



Arbitration CAS 2007/A/1204 Club Barcelona FC v. Fédération Internationale de Football Association (FIFA), award of 3 July 2007

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Hernán Jorge Ferrari (Argentina); Mr Raymond Hack (South Africa)

Football

Disciplinary sanction against a club for failing to comply with the decision of a FIFA body

Object of the appeal in disciplinary proceedings

Conditions for a fine to be imposed

- 1. Within the framework of a disciplinary procedure opposing a party and FIFA, the object of the appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed in the decision. As a result, only submissions such as the legal basis and quantum of the fine can be heard. Any request concerning the decision which was not complied with and has led to the disciplinary procedure, is precluded.**
- 2. The FIFA Disciplinary Code allows a sanction to be imposed on a club that has failed to pay entirely its debts to another subject. The provision is intended to confirm that it is a disciplinary duty of clubs to fully comply with the decisions of the bodies of FIFA.**

Club Barcelona FC (the “Club” or the “Appellant”) is an Ecuadorian football club existing under the laws of Ecuador and has its headquarters in Guayaquil, Ecuador.

The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the governing body of international football. FIFA is an association under Swiss law and has its headquarters in Zurich (Switzerland).

The Club is affiliated to the *Federación Ecuatoriana de Fútbol* (the “FEF”), which in turn is a member of FIFA. As a result, the Club is subject to and bound by the applicable rules and regulations of FIFA.

On 30 November 2006 the FIFA Disciplinary Committee (the “DC”) issued a decision (the “DC Decision”) holding that:

- “1. El deudor es hallado culpable de incumplimiento de la decisión de un órgano de la FIFA de acuerdo con el art. 68 del CDF.*
- 2. Se condena al deudor a pagar una multa de CHF 15,000. La multa debe abonarse en los treinta días siguientes a la notificación de la presente decisión. La suma puede saldarse en francos suizos (CHF) en el banco ..., n° de cuenta ... o en dólares estadounidenses (USD), en el banco ... n° de cuenta*

3. *El deudor tiene un último plazo de 30 días a partir de la notificación de la decisión para saldar su deuda con el acreedor.*
4. *Si el pago no se efectúa dentro de este plazo, el acreedor puede solicitar por escrito a la Comisión Disciplinaria de la FIFA la deducción de 6 puntos al primer equipo del club deudor en el campeonato nacional. Una vez que esta solicitud haya sido realizada, los puntos deberán obligatoriamente ser deducidos en todos los casos.*
5. *Si, tras la deducción de los puntos conforme a lo estipulado en el punto 4, el club deudor sigue sin saldar su deuda, su primer equipo será relegado a la categoría inmediatamente inferior.*
6. *Se recuerda a la Federación Ecuatoriana de Fútbol que está a cargo de la correcta ejecución de la presente decisión y se le invita a suministrar a la FIFA los documentos que, en caso necesario, confirmen que ha procedido a la deducción de puntos o a ordenar el descenso previsto. En el caso de que exista una ejecución incorrecta o la omisión de la ejecución por parte de la Federación Ecuatoriana de Fútbol, la Comisión Disciplinaria adoptará las sanciones disciplinarias apropiadas que incluso pueden conllevar la exclusión de toda competición de la FIFA.*
7. *Las costas y gastos se fijan en CHF 2,000 y quedarán a cargo del deudor.*
8. *El acreedor se compromete a informar a la Comisión Disciplinaria sobre los pagos efectuados por el club deudor”.*

[Translation provided by the Appellant:

- “1. *The debtor is found guilty of failure to comply with a decision of a FIFA organism in accordance with Art. 68 of the FDC.*
2. *The debtor is condemned to pay a fine of CHF 15,000. The fine must be paid within 30 days after the notice of this decision has been served. The amount may be paid in Swiss francs (CHF) in the bank [...] or in US dollars (USD) in the bank [...].*
3. *The debtor has a last 30-day term counted as of the date the notice of the decision is served to pay its debt to the creditor.*
4. *Should the payment not be carried out within that term, the creditor may request in writing to FIFA Disciplinary Committee the deduction of 6 points to the first team of the debtor club in the national championship. Once this request has been made, the points must obligatorily be deducted in every case.*
5. *If, after the deduction of points pursuant to what has been provided for under paragraph 4 above, the debtor club still fails to comply with its obligation to pay the debt, its first team shall be degraded to the category which is immediately below.*
6. *The Ecuadorean Football Federation is reminded that it is in charge of the correct execution of this decision and it is invited to provide FIFA with the documents which, if necessary, confirm that it has proceeded to deduct the points or has ordered the foreseen relegation. In the event there is an incorrect execution or omission of the execution by the Ecuadorean Football Federation, the Disciplinary Committee shall adopt the appropriate disciplinary sanctions that may even imply its exclusion from all FIFA competitions.*
7. *The costs and expenses are set in CHF 2 000 and shall be to the charge of the debtor.*

8. *The creditor commits himself to inform the Disciplinary Committee on the payments effected by the debtor club”.*

The DC Decision was rendered on the basis of Article 68 of the FIFA Disciplinary Code, adopted on 29 June 2005 and in force since 1 September 2005 (the “FDC”), providing for sanctions on *“anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA”*. The DC, in fact, noted that the Club had failed to comply with a decision issued by the FIFA Dispute Resolution Chamber (the “DRC”) on 12 January 2006 (the “DRC Decision”), whereby the Club was ordered to pay to a player, E. (the “Player” or the “Creditor”), an amount of money (USD 88,100, plus interest).

More specifically, the DC remarked that:

- disciplinary proceedings against the Club were opened on 29 September 2006, after that, on 19 June 2006, the Court of Arbitration for Sport had denied the appeal filed by the Club against the DRC Decision;
- on 30 October 2006, the Club filed with the Player Status Committee of FIFA (hereinafter referred to as the “PSC”) an extraordinary motion to reopen the case and review the DRC Decision;
- on 14 November 2006, FIFA informed the Club that the requirements for a review of the DRC Decision were not met and therefore the request could not be granted;
- on 16 November 2006, the Club requested FIFA to reconsider the motion to reopen the case previously filed;
- on 27 November 2006, FIFA reiterated the position expressed on 14 November 2006, denying also the second motion made by the Club;
- on 30 November 2006, the Creditor confirmed that no payment had been received.

On the basis of the above, the DC noted that:

- in accordance with the FIFA Statutes, it had the power to impose the sanctions indicated by the Statutes and the FDC to the members, clubs, officials, players, game agents and player agents;
- in accordance with Article 68 para. 1 FDC, whoever does not pay, or does not pay in full, another subject (e.g. a player, a coach or a club) the amount it was condemned to pay by a FIFA body:
 - shall be sanctioned with a fine not less than CHF 5,000 for failure to comply with an order of the body that had ordered it to make the payment;
 - FIFA’s jurisdictional bodies shall grant a last and definitive period of grace to pay the debt.
 - if the debtor is club, it shall be warned of the deduction of points or the relegation to a lower category in the event of non-payment within the period of grace granted to that effect; and

- if the club has not paid the amount owed within the period of grace granted to that effect, the competent authority shall request the national association to which the debtor club belongs to carry out the execution of said warning;
- the Club had not paid its debt to the Creditor, and had therefore to be considered guilty in accordance with Article 68 FDC, for having failed to comply with the DRC Decision, which was final and binding;
- with regard to the sanction to be imposed,
 - the measure of the fine could range between CHF 5,000 and CHF 1,000,000;
 - the Club had illegally retained the amount owed to the Creditor, notwithstanding the efforts made by FIFA, and the failure to pay the amount owed was suitable to cause serious financial difficulties to the Creditor;
 - therefore, in consideration of these circumstances, a fine of CHF 15,000 was adequate and consistent with the practice of the DC;
 - the points to be deducted in the event of failure by the Club to make the payment owed to the Creditor within the period of grace of 30 days should be determined taking into account, and in proportion to, the amount of the debt unpaid;
 - therefore, a 6 points deduction was appropriate and consistent with the practice of the DC.
- in accordance with Article 110 para. 1 FDC, the costs and expenses of the disciplinary had to be sustained by the Club, as unsuccessful party.

The DC Decision was notified to the Club on 6 December 2006.

On 27 December 2006, the Club filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the DC Decision, requesting its stay.

On 5 January 2007, the Appellant filed its appeal brief, with the supporting documents. In a letter of 8 January 2007, the Appellant clarified “*some issues regarding our appeal in this case*”. In its appeal brief the Appellant asks the CAS:

“to receive our appeal in the sense that the notice sent by FIFA’s disciplinary Committee is rendered void, with respect to the last term granted ... and the economic fine for 15,000 CHF is annulled”.

On 8 January 2007 FIFA filed with CAS a letter confirming, inter alia, that it “*accept to stay the execution of the challenged decision until CAS has taken a final decision*”.

On 27 March 2007, then, FIFA filed its answer, containing the following requests to the CAS:

- “1. *The appeal is to be rejected completely.*
2. *The consequential costs and damages are to be borne by the appellant*”.

In a letter dated 2 May 2007 the Panel informed the parties that, in accordance with Article R57 of the Code, it had decided not to hold a hearing in this case. The present award is therefore rendered after consideration of the written documents on file.

LAW

Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Article 60 ff. of the FIFA Statutes, in their version as of 1 August 2006, in force when the DC Decision was issued and the appeal was filed (the “FIFA Statutes”), and Article R47 of the Code. It is further confirmed by Article 68 para. 5 FDC.
2. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Appeal proceedings

3. As these proceedings involve an appeal against a disciplinary decision issued by a federation (FIFA) whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

4. The Player’s statement of appeal was filed within the deadline set down in the FIFA Statutes and the DC Decision. No further recourse against the DC Decision, rendered in application of Article 68 FDC, is available within the structure of FIFA. Accordingly, the appeal is admissible.

Applicable law

5. Pursuant to Article R58 of the Code, the Panel is required to 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”.

6. Pursuant to Article 59.2 of the FIFA Statutes:
"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".
7. In this case, accordingly, the FIFA rules and regulations fall to be applied primarily, with Swiss law applying subsidiarily.
8. The FDC rules relevant to these proceedings are the following:
Article 68 - "payment of sums of money":
 - "1. *Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA:*
 - a) *will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cf. art. 55 par. 1 c) of the FIFA Statutes);*
 - b) *will be given a final time limit by the judicial bodies of FIFA in which to settle the debt;*
 - c) *if it is a club, it will be warned and threatened with deduction of points or relegation to the next lower division if it has not paid by the final time limit. Furthermore, a transfer ban may be imposed.*
 2. *If the club disregards the final time limit, the body will request the national association concerned to implement the threat.*
 3. *If points are deducted, they shall be proportionate to the amount owed.*
 4. *A ban on any football related activity may also be imposed against natural persons [...]"*.

Article 16 - "Fine":

- "1. *A fine is issued in Swiss francs (CHF) or in US dollars (USD). It shall be paid in the same currency.*
2. *The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than 1,000,000.*
3. *The body that pronounces the sanction decides the terms and time limits for payment. If the fine is added to a match suspension, it shall be paid before the suspension has ended.*
4. *Associations are jointly liable for fines imposed on representative team players and officials. The same applies to clubs in respect of their players and officials. The fact that a natural person has left a club or association does not cancel out joint liability".*

The Merits of the Dispute

9. The Appellant challenges the DC Decision to sanction its failure to comply with the DRC Decision, which imposed on the Club the obligation to pay a given amount of money (USD 88,100, plus interest) to the Player. Having failed to pay within the deadline specified in the DRC Decision, the Appellant was sanctioned by the Respondent pursuant to Article 68 FDC.
10. In support of its request to have the sanction cancelled the Appellant invokes one main reason:

it submits that the DC Decision “*is not valid*” because it was issued notwithstanding a request for revision of the DRC Decision. In the opinion of the Appellant, it could not be considered to be a debtor to the Player failing a decision on its application for the review of the DRC Decision, where “*the mistakes made by the DRC*” have been explained.

11. In other words, the Appellant makes submissions with regard to the debt to the Player, which it assumes not to be owed failing a determination on its request for review of the DRC Decision, and alleges that Article 68 FDC could not be applied.
12. With respect to the Appellant’s submissions, the Panel wishes to underline three preliminary important points.
13. First, the Panel notes that according to the FIFA rules (Article 61 para. 1 of the FIFA Statutes), the DRC Decision could be challenged before the CAS: any and all reasons for an appeal to be brought against the DRC Decision had to be set forth in a request to the CAS under the applicable rules in a time limit starting from the notification of the DRC Decision. In this respect, the Panel notes that an appeal was brought by the Club against the DRC Decision, but that it was dismissed as being manifestly late. As a result, the DRC Decision is final and binding on the Club.
14. Second, the Panel remarks that this appeal concerns the challenge brought by the Appellant to the DC Decision, and therefore does not extend to other decisions rendered by FIFA.
15. Third, the Panel underlines that the object of this appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the DC in the DC Decision, which is being challenged. As a result, only submissions relating to the fine imposed by the DC, such as its legal basis and quantum, can be heard.
16. In the light of the above, the Panel finds that the reasons invoked by the Appellant are untenable as grounds of its appeal against the DC Decision.
17. The Panel, in fact, cannot consider requests concerning the debt owed by the Appellant to the Player, the issues relating thereto having been decided by the DRC Decision, which is final and binding. Any request by the Appellant concerning its debt towards by the Player is precluded: it cannot be re-heard now, within the framework of a disciplinary procedure opposing the Appellant and FIFA.
18. In any case, the same conclusion has to be reached also with respect to the issues concerning the Appellant’s request for the reopening of the case decided by the DRC and for the review of the DRC Decision.
19. In this regard the Panel notes that the applications made by the Appellant have been considered by FIFA: the motion filed on 30 October 2006 was dismissed on 14 November 2006, while the second motion of 16 November 2006 was rejected on 27 November 2006. With respect to such motions, the Panel does not find it necessary to investigate whether a legal basis existed for their filing by the Appellant and whether the FIFA’s denial was justified in light of the applicable

procedural and substantive rules and principles. The Panel only remarks that no challenge has been directly filed against those decisions, rendered on 14 November 2006 and 27 November 2006, dismissing the Club's motions: the current proceedings, indeed, only concern an appeal against a different decision, i.e. the DC Decision.

20. The Panel therefore finds that the DRC Decision was final and that no application of its review had been granted, with the consequence that at the time the DC Decision was passed the Club was owing the Player the amount finally indicated in the DRC Decision. Indeed, no indication of the full payment of the debt by the Club has been submitted by the Appellant even in the course of these arbitration proceedings.
21. As a result, the Panel concludes that the conditions for a fine to be imposed on the Club have been met. Moreover, the amount of the fine appears to be proportionate.
22. As to the first aspect, the Panel confirms that Article 68 FDC allows a sanction to be imposed on a club that has failed to pay entirely its debts to another subject. The provision is intended to confirm that it is a disciplinary duty of clubs to fully comply with the decisions of the bodies of FIFA. And it is undisputed that the Appellant failed to make timely payment of the DRC Decision, and to settle its debt to the Player.
23. As to the amount of the fine, the Panel notes that it has not been challenged. In any case, the Panel confirms that the DC Decision is consistent with Articles 16 and 68 FDC: the amount of the fine, set at CHF 15,000 in a scale ranging from CHF 5,000, which is the minimum amount pursuant to Article 68 FDC, to CHF 1,000,000, which is the maximum amount pursuant to Article 16 FDC, does not seem to be oppressive, and appears to be justified by the attitude of the Club, which made no efforts to settle its debts after the DRC Decision had been rendered, and proportionate to the amount owed to the Player.

Conclusion

24. In light of the foregoing, the Panel dismisses the appeal brought by the Club; the DC Decision is confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Club Barcelona FC against the decision issued on 30 November 2006 by the FIFA Disciplinary Committee is dismissed.

(...).