

Decision of the FIFA Disciplinary Committee

passed on 03 August 2023

DECISION BY:

Anin YEBOAH (Ghana), Deputy Chairperson

ON THE CASE OF:

Mahmoud Abdelmonem Abdelhamid Soltane

(Decision FDD-15215)

REGARDING:

Art. 15 of the FIFA Disciplinary Code (2019 edition) / art. 21 of the FIFA Disciplinary Code (2023 edition) - *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 13 August 2020, the FIFA Dispute Resolution Chamber (**DRC**) passed a decision (under ref. 20-00051 – **the DRC Decision**) regarding an employment-related dispute concerning the Egyptian player Mr. Mahmoud Abdelmonem Abdelhamid Soltane (**the Respondent** or **the Player**), by means of which *inter alia* - pursuant to point 3. of the DRC Decision - the Respondent was ordered to pay to the club Zamalek Sporting Club (**the Claimant**) EGP 32,837,175 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 06 January 2020 until the date of effective payment. The Portuguese club CD Aves (**Aves**) was held jointly and severally liable for the payment of the aforementioned compensation¹.
3. The grounds of the DRC Decision were duly communicated to the parties on 28 September 2020.
4. On 07 October 2020, the Respondent filed an appeal before the Court of Arbitration for Sport (**CAS**) against the Claimant with respect to the DRC Decision (ref. CAS 2020/A/7443).
5. On 14 October 2020, the Claimant filed an appeal before the CAS against the Respondent, Aves, the Egyptian club Al Ahly Sporting Club and FIFA with respect to the DRC Decision (ref. CAS 2020/A/7446).
6. On 19 October 2020, Aves filed an appeal before the CAS against the Claimant with respect to the DRC Decision (ref. CAS 2020/A/7458).
7. On 09 December 2020, CD Aves withdrew its appeal before the CAS (ref. CAS 2020/A/7458).
8. On 29 March 2022, the CAS rendered its Award (ref. CAS 2020/A/7443 & CAS 2020/A/7446 – **the CAS Award**), partially upholding the Respondent's and the Claimant's appeals and confirming the DRC Decision with the exception of point 3. of its operative part, which was modified as follows:

"[The Player] has to pay to [the Claimant] the following amount:

USD 2,000,000 (two million United States Dollars) as compensation for breach of contract without just cause plus 5% interest p.a. on said amount as from 20 June 2019 until the date of effective payment".

9. No challenge was lodged before the Swiss Federal Tribunal against the CAS Award.

¹ In accordance with point 4. of the DRC Decision.

10. On 19 May 2022, as the amounts due to the Claimant in accordance with the CAS Award had not been paid, the Claimant *inter alia* requested FIFA “to apply the relevant Disciplinary measures in full respect of the FIFA Regulations”.
11. On 11 July 2022, following the request of the Claimant and as the amount(s) due to the former in accordance with the CAS Award had not been paid, the FIFA Secretariat informed the parties that, consistently with point 8. of the DRC Decision, “a ban from playing in official matches up until the due amounts are paid has been implemented by FIFA [on the Respondent] as of today. The overall maximum duration of the restriction shall be of a maximum of six months”².
12. Likewise on 11 July 2022, following the request of the Claimant and as the amount(s) due to the former in accordance with the CAS Award had not been paid, the FIFA Secretariat further informed the parties that, consistently with point 9. of the DRC Decision, “a ban registering new players internationally has been implemented by FIFA [on Aves] as of today. In accordance with [the CAS Award], [Aves’] member association is requested to immediately implement on [Aves] a ban registering new players at national level”³.
13. The restriction from playing in official matches imposed on the Respondent in accordance with the DRC Decision confirmed by the CAS Award, elapsed on 11 January 2023.
14. On 12 January 2023, the Claimant *inter alia* informed the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) that it had not been paid the amount(s) due to it in accordance with the CAS Award which had confirmed (with amendment) the DRC Decision and therefore requested the initiation of disciplinary proceedings against the Player, with particular consideration being afforded to the fact that the restriction from playing in official matches imposed on the Player had expired.
15. On the same date (12 January 2023), in view of the foregoing, the Secretariat opened disciplinary proceedings (ref. FDD-13817) against the Respondent for the potential breach of art. 15 of the FIFA Disciplinary Code, 2019 edition.
16. On 02 February 2023, following the above, the FIFA Disciplinary Committee passed a decision (ref. FDD-13817 – **the First Disciplinary Decision**) by means of which it found the Respondent responsible for failing to comply in full with the CAS Award. In this respect, by way of the First Disciplinary Decision, the Respondent was ordered to pay to the Claimant USD 2,000,000 as compensation for breach of contract without just cause plus 5% interest *p.a.* on said amount as from 20 June 2019 until the date of effective payment. Furthermore, the Respondent was likewise ordered to pay a fine to the amount of CHF 30,000 and granted a final deadline of 60 (sixty) days as from notification of the first Disciplinary Decision in which to settle his debt(s) (*i.e.* the amount(s) ordered to be paid) towards the Claimant. Pursuant to point 3. of the First Disciplinary Decision,

² In accordance with the DRC Decision confirmed with amendment to point 3. by the CAS Award, the restriction on playing in official matches would be imposed against the Respondent up until the due amount(s) were paid and for the maximum duration of six months, with the former to be lifted immediately should payment be made to the Claimant of the due amount(s) prior to its complete serving.

³ In accordance with the DRC Decision confirmed with amendment to point 3. by the CAS Award, the ban from registering any new players, either nationally or internationally would be imposed against the Respondent up until the due amount(s) were paid and for the maximum duration of three entire and consecutive registration periods, with the former to be lifted immediately should payment be made to the Claimant of the due amount(s) prior to its complete serving.

upon the expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full within the period stipulated, the case would, upon the request of the Claimant, be resubmitted to the FIFA Disciplinary Committee in order to impose a ban from taking part in any kind of football-related activity upon the Respondent for a period of six (6) months.

17. On 11 April 2023, the grounds of the First Disciplinary Decision were notified to the parties.
18. As no appeal was lodged before the CAS against the First Disciplinary Decision, the latter subsequently became final and binding.
19. On 28 June 2023, as the outstanding amount(s) due to the Claimant were not paid by the Respondent within the final deadline granted pursuant to the First Disciplinary Decision, in accordance with point 3. of the latter, the Claimant *inter alia* request to “to suspend [the Respondent] (...) for a period of 6 months”.
20. On 03 July 2023, in view of the foregoing and since the amount(s) due to the Claimant had still not been paid, the Secretariat *inter alia* informed the parties that, in accordance with the provisions of point 3. of the First Disciplinary Decision, the matter would be resubmitted to the FIFA Disciplinary Committee (the present disciplinary proceedings – ref. FDD-15215) in order to decide on “the imposition of a ban from taking part in any kind of football-related activity upon [the Player] for a period of six (6) months”. In this respect, the Respondent was granted a six-day deadline within which to provide the Secretariat with his position, including proof of payment of any outstanding amount(s).
21. On 24 July 2023, the Respondent informed the Secretariat that he “[took note] of the reopening of the disciplinary procedure” against him, and that contrary to the Claimant’s stipulation(s), the Respondent was “trying his best to execute the decision” and was currently collecting the amount(s) due to be paid “hopefully before 15 November 2023”. In this respect, the Respondent requested the Committee to grant him a “last deadline until 15 November to settle definitely the litigation”.
22. On 26 July 2023, in response to the Respondent’s above-mentioned communication of 24 July 2023, the Secretariat *inter alia* informed the parties that as both the CAS Award and the First Disciplinary Decision had become final and binding, the Secretariat “[could not] grant [the Respondent] an extension of time to pay the amount(s) due” to the Claimant in the present case and that as a result, a “possible agreement to extend the deadline to pay the amounts due [would have] to be agreed upon directly with the Claimant (...) which, at its own discretion, [could] accept or not the proposed agreement”.
23. Notwithstanding the abovementioned communication of the Respondent provided on 24 July 2023, following the opening of the present disciplinary proceedings and the Secretariat’s communication of 26 July 2023, no (further) position was provided by the Respondent.

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

24. 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 with the First DisCo Decision, in addition to the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

25. 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.
26. 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).
27. 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

28. 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 and subsequently, the First Disciplinary Decision, was 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.
29. 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 read 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;

(...)

*f) in the case of natural persons, 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 any football-related activity for a specific period may be imposed.** Other disciplinary measures may also be imposed.*

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. (...)" (emphasis added)

30. Keeping in mind that the Respondent had already been found responsible for failing to comply with the CAS Award (cf. the First Disciplinary Decision), but seemingly had still failed to comply in full with the CAS Award following the expiry of the final deadline granted pursuant to the First Disciplinary Decision, the Committee pointed out in this respect that art. 21.1.f) FDC was of particular relevance to its assessment of the present matter.
31. 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.
32. 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.
33. Its jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the CAS Award and the First Disciplinary Decision.

C. Merits of the dispute

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

34. The above having been determined, the Committee remarked that the present disciplinary proceedings concerned the potential failure of the Respondent to comply with i) the CAS Award – which had confirmed the DRC Decision with the exception of point 3. which was modified as outlined-above – and; ii) the (subsequent) First Disciplinary Decision by means of which *inter alia* the Respondent was granted a final deadline of 60 (sixty) days within which to comply with the CAS Award.

35. In this context, the Committee once again recalled, as mentioned *supra.*, that no challenge had been lodged before the Swiss Federal Tribunal against the CAS Award and that further, no appeal had been lodged before the CAS against the First Disciplinary Decision, both of which had respectively therefore become final and binding.
36. The above being clarified, the Committee reiterated that it was neither allowed to analyse or review the CAS Award which had confirmed with amendment the DRC Decision, nor the First Disciplinary Decision, as to their respective substances, but that it had as a sole task to analyse if the Respondent had complied with the (final and binding) Award rendered by the CAS on 29 March 2022 (and by way of consequence with the order(s) contained in the (final and binding) decision passed by the FIFA Disciplinary Committee on 02 February 2023)⁴.
37. Against this background, the Committee observed once more from the case file before it that by means of the Respondent's correspondence dated 24 July 2023, the Player had informed the Secretariat that he was "*trying his best to execute the decision*", was currently collecting the amount(s) due to be paid "*hopefully before 15 November 2023*" and had likewise requested to be granted a "*last deadline until 15 November to settle definitely the litigation*". In this respect, the Committee acknowledged that, on 26 July 2023, the Secretariat had informed the Respondent that, as both the CAS Award and the First Disciplinary Decision had become final and binding, it "[could not] grant [the Respondent] *an extension of time to pay the amount(s) due*" to the Claimant and that a "*possible agreement to extend the deadline to pay the amounts due [would have] to be agreed upon directly with the Claimant (...) which, at its own discretion, [could] accept or not the proposed agreement*" – the Claimant reading in copy of such correspondence.
38. In these circumstances, the Committee further remarked from the documentation at its disposal that, subsequent to the First Disciplinary Decision, and, importantly, after the opening of the present disciplinary proceedings against the Respondent (ref. FDD-15215), following the above, the Respondent had neither provided any proof of payment nor had submitted any further correspondence(s). Similarly, neither had the Claimant confirmed receipt of any of the outstanding amount(s) due nor had it provided any communication(s) to the Secretariat which could have confirmed that an extension of the deadline for payment had been agreed upon with the Respondent.
39. Against this background, the Committee concluded that the Respondent had failed to pay to the Claimant the outstanding amounts due to it in accordance with the CAS Award and as ordered by the First Disciplinary Decision – this, being despite the related final deadline granted to the Respondent by way of the latter.
40. As a result, the Committee concluded that the Respondent, by his described conduct(s), was to be considered guilty of persistent failure to comply with (a) financial decision(s) under the terms of art. 21 FDC – specifically, with the CAS Award (and subsequently, the First Disciplinary Decision).

⁴ CAS 2018/A/5779

II. Summary

41. In view of the foregoing, the Committee concluded that the Respondent, by his conduct(s) as described above, had violated art. 21 of the FDC.
42. Therefore, the Committee considered that the Respondent had to be sanctioned for the abovementioned violation(s).

III. The determination of the sanction

43. As a preliminary remark, the Committee emphasized that the Respondent had withheld the amount(s) due unlawfully from the Claimant. Even FIFA's (repeated) attempts to urge the Respondent to fulfil his financial obligations had failed to induce him to make payment of the total amounts due.
44. With regards to the applicable sanction(s), the Committee observed in the first place that the Respondent was a natural person, and as such was subject to the sanctions described under art. 6 (1) and (2) FDC.
45. In these circumstances, the Committee next proceeded to recall that on 02 February 2023, by way of the First Disciplinary Decision, the Committee had found the Respondent responsible for the infringement of art 21 FDC due to his failure to comply with the CAS Award, thereby ordering him to pay the amount(s) due to the Claimant (as outlined *supra.*) and sanctioning him with a fine of CHF 30,000. Furthermore, and more importantly, the Committee further recounted that the Respondent had been granted a final deadline of 60 (sixty) days as from notification of the First Disciplinary Decision in which to settle his debt(s) towards the Claimant.
46. By way of continuation, the Committee further noted that the First Disciplinary Decision had additionally clearly specified under point 3. of its operative part that, in line with art. 21.1.f) FDC, upon the expiry of the final 60 (sixty) day deadline and "*in the event of persistent default or failure to comply in full with the [CAS Award] within the period stipulated*" by the Respondent, the matter would, upon the request of the Claimant, be resubmitted to the FIFA Disciplinary Committee "*in order to impose a ban from taking part in any kind of football-related activity on [the Respondent] for a period of six (6) months*".
47. Against this background, the Committee subsequently pointed out that, despite the First Disciplinary Decision, the Respondent had nevertheless (still) withheld the relevant amount(s) due unlawfully from the Claimant – as mentioned, even FIFA's attempts to urge the Respondent to fulfil its financial obligations (towards the Claimant) had failed to induce the Respondent to pay the total amount(s) due.
48. With the foregoing in mind, the Committee highlighted that as the grounds of the First Disciplinary Decision had been notified on 11 April 2023 to the parties, in accordance with the final deadline of 60 (sixty) days granted therein, the Respondent had therefore had up until 12 June 2023 (cf. art. 38 (4) FDC) to settle its debts and/or to pay the amount(s) due to the Claimant accordingly.

49. The above notwithstanding, and as previously emphasised by the Committee, the Respondent had failed to settle his debt(s) towards the Claimant within the deadline granted, the relevant amount(s) due remaining, to the present date, outstanding to be paid. As such, the Committee was settled in its determination that further measures were to be imposed upon the Respondent – the Committee being resolute in this respect, given that, in keeping with the provision(s) of art. 21.1.f) FDC and the First Disciplinary Decision, the Respondent had undoubtedly demonstrated “*persistent default or failure to comply in full with the [CAS Award]*” following the expiry of the above-mentioned final granted pursuant to the latter.
50. This being established, for the sake of good order, the Committee recalled once more that art. 21 FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision, in so far that the latter:
- will be fined and will receive any pertinent additional disciplinary measure (lit. a);
 - will be granted a final deadline of 30 days in which to pay the amount(s) due (lit. b);
 - (in the case of natural persons, as *in casu*) 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 any football related activity for a specific period may be imposed (lit. f).
51. Therefore, in alignment with the above, taking into account all of the circumstances pertaining to the present case and, in particular, the persistent failure of the Respondent to comply in full with its financial obligations in accordance with the CAS Award as well as its related failure to comply with the First Disciplinary Decision, the Committee determined that, in accordance with point 3. of the First Disciplinary Decision as read together with arts. 6.2 and 21.1.f) FDC, a ban from taking part in any kind of football-related activity was to be imposed upon the Respondent for a period of six (6) months. In particular, the Committee considered that such sanction was to be considered proportionate to the offence(s) committed by the Respondent and justified in view of the circumstances of the case at hand. Indeed, the Committee underscored in this regard, that the facts have shown that the previous disciplinary measures imposed upon the Respondent (pursuant to the First Disciplinary Decision) were insufficient and did not induce the latter to settle his debt(s) towards the Claimant.
52. In continuation, the Committee subsequently recalled, with respect to the fine to be imposed, in accordance with art. 6 (4) FDC such fine shall range between CHF 100 and CHF 1,000,000. As such, after analysing the circumstances pertaining to the present case and whilst taking into account the outstanding amount(s) due in light of Annexe 1 FDC, the Committee regarded a fine amounting to CHF 1,000 as appropriate – the foregoing taking into account the provisions of art. 21.1.a) FDC but also the fine of CHF 30,000 previously imposed under the First Disciplinary Decision.
53. Further, given the amounts due by the Respondent, the Committee exceptionally considered that a final deadline of 60 (sixty) days to pay the amount(s) due to the Claimant was to be considered as justified and appropriate in the present case.

54. The Respondent is hereby warned and notified that, in case of default within the period stipulated, the aforementioned ban from taking part in any kind of football-related activity for a period of six (6) months will be automatically imposed against him.

55. Finally and for the sake of completeness, the Committee recalled, as established by the pertinent jurisprudence of the CAS⁵, that the aforementioned sanction – *a ban from taking part in any kind of football-related activity for a period of six (6) months* – would not affect the Respondent's fundamental right to freely exercise a profession, *i.e.* his economic freedom. Indeed, the Committee wished to point out that the Respondent would 'only' be prevented from taking part in football-related activities for a limited period of time, whilst retaining, in principle, the ability to exercise any other economic activity.

⁵ CAS 2017/A/4947

III. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. Mr. Mahmoud Abdelmonem Abdelhamid Soltane is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 29 March 2022 (Ref. CAS 2020/A/7443 & CAS 2020/A/7446), as well as with the decision passed by the FIFA Disciplinary Committee on 02 February 2023 (Ref. FDD-13817).**
- 2. Mr. Mahmoud Abdelmonem Abdelhamid Soltane is ordered to pay to Zamalek Sporting Club as follows:**
 - USD 2,000,000 as compensation for breach of contract without just cause plus 5% interest *p.a.* on said amount as from 20 June 2019 until the date of effective payment.**
- 3. Mr. Mahmoud Abdelmonem Abdelhamid Soltane is granted a final deadline of 60 days as from notification of the present decision in which to settle said amount. 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 taking part in any football-related activity will automatically be imposed on Mr. Mahmoud Abdelmonem Abdelhamid Soltane for a period of six (6) months.**
- 4. Mr. Mahmoud Abdelmonem Abdelhamid Soltane is ordered to pay a fine to the amount of CHF 1,000.**
- 5. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin YEBOAH

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.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

The Respondent, Mr. Mahmoud Abdelmonem Abdelhamid Soltane, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Egyptian Football Association of every payment made and to provide the relevant proof of payment.

The Creditor, Zamalek Sporting Club, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Egyptian Football Association of every payment received.

NOTE RELATING TO THE BAN ON ANY FOOTBALL-RELATED ACTIVITY:

The ban covers the participation, in any capacity, in a competition or activity authorised or organised by FIFA or any association, club or other member organisation of an association, or in competitions authorised or organised by any professional league or any international or national-level competition organisation or any elite or national-level sporting activity funded by a governmental agency.

The ban may be lifted upon full payment of the amount(s) due.

NOTE RELATING TO THE PAYMENT OF THE FINE:

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