

Decision of the FIFA Disciplinary Committee

passed on 06 July 2023

DECISION BY:

Anin YEBOAH (Ghana), Deputy Chairperson

ON THE CASE OF:

Al Jazira

(Decision FDD-14858)

REGARDING:

Art. 21 of the FIFA Disciplinary Code - *Failure to respect decisions*

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 Deputy Chairperson of the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered 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 22 September 2021, the Court of Arbitration for Sport (**CAS**) issued a Consent Award (ref. CAS 2020/O/7362 – **the CAS Award**) which ruled as follows: -

“1. The Sole Arbitrator, with the consent of Al Jazira Football Sports Company LLC C and Ailton José Almeida, hereby ratifies the Settlement Agreement signed by Al Jazira Football Sports Company LLC and Ailton José Almeida on 11 May 2021 and incorporates its terms into the consent award.

2. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement of 11 May 2021 referred to above.

3. The costs of arbitration, to be determined and notified to the Parties by the CAS Court Office, shall be paid by Al Jazira Football Sports Company LLC.

4. The Parties shall bear their own legal fees and expenses sustained in connection with the arbitration procedure.

5. All other motions or prayers for relief are dismissed.”

3. In this regard, the Settlement Agreement dated 11 May 2021 signed by Mr. Ailton Jose Almeida (**the Claimant** or **the Player**) and Al Jazira (**the Respondent** or **the Club**) and ratified pursuant to the CAS Award (**the Settlement Agreement**), *inter alia* read as follows: -

“(…)

WHEREAS the CLUB and the PLAYER signed an employment agreement on 15 January 2017 (...)
(“EMPLOYMENT AGREEMENT”); and

(…)

WHEREAS the PARTIES executed a Settlement Agreement to settle all the disputes under the EMPLOYMENT AGREEMENT (“FIRST SETTLEMENT AGREEMENT”);

WHEREAS the CLUB failed to pay the third and fourth installments (...) under the FIRST SETTLEMENT AGREEMENT;

(…)

WHEREAS the PARTIES now wish to amicably resolve the DISPUTE by signing this SETTLEMENT AGREEMENT;

(…)

3. Payment by the CLUB

3.1. The CLUB shall, as full, complete and final settlement under the FIRST SETTLEMENT AGREEMENT:

pay to the PLAYER the total amount of Euro 355,000 (three hundred and fifty-five thousand Euros) ("SETTLEMENT AMOUNT"), in accordance with the provisions of clause 3.2 of this SETTLEMENT AGREEMENT;

bear the costs incurred by the PLAYER in the arbitration proceedings under case ref no. CAS 2020/0/7362;

3.2 The SETTLEMENT AMOUNT shall be paid by the CLUB to the PLAYER, through bank transfer by no later than 30 August 2021.

(...)

3.3 If the CLUB fails to make the payment mentioned above within the agreed due date (i.e., by no later than 30 August 2021) then a penalty of 10%, plus interest will accrue on the full amount outstanding at the rate of 12% per annum from the due date until the date of payment. The CLUB hereby agrees that it shall not dispute the penalty and default interest applicable herein since they are result of a fair and just negotiation held between the PARTIES.

3.4 Notwithstanding to the provisions of Clause 3.1 above, **in the event the CLUB pays to the PLAYER, the total amount of EUR 286,000 (two hundred and eighty- six thousand Euros) on or before 30 July 2021, the CLUB shall, for the purposes of this SETTLEMENT AGREEMENT, be deemed to have paid the SETTLEMENT AMOUNT in full including the cost of the Arbitration.**

(...)"

(emphasis added)

4. No challenge was lodged before the Swiss Federal Tribunal against the aforementioned CAS Award.
5. On 19 August 2022, in reference to point 3. of the CAS Award, the CAS Secretariat addressed a correspondence to the parties containing the calculation of the final amount(s) of the costs of the arbitration proceedings fixed by the CAS (**the CAS Costs Letter**). In this respect, the CAS Costs Letter *inter alia* stipulated that "(...) Al Jazira shall pay the amount of CHF 7,102 to Ailton Jose Almeida within thirty days of receipt of this letter, by DHL (...)" (**the CAS arbitration costs**).
6. On 26 May 2023, the legal representative of the Player requested the initiation of disciplinary proceedings against the Respondent for the latter's alleged failure to comply with the CAS Award. In particular, within his request for disciplinary proceedings, the Claimant requested that the Respondent, in line with the "operative part" of the CAS Award, be ordered to pay him the CAS arbitration costs as set-out within the CAS Costs Letter, i.e. the "amount of CHF 7,102".
7. On 13 June 2023, in view of the foregoing, as it appeared that the Respondent had not complied in full with the CAS Award, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) *inter alia* informed the Respondent that such conduct would constitute a potential breach of art. 21 of the FIFA Disciplinary Code, 2023 edition (**FDC**) and therefore, in accordance with art. 58 FDC as read in

conjunction with Annexe 1 FDC, proposed the following sanction(s) on the basis of the existing case file (**the Proposal**):

"1. The Respondent, the club Al Jazira, shall pay to Mr. Ailton Jose Almeida (the Creditor) as follows:

- CHF 7,102 as costs of arbitration.*

2. The Respondent is granted a final deadline of 30 days as from the present proposal becoming final and binding in which to pay the amount(s) due. 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 ban on registering new players will be issued until the complete amount due is paid.

3. The Respondent shall pay a fine to the amount of CHF 1,000."

8. On 19 June 2023¹, the Respondent rejected the Proposal of the Secretariat and provided its position².

II. RESPONDENT'S POSITION

9. The position provided by the Respondent may be summarized as follows: -

A. Summary of events and legal analysis

- Pursuant to the Settlement Agreement, in accordance with clause 3.1, the parties freely and willingly agreed that the Respondent had to pay to the Claimant EUR 355,000, in addition to having to bear *"the Cost of the Arbitration Proceedings"*.
- However, notwithstanding the stipulations of clause 3.1 of the Settlement Agreement, according to clause 3.4 of the same, in the event that the Respondent paid the total amount of EUR 286,000 on or before 30 July 2021, the Respondent would be deemed to have paid the Settlement Amount in full *"including the Cost of Arbitration associated to the Arbitration Proceedings CAS 2020/O/7362"*.
- On 26 July 2021, before the deadline of 30 July 2021 set in clause 3.4 of the Settlement Agreement, the Respondent made the transfer of EUR 286,000 to the chosen account of the Claimant.
- Therefore, by paying the total amount of EUR 286,000 before 30 July 2021, the Respondent considered that it had clearly fulfilled its contractual and financial obligations towards the Claimant, mainly the payment of *"the settlement amount including the payment of the Cost of the Arbitration"* as stated pursuant to clause 3.4 of the Settlement Agreement.

¹ In other words, within the 5-day deadline for the rejection of the proposed sanction(s) granted pursuant to art. 58 FDC.

² Please see section II. *infra.* for the position of the Respondent in full.

- Moreover, the Respondent stipulated that the Claimant's legal representative, by an email dated 04 August 2021, had acknowledged receipt of the due amount of EUR 286,000.
- As such, by transferring the settlement amount pursuant to clause 3.4, the Respondent submitted that it had executed its legal and financial obligations arising from the Settlement Agreement and the CAS Award in full, including the payments of the "*Cost of Arbitration*".
- On 19 August 2022, the CAS Costs Letter was communicated, stating that the Respondent had to pay to the Claimant the total of CHF 7,102.
- As the Respondent had executed the terms of the Settlement Agreement pursuant to clause 3.4 (and not based on clause 3.1), the Respondent submitted that the CAS Costs Letter was "*no longer enforceable to the Parties of the proceedings*" – the Respondent having executed the full Settlement Agreement including the associated costs of the arbitration, by paying EUR 286,000 to the Player before 30 July 2021.
- In other words, the Respondent argued that the Claimant was not entitled to request the Respondent to pay the CAS arbitration costs as set out in the CAS Costs Letter of 19 August 2022.
- During the negotiations and discussions of the Settlement Agreement, the Respondent and the legal representative of the Claimant discussed "*this point*" clearly and agreed that the SETTLEMENT AMOUNT under clause 3.4 shall also include the "*Costs of Arbitration of the Arbitration proceedings*", for which reason the Respondent was surprised by the false allegations made by the Claimant that the Respondent had failed to comply with a final decision.

B. Requests for relief

- The Respondent respectfully requested the Committee to acknowledge that the Respondent had fully executed its financial obligations towards the Claimant arising from the Settlement Agreement and the CAS Award – including the payment of the "*Costs of Arbitration*", by making payment to the Claimant in accordance with clause 3.4 of the Settlement Agreement.
 - To dismiss the disciplinary claim filed by the Claimant against the Respondent.
10. The Respondent provided documentary evidence in support of its position. In particular, the Respondent provided i) proof of payment in the form of a bank statement, the latter denoting the amount of EUR 286,000 as having been transferred to the Claimant by the Respondent, with the 'Payment Date' being stipulated as 26 July 2021 (**the Bank Statement**), and; ii) an email exchange between the parties dated 04 August 2021, in which the Respondent informed the Claimant that it had "*on 27 July 2021, (...) transferred the due Settlement Amount and therefore (...) has fulfilled its contractual obligations as per the Settlement terms (...)*" with the Claimant, by way of response, stating that he "[confirmed] receipt of the amount set out in the Settlement Agreement".

11. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision has only referred to those observations and evidence for which it considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

12. In view of the circumstances of the present matter, the Committee decided first to address the procedural aspects of the case, namely its jurisdiction and the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with the CAS Award as well as the potential sanction(s) resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

13. First of all, the Committee noted that at no point during the present proceedings had the Respondent challenged either its jurisdiction or the applicability of the FIFA Disciplinary Code.
14. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of arts. 56 and 57 FDC, it was competent to evaluate the present case and to impose sanction(s) in case of corresponding violation(s).
15. Furthermore, the Committee likewise underlined that on the basis of art. 51 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the FIFA Statutes and the FIFA Disciplinary Code on member associations, clubs, officials, players, football agents and match agents.

B. Applicable legal framework

16. With respect to the matter at hand, the Committee pointed out that the potential disciplinary offense, *i.e.* the potential failure to comply with the CAS Award, would have been committed continuously both *prior to* and *after* the entry into force of the 2023 edition of the FIFA Disciplinary Code. In this respect, whilst keeping in mind the principles as enshrined under art. 4 of the FIFA Disciplinary Code (2023 edition), the Committee deemed that the merits as well as the procedural aspects of the present proceedings should fall under the 2023 edition of the Code.
17. The above being understood, in order for it to duly assess the case at hand, the Committee next recalled the content and scope of the provision(s) at stake, namely that of art. 21 FDC, which reads as follows:

"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, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS:

a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:

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;

(...)

d) 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 ban on registering new players will be issued 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 ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason;

2. With regard to financial decisions passed by a body, a committee, a subsidiary or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party who is entitled to be notified of the final outcome of the said disciplinary proceedings, including the motivated decision if so requested.

3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. (...)"

18. Moreover, the Committee further emphasized, in particular, that in line with art. 57.1.h) FDC, cases involving matters under art. 21 FDC may be decided by a member of the Disciplinary Committee alone, acting as a single judge, as in the present case.
19. Finally, the Committee underlined 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.
20. Its jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the CAS Award.

C. Merits of the dispute

I. Analysis of the facts in light of art. 21 FDC

21. The above having been established, the Committee noted that the CAS, by means of its Award dated 22 September 2021, had ratified the Settlement Agreement agreed between the Respondent and the Claimant (thereby incorporating its terms), and ordered the Respondent and the Claimant to perform their obligations and duties outlined therein.

22. This being recounted, the Committee subsequently observed that no challenge had been lodged before the Swiss Federal Tribunal against the CAS Award, which had therefore become final and binding.
23. In view of what has been explained *supra.*, the Committee next likewise recalled that it was not allowed to analyse the case decided by the CAS as to the substance, but that it had as a sole task to analyse if the Respondent had complied with the (final and binding) Award – *ratifying the Settlement Agreement* – rendered by the CAS on 22 September 2021.
24. In this respect, the Committee remarked from the circumstances of the case, but also from the information provided by the Claimant and the arguments raised by the Respondent, that the heart of the matter in the present proceedings related to whether the CAS arbitration costs (communicated *via* the CAS Costs Letter), in accordance with the provisions of the Settlement Agreement ratified under the CAS Award, can be considered as having been due and/or paid by the Respondent to the Claimant - the Respondent contesting the former to the negative, as shall be addressed in further detail below.
25. Against this background, the Committee turned its attention to the ratified Settlement Agreement and observed, in particular, that:
 - i) Pursuant to clause 3.1, the Respondent had agreed (i) to pay to the Claimant the amount EUR 355,000 (**the Settlement Amount**) in accordance with the provisions of clause 3.2, the latter stipulating that the Settlement Amount shall be paid to the Claimant by the Respondent *via* bank transfer, “*by no later than 30 August 2021*”, as well as (ii) to bear the costs incurred by the Player in the arbitration proceedings before CAS, and;
 - ii) Pursuant to clause 3.4., notwithstanding the provisions of clause 3.1, the parties had agreed that if the Respondent should pay to the Claimant the total amount of EUR 286,000 on or before 30 July 2021, the Respondent would be deemed to have paid the Settlement Amount (*i.e.* the amount listed under clause 3.1) **in full, “including the cost of the Arbitration”** (emphasis added).
26. In this respect, the Committee firstly highlighted from the case file at its disposal, that it was uncontested by the Claimant that the Respondent had executed the payment of, and the Claimant had received, the amount of EUR 286,000 within the relevant deadline stipulated under clause 3.4 of the Settlement Agreement *i.e.* “*on or before 30 July 2021*” – the Committee noting that the Claimant had even appeared to acknowledge receipt of payment of the amount of EUR 286,000 within the aforementioned email exchange dated 04 August 2021 between the parties, as read in conjunction with the Bank Statement - the former and latter having been submitted by the Respondent in support of its position (see par. 10 *supra.*).
27. Indeed, the Committee observed in this regard that the Claimant had, within his request for the initiation of the present disciplinary proceedings against the Respondent on 26 May 2023, ‘only’ requested that - in line with the ‘operative part’ of the CAS Award - the Respondent be ordered to pay to him the CAS arbitration costs as set-out within the CAS Costs Letter (*i.e.* the “*amount of CHF 7,102*”), without any particular further explication.

28. In these circumstances and with the foregoing in mind, the Committee took into account the submissions of the Respondent concerning:
- i) As the Respondent had paid the total amount of EUR 286,000 to the Claimant before 30 July 2021, in accordance with clause 3.4 of the Settlement Agreement, the Respondent had clearly executed its contractual and financial obligation(s) towards the Claimant in relation to the CAS Award in full, including the payment(s) of the arbitration costs;
 - ii) By an email dated 04 August 2021, the Claimant's legal representative had acknowledged receipt of the due amount of EUR 286,000;
 - iii) As the Respondent had executed the terms of the Settlement Agreement pursuant to clause 3.4 (and not based on clause 3.1), the CAS Costs Letter was "*no longer enforceable to the Parties of the proceedings*" and the Claimant was not entitled to request the Respondent to pay the CAS arbitrations costs as set out therein;
 - iv) During the negotiations and discussions concerning the Settlement Agreement, the Respondent and the legal representative of the Claimant had allegedly discussed "*this point*" clearly and agreed that the SETTLEMENT AMOUNT under clause 3.4 shall also include the "*Costs of the Arbitration proceedings*".
29. Against such background and taking into account the above, the Committee firstly wished to raise the point that as a principle, it was the Respondent's upmost obligation as the debtor party to duly transfer the amount(s) owed to the bank account provided by the Claimant as the creditor party³, and so to make all relevant efforts to comply with its payment obligation(s) accordingly.
30. This being recalled as the guiding principle, the Committee recounted once more from the information and documentation at its disposal, as mentioned *supra.*, that it was not contested by the parties that the Respondent had executed the payment of, and the Claimant had received, the amount of EUR 286,000 within the relevant deadline stipulated under clause 3.4 of the Settlement Agreement *i.e.* "*on or before 30 July 2021*".
31. In this context and having afforded due consideration to the CAS Award and the Settlement Agreement ratified therein, the Committee considered the terms of the Settlement Agreement clear, in so far that, as previously mentioned, under clause 3.4 of said Agreement, provided that "*the total amount of EUR 286,000*" was paid by the Respondent to the Claimant "*on or before 30 July 2021*", the Respondent, for the purposes of the Settlement Agreement, would be "*deemed to have paid the SETTLEMENT AMOUNT in full including the costs of the Arbitration*" (emphasis added).
32. Furthermore in this respect, the Committee likewise remarked from pars. 29-31 of the body of the CAS Award that, in so far as the legal fees and other expenses incurred in connection with the CAS proceedings - which the Committee pointed out were to be differentiated from the costs of the arbitration proceedings - were concerned, the Sole Arbitrator had stipulated at par. 31 of the CAS Award that "*each party shall bear its own legal fees and expenses*", the amount(s) stipulated within the CAS Costs

³ CAS 2017/A/5279, CAS 2013/A/3323, CAS 2015/A/4342 *ex plurimis*.

Letter therefore clearly not involving any legal fees/other expenses incurred by the Claimant or otherwise.

33. Accordingly and with the foregoing in mind, the Committee, having analysed the entirety of the evidence at its disposal, deemed that by way of the Respondent's payment of EUR 286,000 to the Claimant within the relevant deadline pursuant to clause 3.4 of the Settlement Agreement ratified under the CAS Award, in accordance with the provisions of the same (*i.e.* clause 3.4 of the Settlement Agreement) the Respondent should therefore be considered as having paid the costs of the arbitration proceedings accordingly and that no CAS arbitration costs (*i.e.* the amount stipulated as due by the Respondent to the Claimant within the CAS Costs Letter) shall be considered as due by the Respondent to the Claimant – clause 3.4 of the ratified Settlement Agreement pursuant to the CAS Award being clear and express in this regard.


II. Conclusion

34. As a result, in light of the conclusions reached above, the Committee resolved that no disciplinary sanctions were to be imposed upon the Respondent and that the proceedings initiated against the latter shall be closed, as in light of the Claimant's performance pursuant clause 3.4 of the Settlement Agreement ratified under the CAS Award, the CAS arbitration costs (as communicated *via* the CAS Costs Letter) could no longer be considered as having been due by the Respondent to the Claimant - the Respondent thereby being "*deemed to have paid the SETTLEMENT AMOUNT in full including the costs of the Arbitration*" (emphasis added) and therefore consequently being unable to be considered as a non-compliant party within the meaning of art. 21 FDC.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

To close the disciplinary proceedings opened against Al Jazira.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

A handwritten signature in blue ink, appearing to read 'Anin Yeboah', is written over the printed name.

Anin YEBOAH (Ghana)

Deputy Chairperson of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes as read together with art. 52 of the FDC, 2023 edition, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to 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 CAS.