



Arbitration CAS 2001/A/342 Celtic Football Club & Martin O'Neill / Union des Associations Européennes de Football (UEFA), order of 24 September 2001

CAS jurisdiction

Decision of a sporting nature

In view of the statement of appeal filed by Celtic Football Club and Mr. Martin O'Neill on 24 September 2001 against the decision pronounced by the Control and Disciplinary Body of the Union des Associations Européennes de Football (UEFA) on 21 September 2001;

In view of the application for a stay of the execution of the decision appealed from also dated 24 September 2001;

In view of the answer to such application for a stay filed by the UEFA on 24 September 2001;

In view of art. R37, R48 and R52 of the Code of Sports-related Arbitration;

In view of the urgency of the case;

The President of the CAS Appeals Arbitration Division, ruling in camera, hereby considers

On 18 September 2001, Celtic FC played against Juventus FC in Torino on the occasion of the first round of the UEFA Champions League 2001/2002.

Following an incident at the end of the match, the referee ordered Martin O'Neill, team manager of Celtic FC, to leave the technical area.

Further to this match, the UEFA initiated a disciplinary procedure and invited Celtic FC to provide the UEFA Control and Disciplinary Body with any statement and evidence related to this matter. Celtic FC sent its statement to the UEFA on 20 September 2001.

By decision of 21 September 2001, the UEFA Control and Disciplinary Body made the following decision:

1. *Suspension of Mr. Martin O'Neill for one UEFA competition match;*
2. *This decision is final.*

This suspension shall apply to the following match: Celtic FC v, FC Porto (25/09/2001)

Mr Martin O'Neill may attend this match as a normal spectator in the stands. However, his presence before and during the match in the dressing rooms, in the technical area, on the pitch or in the tunnel is not allowed, as well as any communication in the course of the match with his team".

On 24 September 2001, Celtic FC and Martin O'Neill filed a statement of appeal against this decision before the Court of Arbitration for Sport.

“That the Decision appealed from be overturned, and found to be of no effect; or

Alternatively, that the Decision appealed from be overturned, in so far as it purports to do other than preclude the presence of Mr O'Neill from the pitch and its immediate surrounds including the technical area during the match.

A stay of execution of the Decision appealed from pending determination of this appeal.

The costs of this Appeals arbitration”.

In its reply of 24 September 2001, the UEFA asks the CAS to declare the statement of appeal inadmissible and, in the event the CAS would consider the appeal admissible, to dismiss such appeal.

LAW

In accordance with art. R37 and R52 of the Code of Sports-related Arbitration, it is for the President of the CAS Appeals Arbitration Division to rule on the application for a stay, considering that the Panel has not been formed yet.

In accordance with art. R47 of the Code, *“A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, 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 body”.*

In the present case, the Appellants put forward that the jurisdiction of the Court of Arbitration for Sport is based on Art. 60 of the Statutes of UEFA which reads as follows:

Jurisdiction

1. *CAS shall have exclusive jurisdiction to deal with any challenge against a decision under civil law (of a pecuniary nature) of the Organs for the Administration of justice. Any such challenge must be made at CAS within 10 days of the notification of the decision which is challenged.*

Sporting nature

2. *A decision of the Organs for the Administration of Justice of a sporting nature, or any part or parts of a decision that is of a sporting nature, may not be challenged in civil law.”*

(...)

According to the UEFA Statutes, the CAS has jurisdiction only in relation to decisions *“under civil law (of a pecuniary nature)”*. In their statement of appeal, the Appellants do not give any specific arguments in relation to such pecuniary nature of the decision challenged and only state that the

Appellants would “*suffer loss and damage, for which there is no adequate remedy*”. In its reply, the UEFA considers that the decision challenged is manifestly of a sporting nature and not of a pecuniary nature, which would mean that CAS has no jurisdiction *in casu*.

In previous CAS decisions related to the interpretation of the UEFA Statutes concerning this jurisdiction issue, the CAS has repeatedly stated that the nature of a dispute cannot result from pre-established criteria but must be determined on a case by case basis in accordance with the circumstances of the dispute. In certain situations, a decision of a sporting nature may have pecuniary consequences or not depending on the context of each case (see CAS 98/199 *Real Madrid CF c. UEFA* and CAS 2000/A/290 *Xavier and Everton FC c. UEFA*).

In the present case, the decision challenged concerns the suspension of a team manager for one competition match. Even if the Appellants consider that such suspension would cause a disadvantage for the team during the match against Porto FC on 25 September 2001, they do not give any evidence or even any justification as to the pecuniary nature of the dispute. In the award CAS 98/199 *Real Madrid CF c. UEFA*, Real Madrid was sanctioned by UEFA, following security problems, with a suspension of the pitch for one match, a confiscation of a certain amount of money and a fine. The CAS admitted its jurisdiction as far as the confiscation of money and the fine were concerned but decided that CAS had no jurisdiction as far as the suspension of the pitch was concerned. In that case, the CAS Panel considered that the suspension of the stadium Santiago Bernabeu for one match was essentially a decision of a sporting nature and could not be reviewed by CAS.

In the present matter, it appears clearly that the suspension of the team manager of Celtic FC for one match is also mainly a decision of a sporting nature. Considering that no evidence of a possible financial damage has been brought by the Appellants, the direct pecuniary consequences of such suspension are not obvious, at least at this stage of the proceedings.

Consequently and without prejudice of any future decision by the Panel on this issue, the CAS has no jurisdiction to rule on the present statement of appeal and cannot order a stay of the execution of the decision challenged.

The President of the CAS Appeals Arbitration Division, ruling in camera:

1. Dismisses the application for a stay of the execution of the decision made by the UEFA Control and Disciplinary Body dated 21 September 2001.
2. States that the present order is pronounced without costs.