



Arbitration CAS 2011/A/2628 Foolad Mobarakeh Sepahan FC v. Asian Football Confederation (AFC), award of 14 March 2012

Panel: Prof. Petros Mavroidis (Greece); Mr Enrico Pedro Ingles (Philippines); Mr Rui Botica Santos (Portugal)

Football

Disciplinary sanction to a club for fielding an ineligible player

Non-applicability of Article 38 of the AFC Disciplinary Code to suspensions

Article 69 of the AFC Champions League Regulations and obligations of clubs/national associations

1. **Article 38(2) (c) of the AFC Disciplinary Code relates to “match suspensions in relation to an expulsion”. This provision is not applicable in a case in which no expulsion has been recorded but only two cautions or a suspension.**
2. **According to Article 69 (g) of the AFC Champions League Regulations, clubs and national associations are responsible of monitoring the cautions and/or suspensions received by their players and officials and must ensure that all players and officials registered during the competition are eligible to play.**

I. THE PARTIES

1. Foolad Mobarakeh Sepahan FC is a football club affiliated to the IR Iran Football Federation, which is affiliated to the AFC.
2. The Asian Football Confederation (AFC) is the governing body of Asian football and one of the six Confederations making up FIFA.

II. THE FACTS

3. The circumstances stated below are a summary of the main relevant facts as submitted by the parties in their written submissions and pleadings as well as in all other evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
4. Ahmadi Rahman is an Iranian football player who was playing for Piroozi Athletic during the Group Stage of the 2011 AFC Champions League. He was cautioned in the game of 2 March 2011 between Al Ittihad (KSA) and Piroozi Athletic (IRN) and in the game of 10 May 2011 between Al Wahda (UAE) and Piroozi Athletic (IRN), which was Piroozi Athletic’s last game

- at the Group Stage (from which teams qualify for the final phase of the competition, the AFC Champions League).
5. Piroozi Athletic did not qualify from the Group Stage of the AFC Champions League.
 6. On 15 May 2011, that is, 5 days after its last game at the Group Stage, Piroozi Athletic played an Iran Pro-League game against Foolad Mobarakeh Sepahan FC. Ahmadi Rahman did not participate in that match.
 7. In July 2011, Ahmadi Rahman joined Foolad Mobarakeh Sepahan FC. Unlike Piroozi Athletic, Foolad Mobarakeh Sepahan FC qualified from the Group Stage to the Knock-Out stage of the 2011 AFC Champions League.
 8. On 14 September 2011, the AFC Champions League first leg match between Foolad Mobarakeh Sepahan FC and Al Sadd took place. This was Foolad Mobarekeh's first match in the Knock-out Stage. Ahmadi Rahman participated in the game.
 9. On the same day, Al Sadd lodged a protest with the match commissioner claiming that the Appellant had fielded an ineligible player, namely Ahmadi Rahman. The Protest was followed up officially by the Qatar Football Association requesting that the match be forfeited and that Al Sadd be declared the match winner with a score of 3-0.
 10. The AFC Disciplinary Committee decided on 26 September 2011:
 1. *"Foolad Mobarekeh Sepahan is found guilty of having violated Article 55 of the AFC Disciplinary Code (the said Code) for fielding an ineligible player, Ahmadi Rahman/1431/IRN) in the AFC Champions League 2011 (Knock-Out Stage) match between Al Sadd (QAT) vs Foolad Mobarekeh Sepahan (IRN) on 14 September 2011;*
 2. *As provided for under Article 31 of the said Code Foolad Mobarekeh Sepahan is sanctioned with a forfeiture of losing the match between Foolad Mobarekeh Sepahan vs Al Sadd on 14.9.11 by a score of 3-0 in favour of Al Saad;*
 3. *Further in accordance with Article 55 of the Code, Foolad Mobarekeh Sepahan shall be imposed a minimum fine of USD1000. The fine to be settled within 30 days from the date of the decision (Article 15 par. 3 of the Code);*
 4. *Pursuant to Article 69 par. A of the AFC Champions League 2011 Regulations and Article 17 par. 3 as well as Article 38 par 1 and par 4 of the said Code, the player, Ahmadi Rahman (AFC/1431/IRN) shall serve his automatic ONE match suspension in the AFC Champions League 2011 (Knock-Out Stage) match between Al Sadd (QAT) vs. Foolad Mobarekeh Sepahan (IRN) on 28.9.11;*
 5. *Any disciplinary sanction imposed on Foolad Mobarekeh Sepahan during the said match on 14 September will remain in force".*

11. On 6 October 2011, the Appellant filed a Statement of Appeal against this decision in front of the AFC Appeals Committee.
12. On 13 October 2011, the AFC Appeals Committee upheld the decision of the AFC Disciplinary Committee. The decision of the AFC Appeals Committee (Decision VTC: 260911DC01) was communicated on 17 October 2011 to the Appellant.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 6 November 2011, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as “CAS”) requesting that the decision passed by the AFC Appeals Committee be set aside.
14. On 14 November 2011, the Appellant indicated to the CAS: “*Subject: Appeal Brief (Art. 51 CAS Code) ... the letter dated 25/09/2011 (8 pages), the letter dated 5 Oct. 2011 (3 pages) and the letter dated 6 Oct. 2011 (3 pages) totally 14 pages addresses to the AFC are considered as appeal brief*”.
15. In accordance with Article R55 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), on 6 December 2011, the Respondent filed its answer.
16. On 12 December 2011, by communication of CAS, the Parties were informed that the Panel was constituted by Mr. Petros C. Mavroidis, Professor in Neuchâtel, Switzerland, as President; Mr. Enrico Pedro Ingles y Mendiola, attorney-at-law in Manila, Philippines; and Mr. Rui Botica Santos, attorney-at-law in Lisbon, Portugal both as co-arbitrators. The Panel also appointed Mr. Yvan Fauchère, Neuchâtel, Switzerland, to serve as *ad hoc clerk*.
17. In accordance with Article R56 of the Code, on 2 January 2012 and on 18 January 2012, the Appellant and the Respondent respectively filed their reply and rejoinder.
18. On 30 January 2012, answering a written question from the Panel, the Appellant specified the prayers and requests for relief sought by him as follows:
 - “1. *The appealed decisions be set aside.*
 2. *The Home and Away match win prize and also travel subsidy in Knock out stage based on the article 73 in ACL regulations.*
 3. *This Club be compensated. The size of the compensation will be left to the discretion of the panel with regards to the amount paid to the winner of the AFC Champion League and qualified in the World Clubs Cup*”.
19. The parties, when signing the Order of Procedure, confirmed their agreement that the Panel may decide this matter based on the written submissions. The parties confirmed that their right to be heard has been respected. Pursuant to Article R57 of the Code and following the statements made by the parties in respect of the holding of a hearing, the Panel considers itself to be sufficiently well informed to decide this matter on the basis of the written submissions.

IV. LEGAL CONSIDERATIONS

IV.1. CAS Jurisdiction

20. Article R47 of the Code stipulates 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...”

21. Article 61.1 of the AFC Statutes provides:

“As Appeals Arbitration Body, CAS shall be entitled to hear appeals against final decisions passed by the AFC...”

22. It follows that the CAS has jurisdiction to decide the present dispute. Furthermore, the jurisdiction of the CAS is not disputed by the parties and was expressly recognized by the Order of Procedure signed by them (*forum prorogatum*).

IV.2. Admissibility

23. Article R47 of the Code stipulates:

“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”.

24. Article 61.2 of the AFC Statutes states:

“The appeal shall be lodged with CAS within 21 days of notification of the decision in question”.

25. The decision of the AFC Appeals Committee was communicated on 17 October 2011 to the Appellant. The Appellant’s appeal was filed on 6 November 2011. Therefore, the Appellant has met the deadline and the appeal is admissible.

IV.3. Applicable Law

26. Article R58 of the Code provides:

“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”.

27. This provision was expressly mentioned in the Order of Procedure signed by both parties.

28. The applicable regulations in this case are the AFC Champions League Regulations 2011 and the AFC Disciplinary Code.

29. The parties have not expressly or by implication agreed to a choice of law applicable to this proceeding before the CAS. Since the domicile of the AFC is in Kuala Lumpur, Malaysia (Article 1.4 of the AFC Statutes), the Panel shall apply Malaysian law on a complementary basis, to the extent warranted.

IV.4. Procedural Issues

30. Following its Statement of Appeal, the Appellant indicated that three of its letters to the AFC, dated 25 September 2009, 5 October 2011 and 6 October 2011, form its appeal brief. It is questionable if this practice is in accordance with Article R51 of the Code. However, in this particular case, the facts and legal arguments giving rise to the appeal are clear and the Respondent has not been prejudiced by this way of proceeding. The Panel is mindful of the need to avoid exaggerated and inconsequential formalism, and will hence, examine all facts and arguments raised by the Appellant.
31. In its Statement of Appeal, the Appellant requested the decision of the AFC Appeals Committee to be set aside. It is only on 30 January 2012 that the Appellant requested monetary compensation. The Panel will first examine whether the decision of the AFC Appeals Committee of 13 October 2011 should be set aside, before proceeding with the new request.

IV.5 The Merits

A. Whether the player served his suspension in an Iranian Pro-League match

32. The Appellant contends that by virtue of Article 38(2) (c) of the AFC Disciplinary Code, the match suspension of Ahmadi Rahman was served in the Iran Pro-League match of 15 May 2011.
33. However, Article 38(2) (c) of the AFC Disciplinary Code relates to “*match suspensions in relation to an expulsion*”. This provision is not applicable in the instant case, no expulsion has been recorded in the undisputed (by the parties) facts. Ahmadi Rahman has received two cautions in two different matches but was expelled in none of them.
34. Moreover, pursuant to Article 69 (a) of the AFC Champions’ League Regulations 2011:
- “A player who receives two (2) cautions (yellow cards) during a stage of the Competition shall automatically be suspended from the match following the match in which he received the second caution. If the player receives the second caution during the Team’s last match in the Competition, the suspension will be carried forward as indicated in the AFC Disciplinary Code”.*
35. Article 38.1 of the AFC Disciplinary Code states that:
- “As a general rule, every match suspension (of player and other persons) is carried over from one stage to the next in the same competition”.*
36. Moreover, Article 38.4 of the AFC Disciplinary Code provides:

“In no case may match suspensions resulting from several cautions issued to a player in different matches of the same competition be carried over to another competition”.

37. Ahmadi Rahman received two cautions in two different matches of the same competition, i.e. the AFC Champions League. It is therefore clear that his suspension could not be served in another competition, like the Iran-Pro League.

B. Whether there would be a loophole in AFC Regulations

38. The Appellant argues that AFC Champions League Regulations and AFC Disciplinary Code do not regulate the case of a player leaving a team eliminated from the competition and joining another team participating in the next stages of the competition. The Appellant adds that since Piroozi left the Competition in the group stages, the *“cautions (two yellow cards) automatically were null, void and finished”*.

39. This argument goes against both the letter and the spirit of Article 69 (a) of the AFC Champions' League Regulations 2011 cited above. As a general rule, Article 17.3 of the AFC Disciplinary Codes provides that:

“If a player receives a caution in two separate matches of the same AFC competition, he is automatically suspended from the next match in that competition unless the rules or regulations of that competition provides otherwise”.

40. To the same effect, Article 38.1 of the AFC Disciplinary Code provides that:

“As a general rule, every match suspension (of player and other persons) is carried over from one stage to the next in the same competition”.

41. The Appellant failed to demonstrate why in this particular case the suspension of Ahmadi Rahman should not be served in the next match of the same competition. It is clear that the suspension is imposed on the player and not on the club. There is no doubt that the player received two cautions during the AFC Champions League Group Stage. He was therefore ineligible to play the next match of the competition where he had received the punishment, which happened to be the first leg match of the quarter finals between the Appellant and Al Sadd played on 14 September 2011.

C. Whether the Appellant was misled

42. The Appellant has not discharged its burden of proving that it was misled into believing that the player had been cleared to play. Even if this burden had been discharged, it does not take away the fact that the player was actually suspended for the next match. It was the Appellant's duty to carry out due diligence. Indeed, the Appellant referred to an AFC's letter of 6 April 2010 regarding Article 38(2) (c) of the AFC Disciplinary Code, which relates to match suspensions in relation to an expulsion and is therefore not applicable.

43. Indeed, Article 69 (g) of the AFC Champions League Regulations specifically provides that:

“Each Club and its National Association shall bear the responsibility of monitoring the cautions and/or suspensions received by its players and officials and to ensure that all players and officials registered and/or fielded during the competition are eligible to play”.

This argument is therefore also rejected.

D. Conclusion

44. In light of the above, we conclude that Ahmadi Rahman was fielded by the Appellant in the AFC Champions League match of 14 September 2011 despite being ineligible to play this match. Pursuant to Article 55.1 of the AFC Disciplinary Code, *“if a player is fielded in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (...) and paying minimum fine of USD 1,000”.*
45. The sanctions imposed by the AFC Appeals Committee are therefore right and just as provided under the AFC Disciplinary Code. Thus, the decision of the AFC Appeals Committee must be upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the Appellant Foolad Mobarakeh Sepahan FC on 6 November 2011 is dismissed.
2. The decision of the AFC Appeals Committee of 13 October 2011 (Decision VTC: 260911DC01) is hereby confirmed.
3. (...).
4. (...).
5. All other prayers for relief are dismissed.