



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6241 Qingdao Jonoon FC v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Manfred **Nan**, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Qingdao Jonoon FC, Qingdao, China

Represented by Ms Qiong Xie, Attorney-at-Law, Tianjin Chenyi Law Firm, Tianjin, China

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Ms Audrey Cech, Legal Counsel FIFA Litigation Department, and Mr Julien Deux, Group Leader FIFA Disciplinary Department, Zurich, Switzerland

Respondent

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I. PARTIES

1. Qingdao Jonoon FC (the “Appellant” or the “Club”) is a football club with its registered office in Qingdao, China. The Club is registered with the Chinese Football Association (the “CFA”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Proceedings before the FIFA Dispute Resolution Chamber

4. On 22 August 2014, following a contractual dispute that ensued between the Club and the professional football player Mr Joel Griffiths (the “Player”), the latter lodged a claim against the Club before the FIFA Dispute Resolution Chamber (the “FIFA DRC”), requesting that the Club be ordered to pay him outstanding remuneration, accommodation costs and compensation for breach of contract in the total amount of USD 237,589, plus default interest.
5. The Club disputed the Player’s claim and lodged a counterclaim against the Player in the total amount of USD 734,000.
6. On 19 January 2017, the FIFA DRC rendered its decision (the “FIFA DRC Decision”), with the following operative part:

“1. *The claim of [the Player] is partially accepted.*

2. *The counterclaim of [the Club] is rejected.*

3. *The [Club] is ordered to pay to [the Player], **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amounts of USD 20,000 and Chinese Yuan Renminbi (CNY) 20,000 plus 5% interest p.a. as from 3 January 2014 until the date of effective payment.*

4. *The [Club] is ordered to pay to [the Player], **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 121,000 plus 5% interest p.a. as from 22 August 2014 until the date of effective payment.*

5. *In the event that the aforementioned sums are not paid by the [Club] within the stated time limits, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.*
6. *Any further claim lodged by the [Player] is rejected.*
7. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received."*
7. On 9 March 2018, the grounds of the FIFA DRC Decision were communicated to the parties.
8. On 16 April 2018, the Player informed FIFA that the Club had failed to comply with the FIFA DRC Decision.
9. On 14 June 2018, FIFA requested the Club to immediately pay the relevant amounts to the Player and to provide a copy of the payment receipt by 18 July 2018 at the latest, and informed it that otherwise the entire file would be forwarded to the FIFA Disciplinary Committee for consideration and a formal decision.
10. On 10 July 2018, FIFA informed the Player and the Club that the file would be forwarded to the FIFA Disciplinary Committee.
11. On 19 July 2018, the legal representative of the Player informed FIFA that still no payment had been received.

B. Proceedings before the FIFA Disciplinary Committee

12. On 21 September 2018, the Secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Club due to its alleged failure to respect the final and binding FIFA DRC Decision. The Club was urged to pay the amount due to the Player by 5 October 2018 at the latest and was informed that the FIFA Disciplinary Committee would take a decision based on the documents in its possession, should the Club fail to submit any statement or pay the outstanding amount by the specified deadline.
13. On 4 October 2018, the Club requested FIFA to suspend the proceedings "*due to suspicion of criminal offences occurred in the arbitration*".
14. On 10 October 2018, the Player informed FIFA that still no payment had been received.
15. On 15 November 2018, the Secretariat to the FIFA Disciplinary Committee informed the Club that the FIFA DRC Decision was final and binding, urging the Club for the third time to pay the amount due to the Player by 22 November 2018 at the latest, and reiterating that the FIFA Disciplinary Committee would take a decision based on the documents in its possession, should the Club fail to pay the outstanding amount by the specified deadline.

16. On 23 November 2018, the legal representative of the Player informed FIFA that the Club had not made any payment to the Player.
17. On 10 December 2018, the FIFA Disciplinary Committee rendered its decision (the “Appealed Decision”), with the following operative part:

- “1. The [Club] is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the [FIFA DRC Decision] according to which it was ordered to pay the [Player] USD 20,000, CNY 20,000 and USD 121,000 as well as 5% interest per year to be calculated in accordance with the [FIFA DRC Decision].*
- 2. The [Club] 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. Payment can be made either in Swiss Francs (CHF) to account no [...] or in US Dollars (USD) to account no. [...].*
- 3. The [Club] is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the [Player].*
- 4. If payment is not made to the [Player] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [CFA] by this deadline, six (6) points will be deducted automatically by the [CFA] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*
- 5. In addition, if payment is not made to the [Player] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and the [CFA] by the aforementioned deadline, a ban from registering new players, either nationally or internationally, for one (1) entire registration period will be imposed on the [Club] as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the [CFA] 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 [Club] – first team and youth categories –. The [Club] shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to the [Player] of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, the [Club] 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.*
- 6. If the [Club] still fails to pay the amount due to the [Player] even after the deduction of points and the complete serving of the transfer ban in accordance with points 4 and 5 above, the FIFA Disciplinary Committee,*

upon request of the [Player], will decide on a possible relegation of the [Club's] first team to the next lower division.

7. *As a member of FIFA, the [CFA] is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course and that the transfer ban has been implemented at national level. If the [CFA] 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.*
8. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the [Club] and shall be paid according to the modalities stipulated under point 2. above.*
9. *The [Club] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CFA] of every payment made and to provide the relevant proof of payment.*
10. *The [Player] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CFA] of every payment received.”*
18. On 8 January 2019, the terms of the Appealed Decision were communicated to the Club.
19. On 9 January 2019, the Club acknowledged receipt of the Appealed Decision.
20. On 22 February 2019, the Player informed FIFA that *“pursuant to the payment receipts provided by the Club on 15 February 2019 and 19 February 2019, the Player has now received all outstanding payments into his nominated bank account. The Club has now made full payment to the Player in compliance with the FIFA DRC’s decision of 19 January 2017 [...]”*.
21. On 5 March 2019, FIFA informed the parties that as the Club had fulfilled its payment obligations towards the Player, in compliance with the FIFA DRC Decision, *“the disciplinary proceedings against the [Club] are closed”*.
22. On 7 March 2019, FIFA informed the Club and the CFA that as the Club did not pay the Player within 30 days from notification of the Appealed Decision, the CFA is obliged to deduct 6 points automatically *“without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat”*.
23. On 25 March 2019, the Chairman of the CFA Disciplinary Committee issued the following decision (the “CFA DC Decision”):

“Disciplinary Decision regarding [the Club] for Failing to Comply with the Decision of FIFA Disciplinary Committee

To Football Clubs and Relevant Organizing Committees of Competitions in China:

With reference to the letter from the FIFA Disciplinary Committee dated on 7 March 2019, it is hereby informed that [the Club] failed to comply with the [Appealed Decision] on time, therefore in accordance with the [Appealed Decision] and Article 79 of CFA Disciplinary Code, the following disciplinary decision is made to [the Club]:

Six points Deduction of the First Team of [the Club] in the 2019 Season of China League 2.

The above-mentioned decision comes into force on the date of issuance.”

24. On 25 March 2019, FIFA forwarded the CFA DC Decision to the Club and the Player adding that *“since the mater [sic] between the parties is closed, please be informed that the foregoing is of a purely informative nature”*.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 27 March 2019, the Club lodged an appeal against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2019) (the “CAS Code”), naming FIFA as the sole respondent. In this Statement of Appeal, the Club requested that the present case be submitted to a sole arbitrator.
26. On 12 April 2019, FIFA objected to the admissibility of the appeal, requesting the President of the CAS Appeals Arbitration Division to terminate the present appeal procedure, pursuant to Article R49 CAS Code.
27. On 16 April 2019, the CAS Court Office invited the Club to comment on FIFA’s objection to the admissibility of the appeal.
28. On 22 April 2019, the Club filed its comments on FIFA’s objection to the admissibility of the appeal.
29. On 6 May 2019, the Club filed its Appeal Brief.
30. On 7 May 2019, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to leave any decision on the admissibility of the appeal with the Panel/Sole Arbitrator, once constituted.
31. On 8 May 2019, FIFA agreed with the appointment of a Sole Arbitrator as long as he would be chosen from the football list.
32. On 5 June 2019, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted as follows:
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator.
33. On 25 June 2019, FIFA filed its Answer, pursuant to Article R55 CAS Code, *inter alia* indicating that it did not require a hearing to be held.

34. On 27 June 2019, further to an enquiry from the CAS Court Office in this regard, the Club indicated its preference for the Sole Arbitrator to decide this matter based solely on the parties' written submissions without holding a hearing.
35. On 3 July 2019, the CAS Court Office informed the parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the parties' written submissions, without the need to hold a hearing.
36. On 13 August 2019, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office. By signing the Order of Procedure, the parties, *inter alia*, confirmed that no hearing would be held, but that their right to be heard had nonetheless been respected.
37. The Sole Arbitrator confirms that he fully reviewed and took into account in his decision all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. REQUESTS FOR RELIEF

38. In its Appeal Brief, the Club submitted the following requests for relief:

“(a) Annul the sanction of points deduction imposed on the [Club]; OR alternatively substantially reduce/alleviate the sanction proportionally to one (1) point deduction;

(b) order [FIFA] to reimburse the [Club’s] legal costs and other expenses pertaining to this appeal proceeding before CAS;

(c) order [FIFA] to bear the costs of arbitration.”

39. In its Answer, FIFA submitted the following requests for relief:

“(a) Primarily, to declare inadmissible the appeal lodged by the [Club].

b) Subsidiary, should the Panel decide not to the [sic] declare the appeal inadmissible, to reject the [Club’s] appeal in its entirety.

c) To order the Appellant to bear all costs and expenses related to the present procedure.”

V. SUBMISSIONS OF THE PARTIES

40. The Club's submissions on the admissibility of the appeal, in essence, may be summarised as follows:
 - The Club argues that after the CFA announced the deduction of six points against the Club on its website on 25 March 2019, the Club filed an appeal at CAS on 27 March 2019, which is within the time limit of 21 days pursuant to Article R49 CAS Code.

- The Club acknowledges receipt of the Appealed Decision on 9 January 2019, but argues that the Appealed Decision is not a final decision as it is conditional. In this regard the Club submits that the Appealed Decision “*requested [CFA] to make a decision depending on the fulfilment of the prescribed condition. It is [CFA] NOT FIFA itself who finally imposed the sanction against the [Club]. As a result, the [Club] shall make an appeal against the [CFA DC Decision]. So the time when [CFA] issued the [CFA DC Decision] shall be the time within which for the [Club] to file its appeal start to run, NOT the Appealed Decision.*”
41. FIFA’s submissions on the admissibility of the appeal, in essence, may be summarised as follows:
- FIFA argues that the appeal is inadmissible, pointing out that “*the terms of the Appealed Decision were communicated to the parties on 8 January 2019. As none of the parties requested the grounds of the Appealed Decision in line with art. 116 of the FDC, it became final and binding. However, on 27 March 2019, the [Club] filed to CAS its Statement of Appeal against said decision – meaning more than 3 months after it had become final and binding. In other words, the [Club] blatantly filed its appeal outside of the 21-days deadline foreseen by art. 58 par. 1 of the FIFA Statutes and art. R49 of the [CAS Code].*”
 - In continuation, FIFA maintains that the Appealed Decision is not “conditional” as it became final and binding on 18 January 2019, adding that if the Club “*disagreed with its content, and particularly the automatic point deduction, it should have requested the grounds of the motivated decision within 10-days of their notification and then file an appeal to CAS within 21-days as prescribed by the applicable regulations*”.
 - In the event that the Club’s intention is to appeal the CFA DC Decision, the Club wrongly called FIFA as a respondent into the proceedings as the latter would not have standing to be sued.

VI. JURISDICTION

42. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2018 edition), providing that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question” and Article R47 CAS Code.
43. Article 74 FIFA DC (2017 edition) determines as follows:
- “Certain decisions passed by the Disciplinary and Appeal Committees may be appealed against before the Court of Arbitration for Sport (cf. art. 58 of the FIFA Statutes as well as art. 64 and 128 of this code).”*

44. Article 64(5) FIFA DC determines as follows:

“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly.”

45. In view of Article 64(5) FIFA DC and because the Appealed Decision was based on the application of Article 64 FIFA DC, the Club was not required to file an appeal with the FIFA Appeals Committee before challenging the Appealed Decision before CAS. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.

46. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

47. The Club refers to Article R58 CAS Code, Article 57(2) FIFA Statutes, Articles 39 and 64 FIFA DC and general principles of law and principles specific to sport, submitting that these *“principles are, therefore, to be applied in addition to and, if necessary, over and above the rules of national law applicable to the material dispute”*.

48. FIFA argues that, according to Article 66(2) FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings. Pursuant to the same article, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. FIFA therefore submits that the applicable law should consequently be the FIFA regulations and additionally Swiss law.

49. Article R58 CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

50. Article 57(2) FIFA Statutes (August 2018 edition) stipulates the following:

“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.”

51. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FIFA DC, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. However, to the extent necessary, in respect of specific arguments put forward by the Club on the basis of general principles of law and principles specific to sport, the Sole Arbitrator will consider the direct applicability (or non-applicability) of such principles to the present dispute below.

VIII. ADMISSIBILITY

52. The admissibility of the appeal is challenged by FIFA. FIFA refers to Article 116(1) FIFA DC, maintaining that the Appealed Decision was notified to the Club on 8 January 2019 and became final and binding on 18 January 2019 because the Club never requested the motivated decision. FIFA is of the opinion that if the Club disagreed with the content of the Appealed Decision, and particularly the automatic point deduction, it should have requested the grounds of the motivated decision within 10 days of their notification and then file an appeal to CAS within 21 days as prescribed by the applicable regulations. In any event, FIFA points out that the Statement of Appeal was only filed on 27 March 2019, which is 3 months after the notification of the terms of the Appealed Decision and is thus clearly outside the 21-day deadline as provided for in Article 58(1) FIFA Statutes and Article R49 CAS Code. For the sake of completeness, FIFA refers to the content of para. 4 of the Appealed Decision, which clearly states that if no payment is made, six points will be deducted automatically by the CFA without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.
53. The Club acknowledges that it received the Appealed Decision on 9 January 2019, but claims that the deadline to file an appeal would start only as from 25 March 2019, which is the date the CFA announced the deduction of six points against the Club on its official website, as the Appealed Decision is not a final decision but only a conditional one. Depending on the fulfilment of the condition, the CFA decided upon request of FIFA to impose the point deduction against the Club. Therefore, the Club argues that the time limit for the Club to file the Statement of Appeal at CAS shall be 21 days from 25 March 2019, and as the Club filed its Statement of Appeal on 27 March 2019, it is well within the time limit pursuant to Article R49 CAS Code.
54. Taking into account that the Club also argues in its Appeal Brief that “[i]t is [CFA] *NOT* FIFA itself who finally imposed the sanction against the [Club]. As a result, the [Club] shall make an appeal against the decision by [CFA]”, and for the avoidance of doubt, the Sole Arbitrator first needs to clarify against which decision the Club filed its appeal; is it against the FIFA DC Decision (the Appealed Decision) or against the CFA DC Decision?
55. The Sole Arbitrator observes that the Club provided the following documents, as relevant:
- The Club’s cover letter dated 27 March 2019: “*We are instructed to act for [the Club] to submit the Statement of Appeal and supporting Exhibits against DECISION of the FIFA Disciplinary Committee*”;
 - Statement of Appeal, para 2: “*DECISION APPEALED AGAINST [...] The decision (the “Decision”) of FIFA Disciplinary Committee dated on 10 December 2018 regarding the failure to comply with the decision passed by the Dispute Resolution Chamber on 19 January 2017 to impose on the Appellant an automatically deduction of six (6) points by the Chinese Football Association in case that the payment to the player Mr. Joel Griffiths (the “Creditor”) is not made before the deadline of 30 days as from notification of the Decision.*”

- Exhibit 1 with the Statement of Appeal: Decision of the FIFA Disciplinary Committee, dated on 10 December 2018;
- The Club's letter dated 22 April 2019: "*Regarding the time limit, please note the challenged Decision of FIFA Disciplinary Committee (the Decision) made a conditional penalty [...]*".

56. As such, the Sole Arbitrator has no doubt whatsoever that the Club filed its appeal against the FIFA DC Decision of 10 December 2018 (i.e. the Appealed Decision).

57. Therefore, the main issues to be resolved by the Sole Arbitrator in deciding the question of admissibility are the following:

- (i) What was the time limit for the Club to file an appeal with CAS against the Appealed Decision?
- (ii) Was the Club's appeal filed in a timely manner?

(i) What was the time limit for the Club to file an appeal with CAS against the Appealed Decision?

58. Article R49 CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."

59. Article 58(1) FIFA Statutes (August 2018 edition) provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Member Associations or Leagues shall be lodged with CAS within 21 days of notification of the decision in question."

60. The Sole Arbitrator notes that FIFA only communicated the terms of the Appealed Decision.

61. It is constant CAS jurisprudence that a decision in principle does not need to contain grounds in order to be appealable to CAS (e.g. CAS 2008/A/1705, para. 30 of the abstract published on the CAS website). This may however be different if the applicable regulations require that the grounds are requested prior to filing an appeal.

62. The FIFA DC indeed contains such rule, as Article 116(1) FIFA DC provides as follows:

"The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the terms of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding."

63. The Sole Arbitrator observes that FIFA's cover letter dated 8 January 2019 provides "[p]lease find attached the terms of the decision passed [...]", and that the Appealed Decision is accompanied by a notice on the right to appeal, which provides "*LEGAL ACTION According to art. 64 par.5 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. [...]*".
64. Pursuant to Article 116(1) FIFA DC, FIFA has the duty ("*parties **shall** be informed*" – emphasis added by Sole Arbitrator) to inform the Club that it has ten days to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding.
65. However, in the matter at hand, FIFA failed to inform the Club accordingly, instead, FIFA only informed the Club that the (terms of) the decision may be appealed against before the CAS within 21 days.
66. The Sole Arbitrator finds that under such circumstances the Club was not required to request the grounds of the Appealed Decision within a period of ten days pursuant to Article 116(1) FIFA DC. The Club's failure to ask for the grounds of the Appealed Decision is therefore not detrimental for the Club's appeal.
67. Consequently, the Sole Arbitrator finds that the time limit for the Club to file an appeal with CAS against the Appealed Decision was 21 days of receipt of the Appealed Decision.
- (ii) Was the Club's appeal filed in a timely manner?**
68. As a starting point of his analysis, the Sole Arbitrator concurs with the CAS panel in CAS 2016/A/4814, holding that "*failure to comply with the deadline to appeal results in the loss of the Club's substantive claim. As recognised in CAS 2013/A/3135, para. 27, the inadmissibility, if the appeal is not lodged in time, is automatic and the party's reaction or non-reaction cannot change such consequence: the expiration of the deadline has a preclusive effect that should be controlled by the Panel on the basis of the facts pleaded and proved by the parties and which the Panel has no discretion to extend. Similarly, in CAS 2006/A/1168 (para. 80 of the award) the Panel there rightly held that the consequence for the statement of appeal not being filed timely is an automatic, self-executing one where the respondent's silence, inactivity or even acquiescence cannot change that consequence.*" (CAS 2016/A/4814, para. 65 and 66 of the abstract published on the CAS website).
69. In the present proceedings, FIFA has even expressly raised the issue of the timeliness of the appeal and therefore in no way acquiesced to the admissibility of the appeal.
70. The next step for the Sole Arbitrator is to determine the starting point for the calculation of the compliance with the deadline (i.e. the *dies a quo*). Unlike Article 58(1) FIFA Statutes, Article R49 CAS Code attaches importance to the "*receipt of the decision*" not to the "*notification*" of the decision by the decision-making body. The Sole Arbitrator concurs with the CAS panel in CAS 2016/A/4814 (para. 69 of the abstract published on

the CAS website), holding that the meaning of the two terms “notification” and “receipt” can be reconciled, in the sense that a “notification” of a decision is effected by FIFA – for the purposes of an appeal to the CAS – when the affected party is in “receipt” of the decision. This interpretation is confirmed by Article 90(2) FIFA DC, which reads as follows:

“2. [...] If the document was also or solely sent to the parties or their legal representatives, the time limit commences on the day after receipt of the document in question.”

71. Although FIFA communicated the terms of the Appealed Decision to the Club on 8 January 2019 14:58 Swiss time, the Club acknowledged receipt of the Appealed Decision on 9 January 2019. Be it as it may, regardless of whether the *dies a quo* commenced on 8 or 9 January 2019, the Sole Arbitrator finds that the Appealed Decision came into the sphere of control of the Club on 9 January 2019 at the latest.
72. In view of the foregoing, the Sole Arbitrator is satisfied that the Club received the Appealed Decision at the latest on 9 January 2019, which means that its appeal filed on 27 March 2019 is evidently late.
73. Consequently, the Club’s appeal is inadmissible.

IX. COSTS

74. Article R64.4 CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

75. Article R64.5 CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees

and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

76. Having taken into account the outcome of the arbitration, in particular that the Club’s appeal was declared inadmissible, the Sole Arbitrator considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the parties by the CAS Court Office, shall be borne in full by the Club.
77. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the parties, in particular that FIFA was not represented by external counsel and presumably has significantly more financial resources than the Club, the Sole Arbitrator rules that each party shall bear its own legal fees and other expenses incurred in connection with the present arbitration proceedings.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 March 2019 by Qingdao Jonoon FC against the decision issued on 10 December 2018 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is inadmissible.
2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in full by Qingdao Jonoon FC.
3. Both parties shall bear their own legal fees and other expenses incurred in connection with the present arbitration proceedings.
4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 13 September 2019

THE COURT OF ARBITRATION FOR SPORT

Manfred Nan
Sole Arbitrator