



Arbitration CAS 2013/A/3135 PAS Giannina 1966 v. Stéphane Demol, award of 3 April 2014

Panel: Mr Michael Gerlinger (Germany), Sole Arbitrator

Football

Employment contract between a club and a coach

Proper notification of a decision

Day of the notification

Inadmissibility of the appeal

1. A decision may be sent either to the party directly, and/or to a representative of the party holding a power of attorney and/or to a third party. If the decision is only sent to a third party, it is not properly notified to the party involved in the proceedings. However, a decision within the meaning of Article 67 par. 1 of the FIFA Statutes can be sent to a representative of the party, thus being properly notified to the party itself.
2. If a decision is served directly to a party as well as to the national federation, the latter not representing the party in the proceedings, the day of notification is the day the decision is directly served to the party and not the day the decision is resent to the party by the national federation.
3. Inadmissibility is an automatic consequence of an appeal not lodged in time and does not depend on the other party raising the issue or not. The application of the principles of proportionality, good faith or of other principles cannot change this consequence either.

I. PARTIES

1. PAS Giannina 1966 FC (hereinafter referred to as the “Appellant” or the “Club”) is a professional football club with its registered office in Ioannina, Greece. It is a member of the Hellenic Football Association (hereinafter referred to as the “HFF”) and plays in the Greek top division, the Super League.
2. Mr Stéphane Demol is a professional football coach of Belgian nationality holding a UEFA Pro licence. He has been working as a professional coach for football clubs in Belgium, Greece and Cyprus since the year 2000.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 10 March 2011, the Parties concluded an agreement labelled "Head coach's contract of employment". Clause 2 of such agreement stipulates that *"The duration of the agreement is determined for the period of 01.07.2011 up to 30.06.2012"*. Under a paragraph labelled "Economical arrangements", the agreement stipulates *inter alia*:

"In consideration of the services to be rendered by the Head Coach, the Club will pay to Head Coach:

The amount of 220.000 (two hundred twenty thousand) euros NET payable as follow:

- *220.000 € divided in 11 installments (sic): 11×20.000€ payable every 30th of the month from July 2011 to May 2012.*

The Head coach will also, based on the performances, receive the following "Bonuses"

- *The equal bonus per game as each player as per agreement between the Club and the players*
- *Any other "extra" kindly offered by the President to the players*
- *50.000 (fifty thousand) euros NET if the Club qualifies for participation in the European UEFA games for the next seasons 2012-2013 of if the team In the final standings for the season 2011-2012 is the first team after Athens and Thessalonica teams.*

In addition to the financial arrangements, the Club will also provide to the Head Coach:

- *The Club pays for the whole duration of the agreement the rental fees and domestic expenses of a fully furnished house or apartment to be used by the Head Coach and his family. Including internet and NOVA sports channels, because needed by the Head Coach for his job. Excluded telephones.*
- *The Club will supply the Head Coach with a car with Insurance and taxes and all generally by law licenses etc. ... valid. Fuel to be paid by the Head Coach (except for scouting travel for the Club).*
- *The Club will pay for the family of the Head Coach 8 (eight) economy tickets Brussels-Ioannina-Brussels".*

5. On 23 November 2011 the Appellant issued a letter to the Respondent notified by bailiff, stating inter alia:

“Today we terminate the cooperation agreement dated 31/08/2011 and in addition, the private contract, which is corollary to the former [...]”.

The letter is signed by the Appellant’s President.

6. The Respondent received the following payments from the Appellant:

- 10,000 € on 16 August 2011
- 10,000 € on 16 September 2011
- 10,000 € on 21 October 2011
- 2,500 € on 25 November 2011
- 40,000 € on 30 May 2012

B. Proceedings before the FIFA Players’ Status Committee

7. On 15 February 2012, the Respondent lodged a claim with the FIFA Players’ Status Committee (hereinafter referred to as the “FIFA PSC”) with respect to the termination of the employment agreement.

On 30 May 2012, the Respondent received a further payment of 40.000,- €. Such payment was not notified to the FIFA PSC.

8. On 14 November 2012, the Single Judge of the PSC ruled as follows (hereinafter referred to as the “PSC Decision”):

- “1. The claim of the Claimant, Stéphane Demol, is partially accepted.*
- 2. The Respondent, PAS Giannina FC, has to pay to the Claimant, Stéphane Demol, **within 30 days** as from the date of notification of the present decision , the amount of EUR 52,833 as outstanding salary.*
- 3. Furthermore, the Respondent, PAS Giannina FC, has to pay to the Claimant, Stéphane Demol, **within 30 days** as from the date of notification of the present decision , the amount of EUR 116,250 as compensation for breach of contract.*
- 4. Any further claims lodged by the Claimant, Stéphane Demol, are rejected.*

5. *If the aforementioned amounts of EUR 52,833 and EUR 116,250 are not paid within the aforementioned deadline, an interest rate of 5 % per year will apply as of the expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
6. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid **within 30 days** as from the date of notification of the present decision as follows:*
 - 6.1 *The amount of CHF 5,000 has to be paid by the Claimant, Stéphane Demol. Given that the latter already paid an advance of costs in the amount of CHF 5,000 at the start of the present proceedings, the Claimant, Stéphane Demol is exempted from paying the abovementioned costs of the proceedings.*
 - 6.2 *The amount of CHF 10,000 has to be paid by the Respondent, PAS Giannina FC, to FIFA to the following bank account with reference to case nr. 12-00586/lde*

[...]
7. *The Claimant, Stéphane Demol, is directed to inform the Respondent, PAS Giannina FC, immediately and directly of the account number to which the remittance under points 2 and 3 above is to be made and to notify the Players' Status Committee of every payment received".*
9. According to the positive Fax Delivery Notification of FIFA, the PSC Decision including the grounds was sent via facsimile to the Appellant on 7 March 2013. On 8 March 2013, the Hellenic Football Federation also sent the PSC Decision to the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 29 March 2013 the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"). It submitted the following requests for relief:

"Our club requests by Your Court to accept our appeal in total and solve the present dispute according the following:

 - (i) *To adopt an award according to which the decision with reference number 12-00586/lde of the Single Judge of the FIFA PSC will be cancelled and annulled in total.*
 - (ii) *To examine the case regarding our dispute with the Respondent under the status of a de novo judgement.*
 - (iii) *To establish and accept that we do not owe any amount for and from any reason to the Respondent and reject in total the primary claim that the Respondent filed before the FIFA PSC.*
 - (iv) *To establish that all the costs of this arbitration procedure, have to be paid by the Respondent.*
 - (v) *To establish that all the costs of the procedure before the FIFA PSC, have to be paid by the Respondent.*

(vi) *That as compensation for the legal cost assumed by our club, the Respondent has to pay an amount not minor than 30.000 Euros”.*

11. By letter of 8 April 2013 the CAS Court Office extended the Appellant’s deadline to file its Appeal Brief until 9 April 2013. The Appellant filed its Appeal Brief with the CAS on 9 April 2013.
12. FIFA renounced its right to request intervention with letter dated 16 April 2013. In the same letter, FIFA informed the CAS that deems that the Appellant had not respected the deadline for the appeal.
13. With letter dated 22 April 2013, the CAS Court Office informed the parties that the Deputy President of the Appeals Arbitration Division had decided to submit the present matter to a Sole Arbitrator. The parties did not raise any objections as to such decision.
14. On 6 May 2013 the Respondent filed its Answer with the CAS. The Respondent submits the following requests for relief:

“In principal order:

Request the President of the Panel (if the Panel is constituted) to terminate if the statement of appeal is late in conformity with article R49 of the Code in conjugation with article 67§1 of the FIFA Statutes.

In subsidiary order:

Condemn the Appellant to pay:

- *EUR 32,833 as outstanding salaries;*
- *EUR 116,250 as a compensation for unilateral breach of contract;*
- *EUR 15,500 as a compensation for unlawful breach of contract;*
- *EUR 30,000 as moral damages;*
- *10,000 CHF as legal expenses;*
- *The total of the cost of the procedure before the Single Judge FIFA Player’s Status Committee (i.e. the reimbursement of 5.000 CHF to the Respondent);*
- *The total of the arbitration costs before the CAS (i.e. the reimbursement of 8,000 CHF to the Respondent).*

Condemn the Appellant to give evidence that all Respondent’s taxes have been paid.

Condemn the Appellant to add an interest of 5 % per annum on all the above amounts (except the defence costs and proceeding costs) and this, from 23 November 2011 until the perfect payment of these amounts”.

15. By letter dated 8 July 2013, the CAS Court Office informed the parties that Mr Michael Gerlinger, attorney-at-law in Munich, Germany, had been appointed as Sole Arbitrator. The parties did not raise any objections as to the appointment of the Sole Arbitrator.
16. By letter dated 29 July 2013, the CAS Court Office informed the parties that the Sole Arbitrator had decided to not hold a hearing in this matter. The parties, again, raised no objections as to such decision.
17. As requested by the Sole Arbitrator with respect to the admissibility of the Appeal, the Appellant filed an additional submission on 4 October 2013 and the Respondent on 16 October 2013.

IV. SUBMISSIONS OF THE PARTIES

18. The Appellant’s submissions, in essence, may be summarized as follows:
 - With respect to the admissibility of the Appeal, the Appellant claims that it received the PSC Decision on 8 March 2013 via the Hellenic Football Federation (hereinafter referred to as the “HFF”). It claims that the Respondent, prior to the CAS procedure, did not raise such issue, but only after a “tip” of FIFA. In addition, all correspondence in the FIFA Arbitration was also sent via the HFF to the Appellant. Finally, the Appellant invokes the principle of proportionality with respect to the admissibility of the Appeal.
 - Regarding the substance, the Appellant raises several issues with respect to the fulfillment of the employment agreement: The Respondent did not offer his services according to the agreement. The Respondent had “demanded” specific players that were too expensive for the Appellant. Such players did not perform as expected. Also, many players started having a bad relationship with the Respondent resulting in tensions within the team. In addition, the Respondent had verbal disagreements with the supporters on the pitch.
 - The Appellant, then, claims that the employment agreement had been terminated mutually by both parties as follows:
 - Despite the above-mentioned incidents, it supported the Respondent until a meeting on 21 November 2013 between the Respondent and the Appellant’s President. In such meeting, the Appellant’s President and the Respondent had agreed that something had to change and that the Respondent tries to find another club. If so, the employment contract would be terminated immediately and the Respondent would receive his salary until October 2011 and in addition 30% of the November salary. If not, they would discuss after the next league game of the Appellant. Two days later, on 23 November 2013, the Respondent had informed the Appellant’s President that he had found some clubs in the Belgian League and wanted to be available. Therefore, the Respondent had considered it

better for both parties to terminate the employment agreement. Although the President wanted the Respondent rather to stay until the next crucial league match, he had agreed to the termination of the employment agreement.

- Later on the same day, the Respondent had asked for a letter stating the fact that the employment agreement was terminated, in order for his representative to discuss the details and to provide the new club with it. Since the President was not in Ioannina, he had ordered an employee to sign a document stating the termination of the employment agreement and to notify it to the Respondent.
- With respect to the amount of the outstanding salaries, the Appellant had also made a payment of EUR 4,000 on 6 July 2013. The fact that the Respondent did not notify the receipt of the payment of 40,000 on 30 May 2012 during the procedure before the FIFA PSC, constituted an infringement of Art. 5 para 3 of the Procedural Rules of the FIFA PSC.
- The salary of the Respondent at his new club, which the Respondent submitted being EUR 3,750, was obviously incorrect, since too low. Generally, the Respondent was working continuously and, therefore, suffered no damage.

19. The Respondent's submissions, in essence, may be summarized as follows:

- First, the appeal is inadmissible, since the time limit for the Statement of Appeal was not met with the Appellant's fax date 29 March 2013. The fact that FIFA mentioned the late submission does not change the situation. In addition, the HFF never acted as an intermediary. Also in the FIFA Arbitration, all correspondence was sent directly to the Appellant. Finally, the principle of proportionality does not rule out the strict application of deadlines.
- In the substance, the termination of the employment agreement was unilateral. There was no demand from the Respondent to be relieved from his contract. Neither was the acceptance of the Appellant's payment of € 40,000 during the procedure at the FIFA PSC a mutual consent for the termination.
- The Respondent had had no problems with the players, but the latter left the Appellant only, because they were not paid.
- There was no warning or other letter from the Appellant prior to the letter of 23 November 2011.
- The Respondent received nothing more than the payments of
 - o € 10,000 on 16 September 2011
 - o € 10,000 on 21 October 2011

- o € 2,500 on 25 November 2011

With respect to the employment agreement of 11 March 2011, the payment of € 10,000 on 16 August 2011 related to another employment relationship in the season 2010/2011. In addition, the payment orders produced as evidence were in Greek and did partly not relate to the Appellant's submission.

- The Decision of the Single Judge of the FIFA PSC was wrong when not granting the Respondent the respective value in kind resulting from his right to receive a car, an apartment and flight tickets, which the Respondent's values at € 15,000.
- In addition, compensation for moral damages had to be awarded to the Respondent, which the Respondent values at € 30,000.
- Since there was a "serious tax problem pending" and the Respondent had a net contract, the Appellant had to produce evidence that all taxes have been paid.

V. ADMISSIBILITY

20. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

21. Article 67 par. 1 of the FIFA Statutes states that:

Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

22. The Sole Arbitrator notes that the Decision of the Single Judge of the FIFA PSC was issued by FIFA on 7 March 2013 and sent in advance via facsimile at the same day *inter alia* to the same fax number printed on the Appellant's letter head. The Fax Delivery Notification bears the date "07-MAR-2013 14:24". The same fax was sent by facsimile to the HFF, whereas the Fax Delivery Notification bears the date "07-MAR-2013 14:27". In addition, the fax cover notes regarding the HFF as addressee "Copy for Information", and regarding the Appellant "To: Club PAS Giannina FC". The HFF then, on 8 March 2013, sent the PSC Decision to the Appellant again.
23. For this reason, the question is, whether the "day of notification" within the meaning of Art. 67 par. 1 of the FIFA Statutes in the present case is 7 March 2013 or 8 March 2013. In the first case, the deadline would not have been met, in the latter, the Appellant would have complied with the deadline.

24. The Sole Arbitrator shall now examine, when such decision is properly notified to a party. It is quite clear that a decision may be sent either to the party directly, and/or to a representative of the party holding a power of attorney and/or to a third party. It is also quite clear that, if the decision is only sent to a third party, it is not properly notified to the party involved in the proceedings. However, a decision within the meaning of Article 67 par. 1 of the FIFA Statutes can be sent to a representative of the party, thus being properly notified to the party itself (CAS 2008/A/1456). In CAS 2008/A/1456, the appellant, a professional football player, gave power of attorney to his Football Federation to represent him in the proceedings, which is why the “day of notification” was the day the decision was served to the Football Federation. It was irrelevant that the decision was then only later communicated via the Football Federation to the player.
25. It appears that in the present case there was no such representation of the Appellant by the HFF. But even if the HFF was acting as intermediary within the meaning of a representative as in CAS 2008/A/1456, serving it to the HFF would have been sufficient for notification. However, this question does not need to be clarified in the present case, since other than in CAS 2008/A/1456, the decision was also served to the party directly the very same day, i.e. to both, the HFF and the Appellant on 7 March 2013.
26. Consequently, the fact that the HFF then, again, sent the PSC decision to the Appellant on 8 March 2013 does not eliminate the notification to the Appellant on 7 March 2013. The Sole Arbitrator notes that the situation might have been different, if the PSC Decision had been notified only to the HFF on 7 March 2013 and then to the Appellant on 8 March 2013. In such case, the Appellant would have had to rely on the HFF forwarding the decision as an intermediary. But this is clearly not the case in the present matter. It is, therefore, established that the PSC Decision was notified to the Appellant on 7 March 2013.
27. The Appellant, rather than contesting receipt of the PSC Decision on 7 March 2013, wants to rely on the fact that the Respondent did not raise the issue early, and invokes the principle of proportionality. However, the inadmissibility if the appeal is not lodged in time is an automatic one and the other party’s reaction or non-reaction cannot change such consequence (CAS 2006/A/1168, par. 80). In addition, the Respondent raised the issue already in its first submission to the CAS and did not suggest that it would not want to rely on the time-limit provisions.
28. The Sole Arbitrator neither sees any reason as to why the principle of proportionality would speak for the admissibility of the Appeal. The Appellant seems to believe that the strict application of the deadlines violated the principle of proportionality. But even if the strict application of deadlines could be restricted by the principle of proportionality, the Appellant does not put forward any reasons or facts for such consequence. The Appellant seems to bring forward facts that are supposed to establish rather a good faith of the Appellant and a bad faith of FIFA when mentioning the deadlines and/or acting “via” the HFF. However, FIFA clearly labelled the correspondence to the HFF as “Copy for information” and simply observed the non-compliance with the deadline in its letter of 16 April 2013. In addition, FIFA is not even party of the present proceedings, for which reason its behaviour cannot account against the Respondent. It is therefore irrelevant, whether issues of good faith can

influence the application of deadlines in the first place (cf. CAS 2006/A/1168, para. 88 *et seq.*). There are no reasons to limit the application of the deadline, whether based on the principle of proportionality or other principles.

29. The Appeal filed on 29 March 2013, therefore, shall be considered as late and inadmissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the PAS Giannina 1966 on 29 March 2013 against the decision issued by the FIFA Players' Status Committee on 14 November 2012 is inadmissible.
- (...)
4. All other motions for relief are dismissed.