief, namely, the wrong identity of the respondent. Thus, no matter what the status of the FIFA DRC Decision, the Panel takes the view that it has no jurisdiction to proceed and examine the claims presented by the Appellant *de novo*.
67. Consequently, the Appeal against the FIFA DRC Decision is also dismissed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The Appeal filed by Club Royal Wahingdoh FC on 20 August 2015 against the decision of the FIFA Disciplinary Committee dated 16 April 2015 is dismissed.
2. The decision issued on 16 April 2015 by the FIFA Disciplinary Committee is fully confirmed.
3. (...).
4. (...).
5. All other or further requests or motions for relief are dismissed.