Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 25 May 2020,

COMPOSITION:

Mrs. Jo Setright, Australia (member)

RESPONDENT:

FK Ventspils, Latvia

Regarding failure to comply with a decision (Ref. 200497)

Article 64 of the FIFA Disciplinary Code – 2017 ed. (hereinafter, the "FDC")

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

2. On 26 June 2018, the Single Judge of the sub-committee of the Dispute Resolution Chamber decided that the club FK Ventspils (hereinafter: *the Debtor*) had to pay:

   To the club FC Abuja, and consequently to the Nigeria Football Federation (hereinafter: *the Creditor*) further to the disaffiliation of the club FC Abuja:

   EUR 87,616.43 within 30 days of the date of notification of the decision plus 5% interest *p.a.* on said amount as of 9 June 2017 until the date of effective payment;

   CHF 2,000 as costs of the proceedings.

   To FIFA:

   CHF 6,000 as costs of the proceedings.

3. The terms of the decision were duly communicated, amongst others, to the parties on 29 June 2018. In this regard, the Debtor requested the grounds of the decision, which were communicated, amongst others, to the parties on 26 November 2018. Finally, no appeal was filed before CAS, so therefore the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber dated 26 June 2018 became final and binding.

4. On 18 March 2020, the Creditor claimed that the above mentioned decision was not respected by the Debtor and requested the Disciplinary Committee to act accordingly in application of Article 15 FDC.

5. In light of the foregoing, and as the aforementioned amounts were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 9 April 2020. Moreover, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 4 May 2020, and invited the Debtor to provide its position within six days of the notification of the opening of the disciplinary proceedings. Finally, the Secretariat informed the Debtor that the member of the FIFA Disciplinary Committee would take a decision based on the documents in his possession, should the Debtor fail to submit any statement by the specified deadline.

II. RESPONDENT´S POSITION

6. On 10 April 2020, the Debtor wrote a letter to FIFA seeking clarification as to who is the party with direct interest invoking the right to enforce the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber, whether the club FC Abuja or the Nigerian Football Federation (hereinafter: *the NFF*). Moreover, the Debtor requested an extension until 1 May 2020 of the deadline to provide its position due to the COVID-19 outbreak.

7. On the same date, the Secretariat sent a letter to the parties and informed the Debtor that the creditor seeking enforcement of the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber dated 26 June 2018 is the NFF on behalf of the club FC Abuja (based on art. 3 par. 3 of Annexe 4 of the Regulations on the Status and Transfer of Players), as it was also stated in the TMS system under the information regarding claim 1601. Moreover, the parties where informed that the Debtor's request for extension of its deadline to file a position had been accepted and a 10-day extension was exceptionally granted for the Debtor to file its position by 26 April 2020 at the latest.

8. On 14 April 2020, the Debtor requested again, in order to be able to provide its position, a clarification as to whether the NFF is acting in the name and on behalf of the club FC Abuja or, on the contrary, on its own name and behalf.

9. On 17 April 2020, further to consultation with the NFF, the Secretariat sent a letter to the parties and informed the Debtor of the disaffiliation of FC Abuja, proof of which was provided by the NFF and forwarded to the Debtor, and confirmed that the NFF is acting on its own behalf in the current disciplinary proceedings.

10. On 21 April 2020, the Debtor provided its position, which can be summarised as follows:

    - The creditor in the disciplinary proceedings is the NFF whereas the creditor in the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber is the Nigerian club FC Abuja.
    - Only the original creditor that was a party to the proceedings before the DRC is entitled to request the enforcement of the relevant decision.
    - Contrary to what the NFF claims, the association is not entitled to claim the money on behalf of the club FC Abuja after the disaffiliation of the latter, given that it was the club that filed the original claim for training compensation. Therefore, the fact that the club disappeared at a later stage should preclude the association from claiming on the club's behalf.
    - The Disciplinary Committee cannot review as to the substance of the DRC decision.
    - To accept the request of the NFF as creditor, the Disciplinary Committee would have to take competence to decide whether the association can be a party of the proceedings.
    - Based on the above considerations, the Debtor considers that the request for disciplinary proceedings by the NFF should be declared inadmissible or, alternatively, should the claim of the NFF be accepted, it should be declared that the association cannot be a party of the proceedings.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

A. Jurisdiction of the FIFA Disciplinary Committee

11. First of all, the FIFA Disciplinary Committee (hereinafter: *the Committee*) notes that at no point during the present proceedings did the Debtor challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC) in relation to the enforcement of a financial decision of the Dispute Resolution Chamber.

12. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

13. However, the Committee notes that the Debtor challenges the active stance invoked by the NFF in the present disciplinary proceedings. Therefore, the Committee considers that the entitlement of the NFF to act as creditor in the present disciplinary proceedings has to be addressed primarily, in order to determine the outcome of the proceedings.

14. In this regard, the Committee found it worthwhile to emphasise that, on the basis of art. 53 of the FDC as read together with art. 25 par. 3 of the Regulations on the Status and Transfer of Players (hereinafter: *the RSTP*), it is competent to evaluate the present case.

B. Applicable law

15. In order to duly assess the matter, the Committee would like to begin by recalling the content and the scope of the provisions at stake.

16. According to Article 15 FDC

> *1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*
>
> *a) will be fined for failing to comply with a decision; in addition:*
> *b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
> *c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent*

failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

(…)

2. With regard to financial decisions passed by a body, a committee or an instance of FIFA, disciplinary proceedings may only commence at the request of the creditor ***or any other affected party*** *(…)* (emphasis added)

3. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.

17. Moreover, art. 3 par. 3 of Annexe 4 of the RSTP provides that "*An association is entitled to receive the training compensation which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – with which the professional was registered and trained – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This compensation shall be reserved for youth football development programmes in the association(s) in question*".

18. Finally, in line with art. 54 par. 1 h) of the FDC, cases involving matters under art. 15 of the FDC may be decided by one member of the Disciplinary Committee alone, acting as a single judge (hereinafter: *the Single Judge*).

19. The Single Judge emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.

C. Merits of the dispute

I. Analysis of the entitlement of the NFF to act as Creditor in the disciplinary proceedings

20. The Single Judge notes, firstly, that "an affected party" is entitled to request the commencement of disciplinary proceedings, as provided in art. 15 par. 2 FDC.

21. Moreover, the Single Judge notes that the club FC Abuja appears as the Creditor in the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber. However, the Single Judge notes that, further to providing proof of the disaffiliation of FC Abuja and in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF would be entitled to receive the training compensation that in principle would be due to the aforementioned club.

22. In light of the foregoing, the Single Judge considers that in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF is entitled to receive the amount due to FC Abuja as training compensation and, consequently, the NFF is to be considered an affected party that can request the commencement of the disciplinary proceedings, as per art. 15 par. 2 FDC.

II. Analysis of the facts in light of art. 15 FDC

23. The above having been established, the Single Judge notes that the terms of the decision were duly communicated, amongst others, to the parties on 29 June 2018. Moreover, the Single Judge notes that the Debtor requested the grounds of the decision, which were communicated, amongst others, to the parties on 26 November 2018. Finally, the Single Judge notes that no appeal was filed before CAS, so therefore the decision of the Single Judge of the sub-committee of the Dispute Resolution Chamber dated 26 June 2018 became final and binding.

24. In view of what has been explained under paragraph III./20. above, the Single Judge is not allowed to analyse the case decided by the Single Judge of the sub-committee of the Dispute Resolution Chamber as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision rendered by the Single Judge of the sub-committee of the Dispute Resolution Chamber.

25. As the Debtor did not comply with the decision passed by the Single Judge of the sub-committee of the Dispute Resolution Chamber on 26 June 2018, and is consequently withholding money from the Creditor, it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the FDC.

III. Summary

26. In view of the foregoing, the Committee concludes that the Debtor, by its conduct as described above, violated art. 15 of the FDC.

27. Therefore, the Committee considers that the Debtor is to be sanctioned for the aforementioned violations.

IV. The determination of the sanction

28. With regard to the applicable sanctions for the present case, the Committee observes in the first place that the club is a legal person, and as such it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

29. The fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 300 and CHF 1,000,000.

30. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Single Judge regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Committee's established practice.

31. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.

32. In accordance with art. 15 par. 1 c) of the FDC, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.

33. The Latvian Football Federation is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Latvian Football Federation is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Latvian Football Federation fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The club FK Ventspils (hereinafter: *the Debtor*) is found guilty of failing to comply in full with the decision passed by the Single Judge of the sub-committee of the Dispute Resolution Chamber on 26 June 2018, according to which it was ordered to pay:

   To the club FC Abuja, and consequently to the Nigeria Football Federation (hereinafter: *the Creditor*) further to the disaffiliation of the club FC Abuja:

   EUR 87,616.43 within 30 days of the date of notification of the decision plus 5% interest *p.a.* on said amount as of 9 June 2017 until the date of effective payment;

   CHF 2,000 as costs of the proceedings.

   To FIFA:

   CHF 6,000 as costs of the proceedings.

2. The Debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.

3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor and to FIFA.

4. If payment is not made <u>to the Creditor</u> and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Latvian Football Federation by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Latvian Football Federation and FIFA

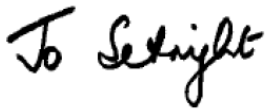
respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

5. As a member of FIFA, the Latvian Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Latvian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.

6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Latvian Football Federation of every payment made and to provide the relevant proof of payment.

7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Latvian Football Federation of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



SETRIGHT Jo

Member of the Disciplinary Committee

NOTE RELATING TO THE PAYMENT OF THE FINE

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

NOTE RELATING TO THE LEGAL ACTION

According to art. 49 together with article 57 par.1 e) of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

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