



**Arbitration CAS 2007/A/1313 Arsenal-Kiev FC v. Grzegorz Bednarz, award of 12 March 2008**

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

*Football*

*Disciplinary sanction against a club*

*Admissibility of the appeal to CAS*

**In the absence of any proof to the contrary, it is not possible for a club party to disciplinary proceedings before the FIFA to assert that the FIFA decision was properly communicated only one month later than to the other party and that the National Federation of which the club is a member did not immediately forward the FIFA decision to the club in accordance with FIFA's specific instructions.**

The Appellant, Arsenal-Kiev Football Club Ltd. ("Arsenal-Kiev FC" or "Appellant") is a football club affiliated to the Football Federation of Ukraine, which in turn is a member of the Fédération Internationale de Football Association (FIFA). FIFA is the international sports federation governing the sport of football worldwide. FIFA is an association established in accordance to art. 60 ss. of the Swiss Civil Code and has its seat in Zurich (Switzerland).

The Respondent, Mr. Grzegorz Bednarz ("Player's agent" or "Respondent") is a licensed players' agent, licensed by the Polish Football Association.

On 5 March 2003 the Appellant and the Respondent, the latter representing "Sports Management Agency Grzegorz Bednarz", signed a "Contract of Agency" for the transfer of the player S. to the Appellant. They agreed that the Appellant would pay to the Agency the amount of EUR 350'000 until 1 May 2003.

On 7 March 2003 S. signed an employment contract with the Appellant.

The Parties agreed on 21 May 2003 on a payment plan. When this plan was not met by the Appellant, the Respondent claimed the payment of EUR 350'000 with FIFA on 17 May 2004.

On 10 November 2004 FIFA's Single Judge of the Players' Status Committee ("FIFA's Single Judge") dismissed the claim in deciding that the Respondent was not himself contracting the Appellant but through his agency, being itself a legal entity.

On 6 December 2004 the Respondent appealed from this decision of FIFA's Single Judge.

On 7 July 2005 the CAS decided to accept the Appeal lodged by the Respondent and referred the case back to FIFA “*to be redecided*”. In upholding the appeal, the CAS applied Polish Law and found that an “entrepreneur” is able to act under his “civil law name” as well as under his “trading name”, e.g. the firm name.

FIFA’s Single Judge decided on 4 December 2006 that the Appellant must pay to the Respondent an amount of EUR 350’000 as follows: EUR 150’000 within 30 days of notification of his decision, EUR 100’000 within 60 days of notification of his decision and EUR 100’000 within 90 days of notification of his decision.

The FIFA’s Single Judge’s decision was sent by fax to the parties as well as the Football Federation of Ukraine on 8 May 2007.

The Respondent informed the Appellant by fax of 18 May 2007 regarding the bank account into which the amount of EUR 350’000 could be paid.

On 15 June 2007 the Respondent filed a request to FIFA’s Disciplinary Committee to introduce a disciplinary procedure against the Appellant, as the amount of EUR 150’000 was not paid by 9 June 2007 in accordance to FIFA’s Single Judge’s decision of 4 December 2006.

FIFA informed the Football Federation of Ukraine by fax letter of 21 June 2007 that a disciplinary procedure was opened against the Appellant, Arsenal-Kiev FC, in respect of a violation of art. 71 FIFA Disciplinary Code (FDC).

On 26 June 2007 the Appellant filed its Appeal against FIFA’s Single Judge’s decision of 4 December 2006. The Appellant stated in its statement of appeal that the Single Judge’s decision was received on 5 May 2007. Further the Appellant applied for a stay of the challenged decision.

By letter of 29 June 2007 the CAS informed FIFA and the Respondent about the Appeal and asked FIFA if it wished to apply to participate as a party in this arbitration.

By letter of 2 July 2007 the Respondent pointed out that the Appellant did not meet the 21-day time limit to file an Appeal, as the parties received the Single Judge’s decision on 8 May 2007.

By letter of 4 July 2007 the Appellant has withdrawn its application for a stay of the Single Judge’s decision, as in accordance to consistent CAS Case Law a decision of a financial nature, issued by FIFA, is not enforceable while being appealed against.

By letter of 5 July 2007 FIFA announced to renounce its right to intervene as a party in this arbitration. However FIFA pointed out that the Appellant has not respected the deadline for the Appeal in accordance to art. 61 para. 1 FIFA Statutes as the Single Judge’s decision was notified to the Appellant on 8 May 2007.

On 6 July 2007 the Appellant filed its Appeal brief to CAS, stating that it received the Single Judge’s decision only on 5 June 2007.

On 27 July 2007 the Respondent filed its answer to the Appeal.

On 10 respectively 14 September 2007 the parties signed an order of procedure. In this order of procedure the parties waived the right to have a hearing in accordance with their previous statements filed to CAS.

## **LAW**

### **Jurisdiction**

1. The jurisdiction of CAS, which is not disputed from the parties, is based on art. 60 ff. FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (the “Code”).
2. It follows that the CAS has jurisdiction to decide on the present dispute.

### **Applicable law**

3. Art. R58 of the Code provides the following:  
*“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”.*
4. Art. 60 para. 2 FIFA Statutes states that the CAS shall apply the various regulations of FIFA and, additionally, Swiss Law.
5. The parties signed the Procedural Order on 10 September 2007 (Respondent) respectively 14 September 2007 (Appellant) and confirmed the application of FIFA regulations and subsidiarily Swiss Law in the present case (see art. 7 Procedural Order).

### **Admissibility**

6. The appeal against a decision of FIFA’s Single Judge of the Players’ Status Committee is possible within 21 days of receipt of notification of the decision, based on art. 61 para. 1 FIFA Statutes.

7. The Single Judge's decision of 4 December 2006 clearly states in art. III, 5. that an appeal may be filed within 21 days of receipt of notification of this decision which corresponds to art. 61 para. 1 FIFA Statutes.
8. FIFA's Single Judge's decision of 4 December 2006 was sent to the parties as well as the Football Federation of Ukraine with fax letter of 8 May 2007. FIFA confirmed this date of notification with its letter to CAS of 5 July 2007. However by fax letter of 9 May 2007 FIFA informed the Football Federation of Ukraine that the fax letter did not reach the Appellant as FIFA was not in possession of the correct fax number. Therefore FIFA asked the Football Federation of Ukraine to "***immediately** forward this decision to the club concerned [Appellant] and ensure that the date of the notification to your club can be traced. Furthermore, we should be grateful to receive a copy of the relevant notification document for our file. Please take note that should we not receive any reaction from your side within the **next four days**, it will be considered that the relevant decision has been communicated properly to the ultimate addressee, i.e. your aforementioned member club, within the said timeframe*".
9. The Football Federation of Ukraine did not respond to FIFA within the four days mentioned in the fax letter of 9 May 2007. As there is proof that the Football Federation of Ukraine received FIFA's fax letters of 8 and 9 May 2007 it is considered that the decision of FIFA's Single Judge was notified to the Appellant by 13 May 2007 the latest.
10. In the Appeal of 26 June 2007 the Appellant clearly states in the headline that it has received FIFA's Single Judge's decision on 5 May 2007. It is only with the Appeal Brief, sent on 6 July 2007, that the Appellant pretends having received FIFA's Single Judge's decision on June 5, 2007. To prove this he files a statement of the Football Federation of Ukraine of 6 July 2007 confirming that it forwarded the Single Judge's decision on 5 June 2007 to the Appellant.
11. By letter of 2 July 2007 the Respondent informed that he had received FIFA's Single Judge's decision on 8 May 2007, including the directives of the CAS regarding the appeal procedure.
12. The confirmation of the Football Federation of Ukraine of 6 July 2007 does in view of FIFA's fax letter of 9 May 2007 not constitute any proof that the Appellant really did receive the Single Judge's decision only on 5 June 2007. The confirmation only states that the Football Federation of Ukraine was forwarding the Single Judge's decision to the Appellant on 5 June 2007. It is however unrealistic, that the Appellant as involved club, was informed only one month later than the Respondent and the involved Football Federation and the Football Federation of Ukraine did not follow up its duties in accordance to FIFA's instruction sent on 9 May 2007. The Football Federation of Ukraine and the Respondent did not contest that they received the Single Judge's decision on 8 May 2007 and the Football Federation of Ukraine never pretended not having followed FIFA's orders sent by fax letter of 9 May 2007. The Appellant received from the Respondent a letter with the information where to pay the amount of EUR 350'000 on 18 May 2007.
13. Based on all these facts it is not possible that the Appellant received the Single Judge's decision only on 5 June 2007. There are no proofs at hand supporting the Appellant's assertion that the decision was for the first time received by the Appellant on 5 June 2007. In considering all facts

the Sole Arbitrator sees the fact established that the Appellant did receive FIFA's Single Judge's decision on 9 May 2007 or at least four days later as stated in FIFA's fax letter to the Football Federation of Ukraine.

14. The 21 days deadline started therefore on 13 May 2007 the latest and expired on 3 June 2007 in accordance to art. 61 para. 1 FIFA Statutes and R32 of the Code.
15. It is not contested that the Appeal was filed on 26 June 2007. This is around three weeks later than the expiry of the Appeal deadline in accordance to the FIFA Statutes and the Code.
16. It is therefore obvious that the Appeal filed by the Appellant on 26 June 2007 is late and does not meet the deadline stated in art. 61 para. 1 FIFA Statutes. Therefore the appeal is not admissible.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by Arsenal-Kiev FC against FIFA's Single Judge of the Players' Status Committee's decision of 4 December 2006 is dismissed.

(...).