



Arbitration CAS 2012/A/2699 Al-Birair v. Confédération Africaine de Football (CAF), award of 20 December 2012

Panel: Mr Lars Halgreen (Denmark), President; Mr Olivier Carrard (Switzerland); Mr Mark Hovell (United Kingdom)

Football

Physical assault against a referee

Standard of proof

Lack of evidence

1. According to a well established CAS jurisprudence, the standard of proof to be applied in disciplinary cases is that of “comfortable satisfaction”. As a result, the Respondent must establish the facts underlying the alleged disciplinary violation, not on a balance of probability but to the “comfortable satisfaction” of the Panel.
2. The witness statements of the match commissioner and the first assistant referee are not sufficient to identify the Appellant as the referee’s assailant. On the contrary, the evidence adduced by the Appellant shows that it would have been almost physically impossible for the Appellant to have attacked the referee. Furthermore, another witness for the Appellant admitted the assault. As a result, it cannot be concluded under the standard of “comfortable satisfaction” that the Appellant was the assailant responsible for the Incident. It follows that the charges made against the Appellant are not founded on the evidence brought.

I. BACKGROUND

1. The Parties

1. Mr. Al Amin Mohammed Ahmed Al-Birair (the “Appellant”) is a national of Sudan and the President of the Al Hilal Club in Khartoum, Sudan (the “Club”).
2. The Confédération Africaine de Football (the “Respondent” or CAF) is an association registered in Egypt and a Confederation recognized by FIFA for the African territory.

2. Facts

3. The case concerns the legitimacy of the disciplinary sanctions applied against the Appellant based on an alleged attack on a referee after a football match, in October 2011.
4. On 2 October 2011, the Club played a home match (the “Match”) against the Tunisian team, L'Espérance de Tunis. The Match was the semi-final of the CAF Orange Champions League. The kick-off time was at 20:00. The first half ended at 20:48.
5. As the main referee made his way to the changing rooms at the end of the first half, at around 20:50 he was the victim of a physical assault (the “Incident”).
6. On the same day, the Incident was reported to the CAF Disciplinary Board, in which report the Appellant was named as the person assaulting the referee. On 10 October 2011, the CAF Disciplinary Board decided to provisionally suspend the Appellant for a period of 30 days, until a decision was made. The provisional decision reads as follows:
“In view of the above, the Board imposed an immediate suspension in terms of article 88(2)(f) on both the President of Al Hilal club, Mr. Alumine Mohamed Al-Birair [and Mr Adel Ragab], for a period of 30 days in terms of article 67(1) to enable the Secretary to comply with the matter referred to above, whereafter the Board will render its final decision in respect of the above”.
7. On 14 November 2011, the CAF Disciplinary Board made its final decision:
“CAF Disciplinary Board decided to suspend the President of Al Hilal club and ban him from performing any football related activities under the auspices of CAF for a period of 2 years. This decision will be forwarded to FIFA and sanction may be extended internationally. The Board also decided to impose a financial sanction of 10,000 USD upon Mr. Al Birair for his aggression towards the referee of the match”.
8. Medical reasons impeded the Appellant from attending the hearing of the CAF Disciplinary Board.
9. On 21 November 2011, the CAF General Secretary notified the Appellant of the CAF Disciplinary Board’s decision and on the same day the Appellant lodged an appeal against the decision to CAF Appeal Board.
10. On 2 December 2011, the CAF General Secretary notified the Sudan Football Association that the appeal would take place on 8 December 2011 in Marrakech, Morocco. The Appellant was notified on 5 December 2011 and was allegedly unable to obtain a visa on time to attend the appeal hearing. He did thus not appear at the appeal hearing.
11. On 4 January 2012, the CAF Appeal Board reached the following decision in the matter:

“VI Conclusion

The Board of Appeal, having very carefully examined the elements and documents submitted to it, and in conformity with Articles 30, 31, and 32 of the Disciplinary Code, and out of its own conviction, considers that

Mr L'Amin Mohamed Ahmed Al-Birair is indeed the person who punched the referee, Mr Haimoudi Djamal in the face, the referee of the match, on October 2nd 2011.

Moreover, that he did so despite the fact that he is the President of the Al Hilal club, i.e. an official in the sense intended by paragraph 6 of Article 4 of the Disciplinary Code.

The Board of Appeal does enjoy the general prerogative stipulated in Article 10 and has the competence, in conformity with Article 4, para 10, to sanction any infractions or violations of the CAF Regulations and any act discrediting the game and its institution.

Article 8 stipulates different sanctions that can be imposed on an official including preventing him from any activities related to football.

Article 98 also stipulates that any person may find himself prevented from exercising any activities related to football (administrative, sports activities or others).

That such sanction can be extended to reach a continental level is also possible and can be imposed by the disciplinary bodies in conformity with the stipulations of Article 71 of the Disciplinary Code.

The Board of Appeal, having carefully examined all the circumstances of the case, decides the following:

- *Declares the regularity of the appeal lodged by Mr L'Amin Mohamed Ahmed Al-Birair,*
- *Declares admissible as to its form the appeal to cancel the decision of the Discipline Committee adopted on October 9th 2011,*
- *As for the substance of the appeal,*
- *The CAF Board of Appeal decides to suspend Mr L'Amin Mohamed Al-Birair from any activity related to football for a period of four years (4 years),*
- *This sanction is extended to include all the African continent in conformity with the stipulations of Article 71 of the Disciplinary Code; it will also be transmitted to FIFA so that it may be also extended at the international level,*
- *A fine of US Dollars 10,000 is to be paid by Mr L'Amin Mohamed Ahmed Al-Birair”.*

II. PROCEEDINGS BEFORE CAS

12. On 13 January 2012, the Appellant filed his Statement of Appeal before the Court of Arbitration for Sport (CAS) against the decision taken by the CAF Appeal Board. Together with his Statement of Appeal, the Appellant filed an application for a stay of the decision. The Appellant nominated Mr. Olivier Carrard as arbitrator.
13. On the same date, the Appellant's counsels requested to be provided with the complete case file and to further substantiate the request for a stay of the Decision, once they had received the file.
14. By letter of 19 January 2012, when initiating the proceedings, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division requested that the

complete case file from the Respondent be provided to the Appellant. The CAS Court Office also informed the parties that it would not proceed with the Appellant's application for a stay of the Decision, as the Appellant had been requested to further substantiate it.

15. On 23 January 2012, the CAF informed the CAS Court Office that it nominated Mr. Mark A. Hovell as arbitrator.
16. On 20 February 2012, pursuant to Article R51 of the Code for Sports-related Arbitration (the "CAS Code"), the Appellant filed his Appeal Brief. Together with his Appeal Brief, the Appellant substantiated his application for a stay of the Decision in further details.
17. On 21 February 2012, the CAS Court Office informed the parties that the Panel appointed to decide the case was constituted as follows:
 - President: Mr Lars Halgreen, Attorney-at-law in Copenhagen/Denmark
 - Arbitrators: Mr Olivier Carrard, Attorney-at-law in Geneva/Switzerland and Mr Mark A. Hovell, Solicitor in Manchester/United Kingdom.
18. On 5 March 2012, pursuant to Article R37 of the CAS Code, the Respondent filed its response to the Appellant's application for provisional measures.
19. On 30 March 2012, pursuant to Article R55 of the CAS Code, the Respondent filed its Answer. The parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held in this matter.
20. On 18 April 2012, the CAS Court Office informed the parties that a hearing would be held on 7 July 2012 at the CAS Court Office in Lausanne.
21. On 29 May 2012, the counsel of the Appellant informed the CAS Court Office that it had not been possible to locate an Arabic/English translator for the hearing date on 7 June 2012, and thus the Appellant requested a postponement of the hearing.
22. On 30 May 2012, the CAS Court Office informed the parties that the Panel under the exceptional circumstances was willing to postpone the hearing till 9 July 2012. At the same time the Panel also granted the Appellant the opportunity to update his position with respect to his request for provisional measures.
23. On 4 June 2012, the Appellant responded to the above letter from the CAS Court Office and provided additional arguments in support of the previous request for provisional measures. The Respondent failed to file an answer to such additional arguments.
24. On 13 June 2012, the CAS Court Office forwarded an Order of Procedure, which was signed by both parties without any objections or reservations. In the Order of Procedure, the Panel informed the parties that a decision on the Appellant's request for provisional measures would be taken at the hearing.

3. The Hearing

25. On 9 July 2012, the hearing was held at the CAS headquarters. The Panel was assisted at the hearing by the CAS Counsel, Ms Louise Reilly.

The following persons were present for and together with the Appellant:

- Mr Ross Wenzel, Attorney-at-law;
- Mr Nora Tuscher, interpreter;
- Mr Magnus Walsten, observer;
- Mr Ibrahim Abbass, advisor to the Appellant.

The following persons were present for the Respondent:

- Mr Stéphane Ceccaldi, Attorney-at-law

26. Following the opening statements of the parties it was acknowledged that the Appellant's request for provisional measures should be dealt with at the hearing itself, as the evidence was clinical to making any determination. Thereafter, a number of witnesses were called to give testimony via video or telephone conference call.

The Appellant called the following witnesses:

- Dr Mamoun;
- Mr Hussein;
- Dr Ibrahim.

27. The Respondent called the following witnesses:

- Match commissioner, Ahmed Elshenawi;
- Main referee, Haimoudi Djamal;
- Assistant referee No 1, Etchiali Abdlehak.

a) The Testimony of the Appellant

28. The Appellant testified that he was the elected President of the Club Al-Hilal in Khartoum, Sudan. He was 52 years old and a devout Muslim, who followed all of the rules of Islam. He was against violence and had never been involved before in any criminal affairs. He suffered from high blood pressure.
29. As for the match in question, where the assault took place, he explained that he had not known any of the match officials before the match.
30. On the day, he was wearing a suit (coat and tie) similar to the other guests in the VIP section.

31. He was not feeling well at the beginning of the match, and at the end of the first half around 20.30, he felt ill and wanted to go to the hospital. He left the stadium through a tunnel, which led into the parking lot, but the tunnel did not pass the changing rooms of the teams and the match officials.
32. He denied that any of the VIPs attending the match had direct access to the players' tunnel.
33. He estimated that it took a couple of minutes to walk from his seat in the VIP to the car. He did not feel well enough to drive the car himself, so he had asked Mr Mamoun, who is the treasurer/secretary of the club, to drive him to the hospital. The first half of the match was still in progress when they left. The traffic to the hospital was smooth. Mr Mamoun had called the hospital ahead to warn them about the Appellant's arrival. It was a private hospital, and he was treated right away, when he arrived. He stayed in the hospital overnight.
34. He noted that someone else had come forward and admitted to the assault. He believes he is a fan of the football club, but he doesn't know him personally. He believes that he has been framed in this case, because his taking-over of the Presidency of the club had created a lot of animosity among the supporters of the previous president.
35. He explained that together with eight or nine guests, including the sports minister and president of the Sudan Football Federation, he went on to the pitch and shook hands with the teams and the match officials. There were no other meetings or social function, where he met the match officials before the match.
36. He explained that he did no longer support the club financially due to the ban, and as far as he knew, no charges had been brought against the person who had stepped forward and admitted to the assault.

b) The Testimony of Mr Mamoun (Treasurer/Secretary of the club)

37. Mr Mamoun confirmed that he sat next to the Appellant in the VIP section of the stadium at the beginning of the match. The Appellant told him that he felt ill, and he offered to drive the Appellant to the hospital for a check-up. He phoned the hospital ahead that a patient was coming. He believed that the time they left the stadium was around 20.30 or 20.35. The first half was still in progress when they left. He testified that the car drive from the stadium to the hospital took approx. 15-20 minutes. He parked near the entrance of the hospital and walked together with the Appellant approx. 2-5 minutes to the reception. They arrived around 21.00. He remembered this, because he was checking the result of the match, when he arrived at the hospital. He stayed in the hospital until 22.00.
38. He did not get a monthly invoice from his mobile phone company with a specification of the calls made from his phone. Thus, he could not verify the exact time he made the phone call to the hospital.

c) The Testimony of Mr Hussein (Khartoum traffic police)

39. Mr Hussein explained that he was a police officer in the Khartoum traffic police. He confirmed that the driving distance between the stadium and the hospital was between 18-22 minutes under normal conditions. He assumed that it would be possible to drive the distance in 12-15 minutes with a police escort, but a civilian car could not drive to the hospital in less than 18 minutes at the minimum. He confirmed that the Appellant was a well-known man in Khartoum, but he did not know the Appellant personally.

d) The Testimony of Dr Mahgoub Ibrahim (doctor at the Royal Care Hospital in Khartoum)

40. Dr Ibrahim confirmed that he was a doctor at the Royal Care Hospital in Khartoum and had been on duty in the evening of 2 October 2011. He was the doctor receiving the Appellant, when he arrived, as the hospital earlier had received a phone call saying that a patient with headache and dizziness was coming to the hospital.
41. He confirmed that the Appellant had been admitted to the hospital, and that the registration procedure in the log book specifying name, time of arrival, symptoms etc., was the one used at the Royal Care Hospital. The log book stated an admission time of 21.03. He confirmed that the patient had stayed at the hospital overnight.

e) The Testimony of Mr El-Shenawi (Match Commissioner)

42. Mr El-Shenawi testified that he was a FIFA referee and was present at the match in his capacity as match commissioner. He had stated in his report that the Appellant had punched the referee strongly in his face causing the referee to be in a “small coma” for 2 minutes, whilst the Appellant ran away.
43. He explained that the Appellant came from the VIP corridor, and that the incident itself only took a couple of seconds. He did not know the Appellant before the match, but he had met him during the pre-match ceremonies together with the Minister of Sport and the Chairman of the Football Federation of Sudan. He had recognized the Appellant right away. He explained that he found the attitude among the spectators to be good, despite the fact that some had thrown bottles and stones onto the playing field at the end of the match. He didn’t know whether there were any security people in the corridor, and he couldn’t give an estimate about the approximate age of the attacker. He stated that the attack had come from the front, and that the referee had been unconscious for about 2 minutes.

f) The Testimony of Mr Haimoundi Djamal (Main referee)

44. Mr Djamal explained that he was the main referee of the match, and on the way back to the dressing room after the end of the first half, he had been attacked just outside the entrance to the tunnel leading into the dressing rooms. After having received a punch in the face, he had lost consciousness for a couple of minutes. When he regained consciousness, he had been

told that the President of the home club (the Appellant) was the perpetrator. He had not himself recognized the person attacking him, because the incident only took a few seconds. He explained that the entrance to the tunnel was just below the VIP section, and that there was a staircase leading down from the VIP section to the tunnel. He explained that the match commissioner and his two assistant referees had been just beside him or behind him at the time of the attack.

45. He believed that it took him about 10 minutes to shake off the attack, and that's why there was a delay before the resumption of the second half of the match.

g) The Testimony of Mr Abdelhak (Assistant referee No 1)

46. He confirmed that he was the assistant referee at the match in question, and that he was walking close by the main referee, Mr Djamal, when the incident happened. He saw that the referee had received a punch in the face, and he recognized the perpetrator as the Appellant. It was the second time that he had seen him. He was first introduced to him before the match at the pre-match ceremonies, where he shook hands with the Appellant and the Minister of Sport in Sudan as well as the President of the Sudan Football Federation. He was not able to say, how old he was or what clothes he wore. He stated that he believed that the assailant came down from the stairs from the VIP section and appeared from the side. The incident happened very quickly, and once his colleague had been hit, he was concentrating on helping him and didn't see, how the assailant got away.
47. Following the witness testimonies, the parties presented their closing arguments and made submissions in support of their respective cases.
48. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings, and that they had been given the opportunity to fully present their cases.

4. The Position of the Parties

49. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of the Appellant

50. The Appellant's requests for relief, as indicated in his Appeal Brief, are the following:
 1. *The Appeal of Mr Al Amin Mohamed Ahmed Al-Birair is admissible;*
 2. *The decision rendered on or around 4th January 2012 by the CAF Appeal Board is set aside in its entirety;*

3. *On a subsidiary basis only in the event that the Panel does not set aside the Appeal Decision in its entirety, Mr Al Amin Mohamed Ahmed Al Birair should be sanctioned with a match suspension between 12 – 24 matches (with credit being given for any matches of the club, which the Appellant has not attended as a result of either the first CAF decision or the Appeal Decision) and a fine not exceeding USD 10,000;*
 4. *Mr Al Amin Mohamed Ahmed Al-Birair is granted an award for costs”.*
51. In support of his requests, the Appellant has presented the following legal arguments:
- A. Burden and Standard for Proof
52. The Appellant submits that the Respondent must establish the facts underlying the alleged disciplinary violation, not on the balance of probability, but to the “comfortable satisfaction” of the Panel. The Appellant refers to the jurisprudence of the CAS in CAS 2009/A/1902 and CAS 2010/A/2172.
53. He also refers to CAS 2005/A/884, where the court held that if the allegations were of a particular grave misconduct, then “the comfortable satisfaction standard may not be much different from the standard of beyond reasonable doubt”.
- B. The Appellant was not involved in the incident
54. The Appellant claims that he was not in any way involved in the incident either as the antagonist or as a witness. Indeed, he had already left the stadium at the time the incident occurred due to illness. The Appellant submits that he left the stadium before the end of the first half and was driven by the treasury secretary of the club, Mr Mamoun, to the hospital, where he checked in at 21.03 according to the hospital register. The distance between the hospital and the stadium was approximately 15.8 kilometers, and according to the Khartoum traffic police as well as Google Maps, the travel time would be at least 19 minutes, and it would therefore be an impossibility for him to have attacked the referee at approximately 20.48.
- C. Another person has admitted assaulting the referee
55. The Appellant further submits that his non-involvement in the incident is further supported by the fact that another spectator and fan, Mr Abdel Rajab, has in fact admitted that he assaulted the referee. Regardless of whether the attack can be characterized as a “push or a punch”, the testimony of Mr Rajab cannot be disregarded, as only one incident occurred. Mr Rajab has for obvious reasons not been willing to step forward in the CAS proceedings, but his statement should nevertheless be characterized as compelling evidence in favour of the Appellant’s innocence.
- D. The evidence against the Appellant is unconvincing

56. The Appellant submits that the so-called “eye witness statements” are unconvincing, as many of the witnesses were told afterwards that the identification of the supposed aggressor was the Appellant. There are also obvious and conspicuous differences between the degree of the physical assault described in the witness statements compared to the injuries visible from the up-close TV footage of the referee blowing the whistle for the start of the second half; the witnesses struggled to recollect the age and clothing of the assailant; and whether the attack took place in front of or to the side of the referee.

E. Reformatio In Pejus

57. In the event that the Panel is comfortable satisfied that the Appellant did in fact physically assault the referee after the first half, the Appellant submits – on a subsidiary basis – that the CAF Appeal Board did not have the authority to increase the sanction already imposed on the Appellant by the first CAF decision.
58. Article 60.3 CAF Disciplinary Code (hereinafter referred to as the “CDC”) – forming part of Part II, Section 3 CDC relating to the procedures of the CAF Appeal Board – provides that “decisions may not be amended to the detriment of the person contesting them”. As a result of this provision and the principle of “*Reformatio In Pejus*” the CAF Appeal Board was not entitled to increase the sanction imposed on the Appellant by the CAF Disciplinary Board, which awarded only a 2 years ban and a fine of USD 10,000.

F. The Alleged Violation and the Applicable Sanctions under the CDC

59. If the Panel is comfortable satisfied that the Appellant did assault the match referee, the Appellant submits that the imposition of a ban of 2-4 years from all football-related activity as a consequence of an alleged involvement in the incident is not provided for by the CDC and is therefore contrary to the principle of legality.
60. With reference to the possible articles of conduct, the Appellant submits that the incident could only constitute either “*physical injury*” or “*violent conduct*”. The sanctions for physical injury provided for by the CDC is only match suspension and a fine. The sanction imposed by the CAF Appeal Board, namely a ban from carrying out any football-related activity is only found in Article 88 CDC, involving non-physical violations, such as e.g. forgery and fortification, corruption, conspiracy charges. Therefore, the principle of legality has been breached by the CAF Appeal Board, as the applied sanction was not applicable to the alleged violation.
61. Should the Panel reach the conclusion that the Appellant was indeed responsible for the attack, the correct sanction can only be a match suspension, which in respect of the incident could only be between 12-24 matches.
62. With respect to a decision to stay the execution of the appealed decision, the Appellant has stated that the facts of the case clearly demonstrate that 1) there is a likelihood of success of the claim filed, 2) a stay of the execution would protect the Appellant from an irreparable

harm, and finally 3) that the interests of the Appellant must outweigh the interest of the Respondent.

b. The Position of the Respondent

63. In its Answer, the Respondent requested the Panel to rule as follows:

"In light of the arguments presented herein, the Confederation of African Football respectfully requests that this court grants its motion and dismiss Mr Al Amin Mohamed Ahmed Al Birair's appeal.

The entire costs of proceedings shall be paid in full by Appellant, and a procedural indemnity of 30,000 Swiss Francs shall be granted by the same to the CAF for a recoverable cost incurred".

64. In support of its request, the Respondent has made the following legal arguments and submissions:

A. Compelling evidence shows that Appellant was involved in the assault

65. The Respondent maintains that a long standing CAS jurisprudence shows that disciplinary disputes between sports federations and athletes are of a civil nature and do not leave room for the application of principles of criminal law. Thus, the Respondent refuses that the standard proof in this case should be "proof beyond a reasonable doubt". On the contrary, Article 32 of the CDC shifts the burden of proof upon the athlete, as the provision states that *"facts contained in match official reports are presumed to be accurate"* (Article 32.1). Further, if there is *"any discrepancy in the reports from the various match officials, and there are no means of resolving the different versions of the facts, the referee's report is considered authoritative regarding incidents"* (Article 32.3).
66. In light of the evidentiary presumption rule in the CDC shifting the burden of proof, the referees' statements are not seriously contradicted by the Appellant's evidence.
67. The Respondent submits that there is no reason for questioning the words of the match officials, among whom at least one of them was a visual witness of the assault. The match commissioner recognized the Appellant as the President responsible for the protocol presenting the teams in a particularly formal manner, and consequently *"the match commissioner could make no error on the aggressor's personality (identity)"*. Further, the Respondent maintains that the DVD version of the match, presented by the Appellant, is incomplete, but does in fact confirm that the incident arose at the half time of the match. The images on the DVD do not show who the assailant was, but they cannot serve as a contradiction of the match officials' version of the incident.
68. As for the Appellant's own testimony regarding his hospitalization, the Respondent claims that the credibility of his alibi is contradicted by his own version of the event. The Respondent maintains that the distance of 15.8 km from the stadium to the hospital could have been done in 12 minutes, as *"the roads were less crowded during important matches of football"*, according to the Khartoum police.

69. Thus, the Respondent maintains that it would be possible for the Appellant to have attacked the referee between 20.45 and 20.50 and be admitted at the hospital at 21.03. The Respondent also finds that it may be surprising that *“this young president, who claims to suffer such health problems, as to lead him to hospital during the outstanding match, has not produced any medical record and/or technical documents for the past”*.
70. Finally, the Respondent dismissed Mr Abdel Rajab’s testimony as unreliable, as his testimony may very well have been produced in favour of the Appellant in order to try to exonerate him, as the Appellant is *“self-proclaimed one of the richest and most powerful persons of Sudan”*.

B. Principle of “Non Reformation In Pejus” will not nullify a sanction

71. The Respondent refutes that the higher sanctions imposed by CAF Appeal Board should be illegal according to the principle of Non Reformation In Pejus. This principle of law is not a general and universal principle, and it allows numerous exceptions and is not embodied in the rules of procedure in the CDC.
72. Further, in support of these arguments, the Respondent submits that Article 60 of the CDC states that the “Non reformation In Pejus” principle only prevails during the proceedings leading up to the decision to appeal. *“In other words, no modification and no worsening of the sanction can be inflicted on the accused, until the Appeals Jury has made a ruling”*. Thus, the article itself does not prevent the Appeals Body from imposing a harsher sanction on the Appellant.

C. The sanction was pronounced and later affirmed by the CAF Appeal Board pursuant to the “principle of legality”

73. The Respondent denies that the Appeal Board’s decision was made in violation of the principle of legality. The Respondent holds that the Appellant’s arguments cannot be accepted on three accounts of evidence: 1) Since the principle of legality is being construed as “complying with associative regulation”, it turns out that the sanction was affirmed in compliance with the CDC. 2) Undoubtedly, the special provisions of the CDC do not explicitly incriminate the situation of an official assaulting a referee, and 3) the present situation involving an officer, having been found guilty of an assault upon a referee, falls under the general provisions of the CDC. Accordingly, the sanction of suspension challenged by the Appellant is consistent with the principle of legality.
74. Finally, the Respondent dismisses that the Appellant has shown that the requirements according to CAS jurisprudence have been satisfied to grant a stay of execution of the decision.

III. LEGAL ANALYSIS

5. Jurisdiction

75. In accordance with Article 186 of the Swiss Private International Law, the CAS has the power to decide upon its own jurisdiction.
76. Article R47 of the CAS Code states that *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or 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 sports-related body”*.
77. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body, from whose decision the appeal is being made, must expressly recognize the CAS as an arbitral body of appeal.
78. Article 49 of the CAF Statutes provides that *“Only CAS is empowered to deal with appeals against decisions or disciplinary sanctions taken in the last instance by any legal body of CAF or FIFA, a national association, league or club. Any appeal must be filed with CAS within ten (10) days of the decision being communicated”*.
79. Based on the above, and in the absence of any objection from the Respondent regarding this matter, CAS has jurisdiction to decide the present dispute. This was confirmed by the parties signing the Order of Procedure for the matter at hand.

6. Admissibility of the Appeal

80. The Statement of Appeal was filed on 13 January 2012 with respect to the Decision taken by the CAF Appeal Board on 4 January 2012. Thus, the Statement of Appeal was filed within the 10 days deadline set by Article 49 of the CAF Statutes. Accordingly, the appeal is admissible.

7. Applicable Law

81. In accordance with Article R58 of the CAS Code *“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”*.
82. Accordingly, the Panel shall decide the case according to the CDC. The laws of Egypt shall apply subsidiarily.

8. Scope of the Panel's Review

83. According to Article R57 of the CAS Code: *"The Panel shall have full power to review the facts and the law. It may issue a new decision, which replaces the decision challenged or annul the decision and refer the case back to the previous instance ..."*.

9. The Dispute

84. Based on the facts and legal submissions in these proceedings, the Panel shall address the following two main issues:

1. Is the evidence presented by the Respondent compelling enough to identify the Appellant as the assailant of the incident?
2. If so, what sanction should be imposed on the Appellant?

85. Analyzing question No 1

86. The disciplinary charges brought against the Appellant in the above matter were initiated by CAF. According to Article 33 of the CDC *"the onus of proof regarding disciplinary infringements rests on CAF"*. The CAF Appeal Board held that the Appellant was the person who had punched the main referee in the face. CAF's evidence against the Appellant is based on the witness statement/official report given by the match commissioner on the same day the Incident happened. The match commissioners' report has been backed-up by the first assistant referee's statement during these proceedings, but no further (physical) evidence nor other witness statements have been presented in support of the Respondent's case against the Appellant.
87. To determine whether the Appellant was the assailant, the Panel must examine whether the evidence provided by CAF establishes the alleged facts. To do so, the Panel must consider the applicable standard of proof.
88. The Appellant has submitted that the Respondent must establish the facts underlying the alleged disciplinary violation, not on a balance of probability but to the "comfortable satisfaction" of the Panel. The Appellant has referred to a number of CAS cases (CAS 2009/A/1920 and CAS 2010/A/2172) that confirm this standard of proof.
89. The Panel agrees with the Appellant that the standard of a proof to be applied in this arbitration is that of "comfortable satisfaction". The Panel recognizes that this standard of proof in disciplinary cases has been developed through a long number of CAS cases, see also CAS OG/96/003-004 and CAS 2011/A/2625.
90. When assessing this case under the "comfortable satisfaction" standard, the Panel has put particular emphasis on the following facts:

91. In his report, the match commissioner, Mr El-Shenawi, named the Appellant as the person, who had *“punched the referee strongly in the face, causing the referee to be in a small coma for 2 minutes”*. In his testimony at the hearing, he confirmed his statement identifying the Appellant as the assailant and explained that he had recognized the Appellant from the pre-match ceremony, where he had met the Appellant together with a number of other VIP guests, including the Sudanese Minister of Sport and the chairman of the Sudanese Football Federation. He also explained that the Appellant had come from the VIP section and attacked the main referee from the front, and that the incident itself didn’t take more than a couple of seconds, after which the Appellant ran away. Almost the same testimony was given by the first assistant referee, Mr Abdelhak, who also confirmed that he had recognized the Appellant as the perpetrator, who had punched the referee in the face. He, too, had recognized the Appellant from the presentation at the pre-match ceremony.
92. As for the main referee himself, it is obvious from his witness statement that he did not have a clear picture of his attacker, because the assault happened so quickly, and due to the punch in the face, he fell immediately to the ground. He was told afterwards that the Appellant had been the attacker.
93. On the basis of the testimonies given by the match officials, the Panel notes that the match commissioner and the first assistant referee indeed confirm to have identified the Appellant as the assailant. However, none of the match officials knew the Appellant beforehand, and their only prior encounter with the Appellant was at the pre-match ceremonial presentation, where the teams and match officials shook hands for a brief moment with the VIP representatives, including the Appellant. The Panel studied the video footage presented as evidence from the match, and noted that the actual handshake only took a second, the Appellant was one of a number of people the officials shook hands with and that the officials did not engage in conversation with the Appellant or any of the others they were introduced to.
94. Therefore, and despite the witnesses’ very definite identification of the Appellant, the Panel has also taken notice of the fact that none of the witnesses have been able to give even an approximate description of the Appellant’s age, height or the clothes he wore or any other distinctive features. The Panel recognizes that such details might have been difficult to remember due to the quickness of the Incident, but it leaves an impression that the witnesses may have been genuinely mistaken, yet have convinced themselves over time that it was the Appellant that struck the referee.
95. Thus, the Panel does not feel convinced that the witness statements of the match commissioner and the first assistant referee on their own merits would be enough to identify the Appellant as the assailant. To the Panel, it has doubts that both witnesses have been able to identify an assailant, whom they did not know beforehand and only met for a brief moment before the match, in an attack, which only took a couple of seconds. The Panel therefore needed to scrutinize the facts relating to the hospitalization of the Appellant in order to determine whether the witness statements of the match officials may be ruled out entirely as sufficient proof under the comfortable satisfaction standard of proof.

96. The Panel has in their regard recorded the statement by Mr Mamoun, who explained that he drove the Appellant to the hospital, when he felt dizzy and ill before the end of the first match. He called ahead to warn the hospital that a patient was coming, and according to the important witness statement of the doctor, Mr Ibrahim, who treated the Appellant, when he arrived, this phone call was in fact received by the hospital before the Appellant arrived. The exact time to drive from the stadium to the hospital may according to the evidence vary under different circumstances. However, the Panel has learned that Mr Hussein from the Khartoum police department has testified that the driving time between the stadium and the hospital would be between 18-22 minutes under normal conditions. The distance could perhaps be driven in between 12-15 minutes with a police escort.
97. Given the fact that the Incident took place not earlier than 20.48 p.m., and the log entry documenting the arrival time of the Appellant at the Khartoum Royal Care Hospital was at 21.03 p.m., the Panel finds that it would be almost physically impossible for the Appellant under any circumstances to have attacked the referee, gotten to the parking lot, driven the 15.8 km to the hospital, walked from the parking lot to the registration desk in only 15 minutes. The Panel took particular note of the video footage that confirmed the time of the second half finishing (so it was able to be comfortably satisfied any attack would have place around 20.48) and from the copy of the log book at the hospital, which contained the details (names, conditions suffered, how they were treated, by who, etc.) for dozens of patients that arrived at the hospital either side of the Appellant (which confirmed he entered the hospital at 21.03). Even if all witness testimony was put to one side, the Panel was comfortably satisfied the “window” was 15 minutes. The Panel considers such a scenario highly unlikely, also taking into account that the Appellant most probably was dizzy and suffered from high blood pressure. The Panel must therefore come to the conclusion that the Appellant could not have been the person, who attacked the main referee at the match.
98. Even though, the Panel has not had a chance to hear a witness statement from Mr Abdel Ragab, who had confessed to “pushing” the referee after the first half of the match, the Panel is strengthened in its conclusion by this confession, as the Panel notes that only one Incident happened, and that one assailant has come forward and admitted that he was the one that had attacked the referee.
99. Accordingly, and on the basis of the foregoing considerations and the evidence presented during these proceedings, the Panel is unable to conclude to its comfortable satisfaction that the charges made against the Appellant are established.
100. Analyzing Question No 2
101. As the Panel finds that the charges made against the Appellant have not been established to the comfortable satisfaction of the Panel, the sanctions imposed on the Appellant should be annulled.

10. Conclusion

102. The Panel concludes that it is not convinced to the standard of “comfortable satisfaction” that the Appellant was the assailant responsible for the Incident. It follows from the reasons set out above that the Panel concludes that the charges made against the Appellant are not founded on the evidence brought forward during these proceedings.
103. The Panel therefore annuls the decision made on 4 January 2012 by the CAF Appeal Board and lifts the four year ban and annuls the fine of USD 10’000 with immediate effect.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Al Birair on 13 January 2012 is upheld.
2. The decision of the CAF Board of Appeal dated 4 January 2012 is annulled.
3. (...).
4. All other and further claims or prayers for relief are dismissed.