



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/9424 Al Wahda Sports Club v. FIFA & Sinisa Dobrasinovic

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Kepa Larumbe, Attorney-at-law in Madrid, Spain

in the arbitration between

Al Wahda Sports Club, Syria

Represented by Mr. Maher Al Said, Chairman, Al Wahda Sports Club, Syria

- Appellant -

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Lietard, Director of Litigation and Ms Cristina Pérez González,
Senior Legal Counsel, FIFA, Zurich, Switzerland

- First Respondent -

Mr Sinisa Dobrasinovic, Serbia

Represented by Mr Christoforos F. Florou, Attorney-at-law in Limassol, Cyprus

- Second Respondent -

TRIBUNAL ARBITRAL DU SPORT
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I. PARTIES

1. Al Wahda Sports Club (the “Appellant” or the “Club”) is a professional football club based in the city of Damascus, Syria, affiliated with the Syrian Football Association (the “SFA”), which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. The Fédération Internationale de Football Association (the “First Respondent” or “FIFA”) is the governing body of football world-wide with headquarters in Zurich, Switzerland.
3. Mr. Sinisa Dobrasinovic (the “Second Respondent” or the “Coach”) is a football coach of Serbian nationality.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 19 May 2022, the Appellant and the Second Respondent entered into a contract (the “Employment Contract”) with a duration of until the end of the 2022/2023 season so that the latter would perform as the coach of the first team of the Club against a remuneration, under the following terms and conditions:
 - Duration: end of the 2022/2023 season
 - Remuneration:
 - Signing fee: USD 2,500
 - Monthly salary: USD 5,000.
 - Hotel accommodation, transport and air tickets.
 - Variable payments subject to the sporting success of the Club.
 - Penalty for early termination of the Employment Contract: *“in case either party wishes to terminate this contract it will pay to the other party amount equal to month salary as penalty condition”*.
6. On 13 October 2022, the Coach sent a letter to the Club claiming for (i) outstanding salaries corresponding to the months of June and July 2022 season, amounting USD

10,000; and (ii) a compensation for the termination without just cause of the Employment Contract by the Club, amounting USD 50,000.

III. PROCEEDINGS BEFORE THE FIFA FOOTBALL TRIBUNAL

7. On 27 October 2020, the Coach filed a claim with the FIFA Football Tribunal (the “FIFA FT”) against the Club requesting payment of outstanding amounts of USD 10,000, as well as the remaining value of the contract (USD 50,000) as compensation, plus interests and costs.
8. On 28 October 2020, the FIFA FT transferred the claim to the Club, requesting the Club to provide FIFA with its position.
9. On 21 November 2020, the Club and the Coach were informed that the submission phase of the proceedings before the FIFA FT was closed. The Club did not file any statement before the FIFA FT.
10. On 13 December 2022, the FIFA FT passed the findings of its decision (hereinafter, the “Findings”), partially accepting the Coach’s claim and ordering the Club to pay to the Coach the following amounts:
 - USD 10,000 as outstanding remuneration.
 - USD 55,000 as compensation for breach of contract without just cause.
11. The Findings had the following note attached to it:

“In accordance with arts. 15 of the Procedural Rules Governing the Football Tribunal (hereinafter: the Procedural Rules), this correspondence only communicates the findings of the decision without grounds.

*Should any of the parties wish to receive the grounds of the decision, a **written request** must be received by FIFA, **within 10 days** of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*

*Whenever procedural costs are due, the grounds of the decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs. If the procedural costs are not paid **within 10 days** of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*

No costs shall be charged if a party decides not to ask for the grounds of the decision and, where applicable, the advance of costs will be reimbursed to the relevant party (cf. art. 25 par. 6 li. A) of the Procedural Rules”.

12. The Findings were sent to the following e-mail addresses of the Club: “alwahdasc@gmail.com”, “alwahdac083@gmail.com”, “kouteiba@gmail.com”.
13. On 18 January 2023, the Club requested the grounds of the Findings from the FIFA FT. The request was made from the “kouteiba@gmail.com” e-mail address and it was signed by Mr Mhd Kouteiba Al Refai, General Secretary of the Club and Mr Maher al Said, Chairman of the Club.
14. On 18 January 2023, the FIFA FT informed the Club by e-mail that the deadline to request the grounds had passed and consequently FIFA was not in a position to provide the Club with the grounds of the Appealed Decision, which had thus become final and binding (the “Appealed Decision”). The Appealed Decision stated as follows:

“Dear Madam or Sir,

We refer to the matter in question, as well as to our previous correspondence dated 6 January 2023, whereby the operative part of the decision adopted by the Dispute Resolution Chamber on 13 December 2022 was notified.

We also acknowledge receipt of the Respondent’s correspondence dated 18 January 2023, enclosed for the information of the other party only.

In this connection, we kindly refer you to art. 15 par. 5 of the Rules of Procedure of the Football Tribunal (hereinafter: the Procedural Rules), which states that “In the event that legal costs are not imposed, the party shall have ten calendar days from the notification of the operative part of the decision to request the grounds for the decision. Failure to comply with the time limit will result in the decision becoming final and binding and the party will be deemed to have waived its right to file an appeal. The time limit for lodging an appeal starts from the notification of the grounds of the decision”.

Based on the above, we would like to emphasise that the operative part of the decision was notified on 6 January 2023 and the request for the grounds of the decision by Al Wahda was received on 18 January 2023, i.e. 12 days after the notification.

*Accordingly, and taking into account all of the above, in particular that the grounds for the decision have not been requested within the stipulated period of ten calendar days, we regret to inform you that we are not in a position to provide you with the reasoned decision and that, consequently, the decision has become **final and binding**.*

Thank you for your attention to the above.

Yours faithfully,”

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 8 February 2023, in accordance with Article R47 of the Code of Sports-related Arbitration (2023 edition) (“CAS Code”), the Appellant filed its Statement of Appeal with the CAS appealing the Appealed Decision.
16. The Appellant requested, in its Statement of Appeal, the stay of the Appealed Decision in accordance with Article R37 of the CAS Code. The Appellant withdrew such request on 16 February 2023.
17. On 27 March 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
18. On 8 May 2023, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.
19. On 23 May 2023, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.
20. On 24 May 2023, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division and further to Article R54 of the CAS Code, that the Arbitral Tribunal appointed to decide the present dispute was constituted as follows:
 - Sole Arbitrator: Mr. Kepa Larumbe, Attorney-at-law in Madrid, Spain
21. On 24 May 2023, the CAS Court Office invited the Parties to indicate whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties’ written submissions. Furthermore, pursuant Article R56 of the CAS Code, the Parties were invited to inform the CAS Court Office to inform whether they request a case management conference with the Sole Arbitrator.
22. On 26 May 2023, the First and Second Respondents informed the CAS Court Office that they did not consider necessary a hearing nor a case management conference to be held.
23. On 31 May 2023, the Appellant informed the CAS Court Office that the Club did not consider it necessary a hearing to be held.
24. On 8 June 2023, the CAS Court Office informed the Parties that the Sole Arbitrator, after having considered the position of the Parties with respect to a hearing, deemed himself sufficiently well-informed to decide this case based solely on the Parties’ written submissions without the need to hold a hearing.
25. On 8 June 2023, the CAS Court Office transmitted to the Parties the Order of Procedure, which was duly signed by all the Parties. By signing the Procedural Order, the Parties confirmed: (i) the jurisdiction of the CAS to decide the present arbitration; (ii) their agreement that the arbitration would be decided by a Sole Arbitrator; and (iii) that their right to be heard had been duly respected by the Sole Arbitrator.

V. SUBMISSIONS OF THE PARTIES

26. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions and the content of the Appealed Decision were all taken into consideration.

A. The Appellant

27. In its Appeal Brief, the Appellant filed the following prayers for relief:

“1) Accept the present appeal against the decision passed by the Player's Status Chamber of FIFA on 18 January 2023

2) Set aside the Appealed Decision in full and refer the case back to the Football Tribunal of FIFA. [L]
[SEP]

3) To order FIFA to issue the grounds of the decision with reference number FPSD 8023 and to reset Al Wahda's 21-day deadline to appeal the decision passed by the Player's Status Chamber passed on 13 December 2022 in accordance with Article 57 of the FIFA Statutes, upon receiving the grounds of the decision. [L]
[SEP]

4) Declare that the First and the Second Respondents are severally and jointly liable to pay the costs of the present proceedings. [L]
[SEP]

5) Fix a minimum fees of the sum of CHF 10,000 (Ten thousand Swiss Francs) to be paid by the Respondents as a contribution to the legal fees and costs of the Appellant”.

28. The Appellant's submissions, in essence, may be summarized as follows:

- The Appealed Decision is null and void for the following reasons:
 - The Appellant was not duly notified neither with the proceedings nor the Decision by FIFA. According to Swiss Law, the jurisprudence of the Swiss Federal Tribunal (the “SFT”) and CAS jurisprudence, there are two requirements that must be met in order for a receipt is to be fulfilled (i) the declaration must have entered the “sphere of influence” of the addressee, and (ii) one can expect under the circumstances that the addressee takes note of it.
 - The old Administration of the Club was dissolved and they refused to give the passwords of the e-mail accounts of the Club to the new Administration. Consequently, the new Administration could not gain access to the email accounts of the Club, hence the latter was neither aware of any claim filed by the Coach nor aware of the issuance of a decision of the FIFA FT.

- Violation of the due process by the Football Tribunal: as a result of not having access to the e-mail accounts, there was no acknowledgement of receipt by the Club, hence the FIFA's service process was in violation of the principles of Swiss law, therefore the Appellant shall not be bound by the Decision of FIFA FT nor the timelines stipulated in the said Decision. FIFA's failure to ensure a reliable and secure notification system for the proceedings initiated by the Coach against the Appellant, as well as FIFA's refusal to provide the Appellant with the grounds of its decision in the said proceedings constituted significant violation to the Appellant's right to due process.
- The Appellant validly requested the grounds of the decision. The Club for the first time was made aware of the claim filed against it through the letter of the SFA dated 10 January 2023 and never received a direct notification from the FIFA FT. The calculation of the 10-day deadline to request the grounds of the Decision starts on the 10 January 2023, meaning that the request made on 18 January 2023 was within the deadline established in Article 15 of the Procedural Rules.

B. The First Respondent

29. The First Respondent filed the following prayers for relief:

“(a) declaring that the Appeal is inadmissible.

Alternatively,

(b) rejecting the reliefs sought by the Appellant and dismissing the Appeal in full; and

(c) ordering the Appellant to bear all costs incurred with the present procedure.”

30. The First Respondent's submissions, in essence, may be summarized as follows:

- The appeal is inadmissible for the following reasons:
- The Appealed Decision is an informative letter and as such, cannot be qualified as an appealable decision as it does not comply with the requirements established by the jurisprudence of the Swiss Federal Tribunal and of the CAS, which are the following: (i) to content a ruling, (ii) to produce legal effects, (iii) to have “*animus decidendi*”.
- The Appellant failed to request the grounds of the Findings notified on 6 January 2023 within the deadline established for that purpose in Article 15 of the Procedural Rules. Only the Findings (not the Appealed Decision) was a communication directed to the parties and “based on an ‘*animus decidendi*’, i.e. an intention of a body of the association to decide on a matter. In particular, it clearly informed the parties that if they wanted to file an appeal against the Findings, the parties should firstly request the grounds of such Findings within 10 days of the notification of the operative part. Moreover, the Findings established that “*failure to request the grounds of the decision within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal*”

- If the Appellant wanted to challenge the Findings, it should have done so within the 10-day time limit (i.e., on or before 16 January 2023), failing which such decision became final and binding, with the Appellant waiving the right to challenge the FT Decision afterwards.
- In the event that the Appeal is declared admissible, FIFA rejects the arguments of the Appellant and sustains that all general principles of law were respected for the following reasons:
 - Article 10(4) Procedural Rules is clear when establishing that “communications from FIFA via email shall be sent to a party by using the email address provided by the party, or that in TMS. An email address provided in TMS is binding on the party that has inserted it. Parties with a TMS account must ensure that their contact details are always up to date” and the Findings were properly sent on 6 January 2023 to e-mail address that appeared (and still appears) in the Club’s TMS account, i.e. to kouteiba@gmail.com. Additionally, the Findings were also notified to alwahdasc@gmail.com , alwahdac083@gmail.com e-mail addresses that were inserted in the Claim filed by the Coach.
 - The Appellant has omitted to provide any counter-evidence in order to demonstrate that it never received the communications sent by FIFA; it rather hides under the uncorroborated excuse that the new administration “could not gain access to the email accounts of the Club” due to the Club’s old administration alleged refusal.
 - The Appellant’s letter of 18 January 2023 was sent from the e-mail address “kouteiba@gmail.com”, the same e-mail address that appeared (and still appears) in the Club’s TMS account and the same e-mail address to which FIFA had been sending all its previous notifications. [L] [SEP] It becomes evident that the Appellant had access to, at least, one of the e-mail accounts to which the PSC Decision (and other relevant communications) had been sent by FIFA. It is undeniable that the Appellant was duly notified by FIFA.
 - Even if one were to consider that the Appellant’s due process rights were somehow violated (quod non), FIFA submits that any such breaches are cured in the scope of these arbitration proceedings, in light of Article R57 CAS Code. [L] [SEP] It follows that all of the Appellant’s arguments related to alleged procedural violations are therefore moot

C. The Second Respondent

31. The Second Respondent filed the following prayers for relief:

“a. that the appeal of the Appellant in front of the CAS should be dismissed by the Panel.

b. dismiss all the arguments, actions, claims by the Appellant.

c. order the Appellant to pay the cost that the Respondent incurred for the procedures in front of CAS.

d. order the Appellant to pay the legal fees equal of CHF 10.000 as a contribution to the legal fees and cost that the Second Respondent incurred for the procedures in front of CAS”.

32. The Second Respondent’s submissions, in essence, may be summarized as follows:

- The appeal is inadmissible for the following reasons:
- The Appeal is directed against the Findings that were notified on 6 January 2023 and not against the FIFA letter of 18 January 2023, since the latter is and informative document by means of which FIFA informed the Club of the application of the consequences set out in Article 15 of the Procedural Rules.
- The Statement of Appeal was filed on 8 February 2023 meaning that the deadline of 21 days counting from 6 January 2023 was exceeded.
- With regard to the merits of the appeal:
- During the procedure before FIFA, all notifications (including the Findings notified on 6 January 2023) were made to the e-mail address “kouteiba@gmail.com” and the Appellant recognises in its Appeal Brief (paragraph 20) that such e-mail address was accessible to the Appellant during the procedure before FIFA. Moreover, the request of the grounds filed on 18 January 2023 was sent from the same e-mail address.
- The Appellant has failed to prove the allegations related to the Club’s old management’s refusal to provide the Club’s new management with the e-mail passwords. The evidences submitted are only referred to an apparent financial conflict between two managements but in any case to the Club’s operations.

VI. JURISDICTION

33. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

34. Article 57 of the FIFA Statutes provides that:

“1. 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 receipt of the decision in question.

2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*

3. *CAS, however, does not deal with appeals arising from:*

(a) *violations of the Laws of the Game;*

(b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*

(c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made. X*

4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*

5. *FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.*

6. *The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations”.*

35. The jurisdiction of the CAS is based on the above-mentioned provisions.

36. In addition, neither Party has challenged the CAS jurisdiction and the Parties have confirmed the same by signing the Order of Procedure.

37. The Sole Arbitrator, therefore, is satisfied that CAS has jurisdiction over this dispute.

VII. APPLICABLE LAW

38. Article R58 of the 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”.

39. Article 56(2) FIFA Statutes 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.”

40. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. ADMISSIBILITY

41. Article R49 of the 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”

42. Pursuant Paragraphs 1 and 3 of Article 57 of the FIFA Statutes, the admissibility of an appeal before CAS is subject to:

1. Having lodged the appeal with CAS within 21 days of receipt of the decision (Article 57(1) of the FIFA Statutes).

2. (...)

3. The appeal not arising from: (i) violations of the Laws of the Game; (ii) suspensions of up to four matches or up to three months (with the exception of doping decisions); or (iii) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made (Article 57(3) of the FIFA Statutes).

43. The Respondents have objected to the admissibility of the appeal based on an alleged violation of the Procedural Rules Governing the Football Tribunal (the “Procedural Rules”). According to Article 15 of the Procedural Rules:

“1. A decision will be notified to a party directly in accordance with these Rules. Where the party is a club, a copy shall be notified to the member association and confederation to which it is affiliated.

2. Notification is deemed complete when the decision is communicated to a party. Notification of an authorised representative will be regarded as notification of the party which they represent.

3. Decisions enter into force as soon as notification occurs.

4. Generally, a party shall only be notified of the operative part of the decision. Decisions that immediately impose sporting sanctions against a party shall only be communicated with grounds.

5. *Where no procedural costs are ordered, a party has ten calendar days from notification of the operative part of the decision to request the grounds of the decision. Failure to comply with the time limit shall result in the decision becoming final and binding and the party will be deemed to have waived its right to file an appeal. The time limit to lodge an appeal begins upon notification of the grounds of the decision.*
6. *Where procedural costs are ordered, notification of the grounds of a decision will only be made to the party that has both requested the grounds of the decision and paid its share of the procedural costs within the regulatory time limit of ten calendar days from notification of the operative part of the decision, if any.*
7. *Failure to comply with the time limit referred to in paragraph 6 of this article shall result in the request for the grounds being deemed to have been withdrawn. As a result, the decision will become final and binding and the party will be deemed to have waived its right to file an appeal.*
8. *Obvious mistakes in decisions and obvious procedural errors discovered after a decision is rendered may be corrected, ex officio or on application, by the chamber that made the decision. Where a decision has been corrected, regulatory time limits will commence from the time of notification of the rectified decision”.*
44. The Sole Arbitrator notes that the establishment of additional requirements to those contained in the FIFA Statutes in the matter of admissibility of an appeal with CAS, i.e. the conditions set out in Article 15 of the FIFA Procedural Rules, is compatible with the fundamental legal principles belonging to the “*ordre public*” and does not infringe any fundamental rights nor any Swiss mandatory provision (CAS 2011/A/2563, paragraph 43).
45. The CAS panel in the Award in CAS 2011/A/2563 stated the following, with which the Sole Arbitrator agrees:
- “44. In principle, Swiss associations have the right to freely establish the rules governing their internal life. Swiss law has a well established tradition of respect of the freedom of the associations and their right to set up the legal framework for the association and its members. The number of mandatory provisions to be respected is indeed very low.*
45. *The statutes of an association are, similar to the articles of incorporation of other legal entities, the fundamental set of rules of an association (cf. RIEMER H.M., Berner Kommentar, Die Vereine – Systematischer Teil vor Art. 60-79 ZGB, N 320). But statutes are often not the only source of valid and binding legal rules of an association: rules of a higher federation, decisions of the association, regulations, agreements with a member or with a third party and even simply stable consistent practice within the association can contain part of the legal binding set of rules.*
46. *In Swiss jurisprudence it is disputed whether a stable, consistent practice can deviate from the rules originally set out in the statutes (cf. RIEMER, op. cit., N 354). It seems questionable that the above mentioned principle of hierarchy of norms must always be applied in a strict way. In any event, whether or not a specific regulation of*

an association that deviates from the original content of the statutes is per se invalid is a legal issue that can be left open in the present case, because Article 15 of the FIFA Procedural Rules does not contradict nor change the FIFA Statutes. The Panel shares the view of the Sole Arbitrator in the case CAS 2011/A/2439 according to which “the 10-days time limit to request the grounds of a decision shall be deemed complementary to the deadline of 21 days foreseen in article 63 of the FIFA Statutes” (paragraph 51).”

46. The Sole Arbitrator is therefore satisfied that Article 15 of the FIFA Procedural Rules complements Article 57 of the FIFA Statutes and its fulfilment have to be verified as a matter of admissibility of the appeal with CAS.
47. Notwithstanding the above, in the present procedure, the Appellant is not challenging the Findings (Decision of 13 December 2022, notified on 6 January 2023) but the letter of 18 January 2023 of not sending the grounds of such findings for considering, in view of FIFA, that the request was out of time. In this point it is necessary to recall the content of the requests for relief of the Appellant:

“1) Accept the present appeal against the decision passed by the Player’s Status Chamber of FIFA on 18 January 2023

2) Set aside the Appealed Decision in full and refer the case back to the Football Tribunal of FIFA. [L] [SEP]

3) To order FIFA to issue the grounds of the decision with reference number FPSD 8023 and to reset Al Wahda’s 21-day deadline to appeal the decision passed by the Player’s Status Chamber passed on 13 December 2022 in accordance with Article 57 of the FIFA Statutes, upon receiving the grounds of the decision. [L] [SEP]

4) Declare that the First and the Second Respondents are severally and jointly liable to pay the costs of the present proceedings. [L] [SEP]

5) Fix a minimum fees of the sum of CHF 10,000 (Ten thousand Swiss Francs) to be paid by the Respondents as a contribution to the legal fees and costs of the Appellant”.

48. Moreover, the Statement of Appeal identifies its “Exhibit 1” as the Appealed Decision, being such document the FIFA Letter of 18 January 2013.
49. Therefore, the assessment on the admissibility of the appeal must be made in relation to the FIFA letter of 18 January 2023 and not in relation to the Findings of 13 December 2023 (notified on 6 January 2023).

Is the FIFA letter of 18 January 2023 appealable before CAS?

50. The Sole Arbitrator considers it irrelevant that the FIFA letter of 18 January 2023 was issued in a letter format. As established by a longstanding CAS jurisprudence, any communication that affects the legal situation of the Appellant by deciding to close a procedure may be qualified as a unilateral act of FIFA intended to produce legal

effects. In fact, the disregard for the form is to prevent “denial of justice” from happening and to allow the parties to appeal to CAS and see their issues resolved when a decision has a legal effect on such parties.

51. In CAS 2020/A/6912, the Panel summarized the CAS jurisprudence, which is reproduced below:

“124. The Panel’s understanding is supported by the long-standing CAS jurisprudence confirming that the form is irrelevant for determining if a communication should be considered as a decision. The Panel adheres and highlights the following CAS jurisprudence:

i. “[T]he form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal” (CAS 2005/A/899 para. 63; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94); 1 Decisions of the Swiss Federal Tribunal ATF 141 V 530, § 6.2, and ATF 136 I 254, §5.2. CAS 2020/A/6912 Cristian Nasuti v. AEK Athens FC & FIFA, award of 22 February 2021 23;

ii. “In principle for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressees of the decision or other parties” (CAS 2004/A/748 para. 89; CAS 2005/A/899 para. 61; CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94);

iii. “A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects” (CAS 2004/A/659 para. 36; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94);

iv. “[A]n appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an “animus decidendi”, i.e. an intention of a body of the association to decide on a matter (...). A simple information, which does not contain any “ruling”, cannot be considered a decision” (BERNASCONI M., “When is a “decision” an appealable decision?”, in: RIGOZZI/BERNASCONI (ed.), The Proceedings before the CAS, Bern 2007, p. 273; and CAS 2008/A/1633 para. 32; CAS/A/4213 para. 49; CAS 2015/A/5200 para. 94);

v. “(...) the Appealed decision clearly ruled on the admissibility of the Appellant’s request for relief, denying such admissibility and thus, objectively affecting the Appellant’s legal position with regard to the right of the latter to pursue the enforcement of its claim against (...). It must be concluded, therefore, that notwithstanding the fact that the Appealed Decision was dressed in the form of a letter it is in substance an appealable decision within the meaning of Article R47 of the CAS Code” (CAS 2015/A/4162 para. 53); and

vi. “(...) even a letter from the secretariat of the FIFA Disciplinary Committee can be a decision if it actually contains and/or notifies a decision/ruling that affects the legal situation of a party” (CAS 2015/A/4266)”.

52. In CAS 2015/A/4162 (para. 51), the Panel embraced the conclusions of the award CAS 2012/A/2854 (para. 69). According to this doctrine, the decisive criterion is whether or not the act in question impacts upon the legal situation of the Appellant. If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned:

“As to the issue whether there is an animus decidendi in the FIFA Letter, the Panel agrees with the Appellant who considers that what is relevant is the objective effect of a decision on its addressee, and not the subjective intent of the authority which renders the decision. Contrary thus to the Second Respondent’s position, the Panel considers that the FIFA Letter had affected the legal situation of the Appellant, and therefore should be considered a decision, irrespective whether FIFA had animus decidendi when issuing the FIFA Letter”.

53. In the case at hand, the Appealed Decision stated that FIFA was not in a position to issue the grounds of the Findings for having been requested out of the limits established in Article 15 of the Procedural Rules:

“Accordingly, and taking into account all of the above, in particular that the grounds for the decision have not been requested within the stipulated period of ten calendar days, we regret to inform you that we are not in a position to provide you with the reasoned decision and that, consequently, the decision has become final and binding.”

54. The Appealed Decision clearly ruled on the admissibility of the Appellant’s request to FIFA that stated:

“We would like to inform you that we (Al Wahda Sport Club, Syria) wish to receive the ground of the decision in order to be able to file our appeal”.

Denying such request objectively affects the Appellant’s legal position with regard to the right to obtain the reasoned decision based on the violation of the time limits established in Article 15 of the Procedural Rules.

55. It must be concluded, therefore, that notwithstanding the fact that the Appealed Decision was dressed in the form of a letter, it is in substance an appealable decision within the meaning of Article R47 of the CAS Code.

56. Finally and for the sake of clarification, the Sole Arbitrator points out that in the event that the Appellant had directed its appeal against the Findings of 12 December 2023 (notified on 6 January 2023), the requirements set out in Article 15 of the FIFA Procedural Rules would turn in a matter of admissibility of the Appeal before CAS. On the contrary, since the Appeal is directed solely against the decision of 18 January 2023 of not sending the grounds, the requirements of Article 15 of the FIFA Procedural Rules are a matter of substance of the Appeal before CAS and they will be addressed in the next section “Merits” of the Award.

57. It follows that the appeal is admissible.

IX. MERITS

A) What is this case about?

58. The issue to be solved by the Sole Arbitrator is whether or not the request of the reasoned decision filed by the Appellant on 18 January 2023 complied with the requirements established in Article 15 of the Procedural Rules. These requirements are the following:

1. To request the grounds of the decision within ten calendar days as from the notification of the findings of the decision (Article 15(5) of the FIFA Procedural Rules).

2. Whenever procedural costs are due, the payment of the relevant procedural costs within 20 days of the notification of the findings (Article 15(6) of the FIFA Procedural Rules).

59. In the case at hand, no procedural costs were imposed to the Club and the only issue under dispute is the timeliness of the Appellant's request for the grounds of the Appealed Decision (Article 15(5) of the FIFA Procedural Rules).

60. In the event that the Sole Arbitrator considers that the timeliness to request the grounds of the Findings was fulfilled by the Appellant, the Sole Arbitrator would order FIFA to communicate the grounds of the decision passed on 13 December 2022 as this is the request for relief of the Appellant. In conclusion, this proceeding is not related to the merits of the contractual dispute between the Club and the Coach.

B) The timeliness of the Appellant's request of the grounds of the Appealed Decision *in casu* (Article 15.5 of the FIFA Procedural Rules)

61. The Parties' dispute is focused on the day from which the calculation of the ten days deadline set out in Article 15(5) of the FIFA Procedural Rules begins ("*dies a quo*"). The Appellant argues that the *dies a quo* is 10 January 2023, i.e., the day in which the SFA notified the Findings to the Club. On the other hand, the Respondents fix the *dies a quo* on 6 January 2023, i.e., the day the Findings were notified to the Club's e-mail addresses.

62. Article 15(5) of the Procedural Rules reads as follows:

"Where no procedural costs are ordered, a party has ten calendar days from notification of the operative part of the decision to request the grounds of the decision. Failure to comply with the time limit shall result in the decision becoming final and binding and the party will be deemed to have waived its right to file an appeal. The time limit to lodge an appeal begins upon notification of the grounds of the decision".

63. The Sole Arbitrator has pointed out above in paragraph 44 of the Award that the establishment of additional requirements to those contained in the FIFA Statutes is compatible with the fundamental legal principles belonging to the "*ordre public*" and

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does not infringe any fundamental rights nor any Swiss mandatory provision (CAS 2011/A/2563, paragraph 43).

64. With regard to the receipt of communications, and according to the consolidated doctrine of CAS and the SFT, there are two requirements to be met in order for “receipt” to be fulfilled: (i) the declaration must have entered the “sphere of influence” of the addressee, and (ii) one can expect under the circumstances that the addressee takes note of it.

65. In CAS 2006/A/1153 (para. 10) and in CAS 2019/A/6253 (para. 81), CAS Panels highlighted:

“As a basic rule, a decision or other legally relevant statement is considered as being notified to the relevant person whenever that person has the opportunity to obtain knowledge of its content irrespective of whether that person has actually obtained knowledge. Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content (CAS 2004/A/574).

Similarly, the Swiss Federal Tribunal decided in 4A_89/2011:

“Une déclaration de volonté émise sous forme de lettre parvient à son destinataire au moment où elle entre dans la sphère d’influence de celui-ci, d’une manière telle que l’on peut prévoir, selon les usages, qu’il en prendra connaissance. Un éventuel refus de recevoir la lettre et d’en lire le contenu n’est pas opposable à l’auteur de cet écrit”.

Working translation by the Sole Arbitrator:

“A declaration of will in the form of a letter arrives at its addressee at the moment it enters into his sphere of influence, such that one can anticipate, according to usage, that he takes note of it. A possible refusal to receive the letter and to read its contents cannot be objected to the author of the document”.”

66. Pursuant Article 10(4) of the Procedural Rules, *“Communications from FIFA via email shall be sent to a party by using the email address provided by the party, or that in TMS. An email address provided in TMS is binding on the party that has inserted it. Parties with a TMS account must ensure that their contact details are always up to date”.*

67. It is undisputed that the e-mail address provided by the Club in TMS was “kouteiba@gmail.com” and that the Findings were notified to that e-mail address on 6 January 2023. Nevertheless, the Appellant argues that the current management of the Club was prevented from accessing to the e-mail address by the old administration of the Club.

68. The allegations cannot be accepted for the following reasons:

- The notification system used by the FIFA FT complied with the requirements established in Article 10(2) of the Procedural Rules since it was sent to the e-mail address provided by the Club to the TMS System:

“Communications from FIFA via email shall be sent to a party by using the email address provided by the party, or that in TMS. An email address provided in TMS is binding on the party that has inserted it. Parties with a TMS account must ensure that their contact details are always up to date”.

- The addressee of the notification is not the Club’s management, but the Club itself and the e-mail was sent to the e-mail address of the Club which appears in TMS. It is the management’s responsibility to have access to the e-mail address provided to FIFA TMS and in the event of having problems of any kind accessing to the e-mail address, the responsibility of changing the TMS contact details. Thus, the requirement of the notification entering the sphere of influence of the Club is fulfilled.
 - According to the Club, the current administration took over the Club on 5 July 2022 and the access to the e-mail address was not available for them until January 2023. This is a party’s assertion without any evidence to support it. On the contrary, FIFA has provided evidence that shows that the Club, through the e-mail address “kouteiba@gmail.com” entered into the TMS system in numerous times from 5 July 2022 to 6 January 2023. Accordingly, any objective observer can expect that the addressee could take note of a notification sent to an e-mail address that it is regularly used by the Club in its relations with FIFA.
69. The consequences of not complying with the time limits are also established in Article 15(5) of the Procedural Rules (emphasis added):

*“Where no procedural costs are ordered, a party has ten calendar days from notification of the operative part of the decision to request the grounds of the decision. **Failure to comply with the time limit shall result in the decision becoming final and binding and the party will be deemed to have waived its right to file an appeal.** The time limit to lodge an appeal begins upon notification of the grounds of the decision”.*

70. Taking into account the foregoing, the Sole Arbitrator is comfortably satisfied, based on the evidence submitted, that the Club received the decision on 6 January 2023 and that the request for grounds of the Appealed Decision was made on 18 January 2023, i.e. on the 13th day. It follows that the timeframe of 10 days was not respected and that the time limit established at Article 15(5) of the FIFA Procedural Rules was not fulfilled and the consequence thereof, i.e. not sending the grounds because the Findings became final and binding, was correctly applied by FIFA.
71. Therefore, the appeal is dismissed and the Appealed Decision that decided not sending the grounds of the Findings to the Club is in accordance with Article 15(2) of the Procedural Rules and is consequently confirmed in full.

X. COSTS

72. The applicable Article R64.4 of the CAS Code, which is applicable to this proceeding, provides the following:

“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. It shall contain a detailed breakdown of each arbitrator’s costs and fees and of the administrative costs and shall be notified to the parties within a reasonable period of time. 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”.

73. Article 64.5 of the CAS Code states:

“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”.

74. Taking into account the outcome of the arbitration, the Sole Arbitrator finds it reasonable that the Appellant shall bear the arbitration costs in their entirety, as determined by the CAS Court Office.

75. Moreover, taking into consideration all the relevant circumstances, the Sole Arbitrator holds that the Appellant shall pay to the Second Respondent the amount of CHF 2,000 as contribution for its legal costs and other expenses incurred in relation to these proceedings, whereas the First Respondent, being not represented by an external counsel, shall bear its own legal costs and other expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Wahda Sports Club on 8 February 2023 against the decision of the FIFA Football Tribunal dated issued on 18 January 2023 is admissible.
2. The appeal filed by Al Wahda Sports Club on 8 February 2023 against the decision of the FIFA Football Tribunal issued on 18 January 2023 is dismissed.
3. The decision of the FIFA Football Tribunal issued on 18 January 2023 is confirmed.
4. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by Al Wahda Sports Club in their entirety.
5. Al Wahda Sports Club is ordered to pay Mr. Sinisa Dobrasinovic a total amount of CHF 2,000 (two thousand Swiss Francs) as contribution towards the expenses incurred in connection with these arbitration proceedings.
6. FIFA shall bear its own costs and other expenses incurred in connection with these appeal proceedings.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 6 September 2023

THE COURT OF ARBITRATION FOR SPORT


Kepa Larumbe
Sole Arbitrator