

Decision of the FIFA Disciplinary Committee

passed on 03 November 2023

DECISION BY:

Jorge Iván PALACIO (Colombia), Chairperson

Anin YEBOAH (Ghana), Deputy Chairperson

Thomas HOLLERER (Austria), Member

ON THE CASE OF:

Red Bull Bragantino - SP

(Decision FDD-16216)

REGARDING:

Art. 17.7 of the FIFA Clearing House Regulations – *First Compliance Assessment failure*

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee (**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 09 October 2023, the FIFA Clearing House sent a notification to the club Red Bull Bragantino - SP (**the Respondent**) *"regarding the solidarity contribution due in connection with the allocation statement SC-1267 corresponding to the electronic player passport 17827 for the player KUCAS SOUZA CUNHA (nationality: Brazil - Male - Date of birth: 23 January 1997 - FIFA ID: 161SIL7)"* (**the Referral Letter**).
3. Specifically, the Respondent was informed about its failure *"to complete the FIFA Clearing House onboarding process"*, which, *"constitutes a compliance assessment failure under article 15 of the FIFA Clearing House Regulations (FCHR)"*.
4. As a result of the foregoing, the Referral Letter informed the Respondent that *"in accordance with article 16.1 (d) of the FCHR (read in conjunction with art. 17 [FCHR]) [the] case has now been referred to the FIFA Disciplinary Committee for consideration and formal decision."*
5. Moreover, the FIFA Clearing House informed the Secretariat to the FIFA Disciplinary Committee that the calculated training rewards due payable to the training clubs amounted to EUR 19,870.37.
6. On 20 October 2023, based on the above and in accordance with art. 55 of the FIFA Disciplinary Code (**FDC**) as read together with art. 17 FCHR, the Respondent was provided with the Referral Letter and informed that the present case would be referred to the next meeting of the FIFA Disciplinary Committee for consideration and formal decision.
7. On 14 November 2023, the Respondent provided an unsolicited comment and documentation, stating *inter alia* that it *"made the payments within the stipulated period to the clubs indicated, sending the receipts to the email: clearinghouse@fifa.org"*.

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

8. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects, namely, its jurisdiction and the applicable law, before entering into the substance of the matter and assessing the possible breaches of the FCHR by the Respondent as well as the potential sanctions, if applicable, resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

9. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FIFA Disciplinary Code.
10. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, in view of the allegations at stake and on the basis of art. 56 FDC as read together with arts. 16.1. d) and 17.2 FCHR, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B. Applicable law

11. In order to duly assess the matter, the Committee noted that the present case related to a potential violation of the FCHR. In this regard, the Committee deemed it relevant to recall that in accordance with art. 1.3 FCHR read in conjunction with art. 3.1 FCHR, the FIFA Clearing House is a separate entity from FIFA and was established to act as an intermediary in payments deriving from the football transfer system, especially for the payment of training rewards that fall due pursuant to the Regulation on the Status and Transfer of Players (**RSTP**) and performs all required compliance assessments in their execution.
12. In particular, the "Compliance Assessment" is a "*procedure required to be performed by the FIFA Clearing house prior to accepting any potential client in order to satisfy financial regulatory requirements*". In other words, the FIFA Clearing House assesses the parties involved in the financial transactions with it in order to ensure that they comply with both the national and international laws in relation to, without limitation, international payment sanctions, money laundering, anti-bribery/corruption and countering the financing of terrorism. Such procedure is governed by art. 15 FCHR, which provides *inter alia* that "*[a]fter receipt and analysis of the information requested from a party to carry out the Compliance Assessment, the FIFA Clearing House will make a first assessment and determination on whether a party passes or fails the Compliance Assessment (**First Compliance Assessment**)*" and that "*any determination of the FIFA Clearing House in relation to a Compliance Assessment shall be final and binding and shall not be subject to any appeal*".
13. Finally, the Committee noted that consequences of a "Compliance Assessment" failure are laid down in art. 16 FCHR, which states in its first paragraph "[w]ere a party fails the First Compliance Assessment: (...) d) the Non-Compliant Party shall be subject to disciplinary proceedings in accordance with article 17 [FCHR]".

14. In sum, the Committee understood that in view of the above provisions, it is not in a position to review or modify any First Compliance Assessment made by the FIFA Clearing House, but has as sole task to apply the sanctions provided for in art. 17 FCHR.

C. Merits of the case

15. Having clarified the above, the Committee observed that, according to the Referral Letter, the FIFA Clearing House has made a First Compliance Assessment upon the Respondent regarding the solidarity contribution in connection with the allocation statement SC-1267 corresponding to the electronic player passport 17827 for the player KUCAS SOUZA CUNHA and has determined that the Respondent had failed its First Compliance Assessment as an engaging/new club in breach of art. 15 FCHR.
16. Therefore, since the violations of the FCHR by the Respondent had been established by the FIFA Clearing House and the Committee is precluded from reviewing the outcome of the First Compliance Assessment carried out by the FIFA Clearing House, the Committee subsequently turned its attention to art. 17 FCHR and the relevant sanction(s) to be imposed for infringing art. 15 FCHR.

D. Determination of the sanction

17. With regard to the applicable sanctions, the Committee observed in the first place that the Respondent is a legal person, and as such was subject to the sanctions described under art. 6.1 and 6.3 FDC.
18. Notwithstanding the above, the Committee observed that the FCHR provides for specific consequences and sanctions depending on whether the club or member association in question failed a First Compliance Assessment. In particular, art. 17.7 FCHR reads as follows:

“The sanction for a club or member association that fails a First Compliance Assessment shall be:

a) For a new club:

- i. in any case, a levy of 2.5% of the calculated training rewards due, payable to the training club(s) through the FIFA Clearing House instead of interest for late payment; and*
- ii. a reprimand; and/or*
- iii. a fine.*

[...]”

19. For the sake of good order, the Committee underlined that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 25.1 FDC).
20. As it was established above, the Respondent was found responsible by the FIFA Clearing House of having infringed art. 15 FCHR, which aim at ensuring that the relevant parties comply with

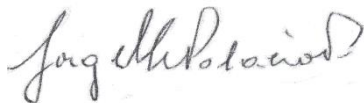
both the national and the international laws in relation to, without limitation, international payment sanctions, money laundering, anti-bribery/corruption and countering the financing of terrorism.

21. In view of the foregoing, consistently with art. 17.7 FCHR, the Committee decided to impose the following sanctions:
 - a levy of 2.5% of the calculated training rewards due, payable to the training club(s) through the FIFA Clearing House, *i.e.*, 2,5% of EUR 19,870.37, and
 - a reprimand.
22. In particular, the Committee took note that the FCHR includes a transitory period until 31 December 2023 (cf. art. 20 FCHR) and decided to replace the fine otherwise applicable for such an infringement with a reprimand.
23. The Committee was satisfied that such sanction would produce the necessary deterrent effect, whilst serving as a reminder to the Respondent to undertake all appropriate measures in order to guarantee that the FIFA regulations are strictly complied with.

III. DECISION OF THE DISCIPLINARY COMMITTEE

1. **The Respondent, Red Bull Bragantino - SP, is issued with a reprimand for having failed a First Compliance Assessment.**
2. **The Respondent is ordered to pay a levy of 2.5% of the calculated training rewards due to the training club(s) (i.e. 2.5% of EUR 19,870.37) through the FIFA Clearing House.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Jorge Iván PALACIO

Chairperson of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

This decision can be contested before the FIFA Appeal Committee (art. 61 FDC, 2023 edition), with the exception of the reprimand imposed, which can be appealed directly before CAS (art. 58 (1) of the FIFA Statutes reads together with arts. 52 and 61 of the FDC). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. The appeal brief must then be filed in writing within a further time limit of five (5) days, commencing upon expiry of the first-time limit of three (3) days (art. 60.4 FDC, 2023 edition). The appeal fee of CHF 1,000 shall be transferred to the bank account below on submission of the appeal brief at the latest (art. 60.6 FDC, 2023 edition).

NOTE RELATING TO THE PAYMENT OF THE LEVY OF 2.5%:

The payment of the amount mentioned under point 2. of the decision is to be made through the FIFA Clearing House. The levy will be included in the Allocation Statement submitted for the subsequent compliance assessment according to article 16.1.c of the FIFA Clearing House Regulations.