

# Decision of the FIFA Disciplinary Committee

passed on 09 November 2023

**DECISION BY:**

**Arnaud DUMONT (Tahiti), Member**

**ON THE CASE OF:**

**Yukatel Kayserispor**

**(Decision FDD-15979)**

**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 member 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 3 May 2022, FIFA's administration provided the clubs Kayserispor Kulubu (**the Respondent**) and Boavista FC (**the Claimant**) with a proposal for the outstanding transfer fee due by the former to the latter (ref. n° FPSD-5662).
3. In particular, the proposal was made to the parties in accordance with art. 20 of the Procedural Rules Governing the Football Tribunal and the parties were informed that they had to either accept or reject the proposal by 17 May 2022.
4. On 19 May 2022, FIFA's administration issued a confirmation letter informing the parties that the aforementioned proposal was now final and binding as both parties had either explicitly or tacitly accepted it, so that the Respondent was ordered to pay the Claimant EUR 225,000 as outstanding transfer fee, plus 5% interest *p.a.* (**the Decision**). In particular, the confirmation letter also clarified that the aforementioned payment had to be made within 45 days of notification of the letter, falling which the Respondent would be banned from registering any new players up until the due amounts are paid in accordance with art. 24 of the Regulations on the Status and Transfer of Players.
5. On 6 July 2022, the Respondent was banned from registering new players, either nationally or internationally, as a result of its failure to pay the amounts due to the Claimant.
6. On 18 August 2023, FIFA was informed that the parties had entered into a settlement agreement (**the Settlement Agreement**) and that the Respondent had (allegedly) paid the settled amount of EUR 225,000. As a result, the registration ban was lifted.
7. On 12 September 2023, the Claimant informed the Committee that the alleged payment had not been received and requested the opening of disciplinary proceedings against the Respondent for its failure to comply with the Decision.
8. On 9 October 2023, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) informed the Respondent that this would constitute a potential breach of art. 21 of the FIFA Disciplinary Code (**FDC**). In this respect, the Secretariat proposed the following sanction to the Respondent in accordance with art. 58 FDC as read in conjunction with Annexe 1 FDC:

1. *The Respondent, (...), shall pay to [the Claimant] as follows:*

- *EUR 225,000 as outstanding transfer fee plus 5% interest per annum as follows:*
  - *On the amount of EUR 125,000 from 1 August 2021 until the date of effective payment and*

- *On the amount of EUR 100,000 from 1 October 2021 until the date of effective payment.*
  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 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 15,000.***
9. On 11 October 2023, the Respondent rejected the aforementioned proposed sanction and provided its position, requesting regular proceedings to be conducted. In essence, the Respondent referred to the Settlement Agreement, claimed to have paid the settled amount of EUR 225,000 to the Claimant on 11 August 2023 and submitted an untranslated "payment order" as evidence.
10. On 12 October 2023, the Secretariat requested the Claimant to confirm whether the payment mentioned in the abovementioned correspondence had been received.
11. On 16 October 2023, the Claimant indicated that "*despite the settlement agreement mentioned by the Respondent, the fact is no payment was received by the Claimant.*"
12. On 17 October 2023, the Secretariat *inter alia* requested the Respondent to provide further evidence and bank statements confirming that the amount of EUR 225,000 had been paid to the Claimant.
13. On 18 October 2023, the Claimant informed the Secretariat that it had not received the payment allegedly done on 11 August 2023. In this respect, it submitted i) a confirmation of its bank stating that the payment had been returned to the Respondent due to missing information and ii) an extract from its bank account covering the entire month of August 2023, pursuant to which no payment amounting to EUR 225,000 had been credited to it.
14. On the same day, the Secretariat reiterated its request to the Respondent.
15. On 20 October 2023, the Respondent submitted the following documents:
  - A copy of the proposal dated 3 May 2022, along with the documents submitted to the FIFA administration in the scope of the proceedings FPSD-5662;
  - A copy of the letter dated 18 August 2023 by means of which FIFA lifted the ban imposed on the Respondent as a result of the Settlement Agreement entered into by the parties;
  - An untranslated bank order;
  - A copy of a swift dated 11 August 2023 according to which a payment of EUR 225,000 was made to the Claimant;
  - An untranslated excerpt of a bank statement with three dates - "01.06.2023" / "11.08.2023" / "11.08.2023" related to three entries.

## II. RESPONDENT'S POSITION

16. The position submitted by the Respondent can be summarized as follows:

- The disputes between the parties were settled through the Settlement Agreement entered into by the parties on 9 August 2023.
- As a natural consequence of the parties' settlement, FIFA lifted the registration ban imposed on the Respondent on the very same date.
- Upon closure of the aforementioned cases, the Respondent held that the FIFA Disciplinary Committee cannot continue with disciplinary proceedings for closed cases, and this solely constitutes a legal ground for dismissal of the present case.
- In accordance with the Settlement Agreement, the Respondent has transferred the settled amount of EUR 225.000,00 to the Claimant on 11 August 2023.
- In this regard, the Respondent submitted an untranslated bank order to corroborate its statement.
- Given that the Respondent has complied with its financial obligation towards the Claimant as per the Settlement Agreement, it requested the closure of the present disciplinary proceedings.

## III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

17. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects of the present matter, namely, its jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with its financial obligations towards the Claimant as well as the potential sanctions resulting therefrom.

### A. Jurisdiction of the FIFA Disciplinary Committee

18. 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 FDC.
19. 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 sanctions in case of corresponding violations. In this respect, the Committee also stressed that, in line with art. 58 FDC, where a party rejects the proposed sanction from the Secretariat (as *in casu*), the matter shall be referred to it for a formal decision to be rendered.
20. In addition, and on the basis of art. 51 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.

## B. Applicable legal framework

21. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the Respondent's potential failure to comply with its financial obligation towards the Claimant, was committed after the entry into force of the 2023 edition of the FDC. In this respect, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2023 edition of the FDC.
22. Having established the above, the Committee wished to recall the content and scope of art. 21 FDC in order to duly assess the case at hand.
23. According to this provision:
  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.*
    - (...)*
  9. *The Disciplinary Committee shall be competent to decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding financial decision issued by a body, a committee, a subsidiary or an instance of FIFA or by CAS.*

24. In this context, the Committee emphasized 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.
25. Moreover, the Committee noted that, in addition to the Decision dated 19 May 2022, the present case revolved around the Settlement Agreement reached between the parties on 9 August 2023, which led to the lifting of the registration ban previously imposed on the Respondent due to its failure to comply with the Decision.
26. In this respect, the Committee noted that art. 21 (9) FDC gives the Disciplinary Committee the competence to enforce a settlement agreement in relation to a final FIFA decision or CAS award, provided that the agreement was entered into after the commencement of disciplinary proceedings in relation to the FIFA decision or CAS award that has not been complied with.
27. However, the Committee also held that, on the basis of the wording of art. 21 (9) FDC and the *rationale* behind this provision - *i.e.* avoiding the need for the claimant to initiate new proceedings before the FIFA Football Tribunal or the competent body in order to enforce a settlement agreement reached in relation to a final and binding decision issued by FIFA or CAS - the competence granted to the Disciplinary Committee under art. 21 (9) FDC should also cover private settlement agreements reached after a decision taken by a body, committee, subsidiary or instance of FIFA or by CAS, particularly when disciplinary measures have been imposed in accordance with said decision.
28. The above being established and the applicable law determined, the Committee subsequently turned its attention to the alleged failure of the Respondent to pay the amount(s) due to the Claimant.

## **C. Merits of the dispute**

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

29. To begin with, the Committee observed that the present disciplinary proceedings referred to a potential failure by the Respondent to comply with a Decision dated 19 May 2022 (ref. FPSD-5662) by means of which the Respondent was ordered to pay to the Claimant as outlined above.
30. Additionally, the Committee also noted that following the issuance of the aforementioned Decision and the Respondent's failure to comply therewith, disciplinary measures – namely a registration ban – had been imposed on the Respondent. The Committee further noticed that the parties entered into a Settlement Agreement in August 2023, which led to the lifting of the aforementioned disciplinary measure and the termination of the proceedings.
31. In light of the foregoing, the Committee concluded that the Settlement Agreement acted as a novation to the Decision and that it was the said Settlement Agreement that had therefore to be complied with by the Respondent. Considering that the Settlement Agreement in question had been entered into following the implementation of disciplinary measures in connection with a final and binding decision issued by FIFA, *i.e.* the Decision of 19 May 2023, the Committee considered that the

Respondent could be held liable for non-compliance with the Settlement Agreement entered into on 9 August 2023, pursuant to art. 21 (9) FDC.

32. Against this background, the Committee then noted that according to the Settlement Agreement, the Respondent had to pay EUR 225,000 to the Claimant in order to comply with its financial obligations.
33. In this regard, the Respondent argued that the aforementioned amount had been paid on 11 August 2023, and provided several documents intended to prove that the payment had been made. However, the Committee understood from the Claimant's positions and from the different documents filed during the disciplinary proceedings that the said payment had not been received.
34. Bearing in mind that *"any party claimant a right on the basis of an alleged fact shall carry the burden of proof of this fact"* as per art. 41 (2) FDC, the Committee examined the documents submitted by the parties and noted that the Respondent had submitted in the course of the present proceedings i) two different untranslated "payment orders", ii) a swift dated 11 August 2023 according to which a payment amounting to EUR 225,000 had been made to the Claimant and iii) an untranslated excerpt of a bank statement with three dates - "01.06.2023" / "11.08.2023" / "11.08.2023" related to three entries. However, the Committee could not find any other evidence or bank statements in the case file explicitly confirming that the amount of EUR 225,000 had been paid to the Claimant (and deducted from its bank account), although this had been requested by the Secretariat during the present proceedings.
35. On the other hand, the Committee reviewed the documents submitted by the Claimant, namely i) a confirmation of the Claimant's bank that the payment had been returned to the Respondent due to missing information and ii) an extract from the Claimant's bank account covering the whole month of August 2023, according to which no payment in the amount of EUR 225,000 had been credited to it.
36. In light of the documents submitted by the parties, the Committee found that the Respondent had not sufficiently corroborated its allegations of payment, whereas the Claimant established to the Committee's comfortable satisfaction that the settled amount of EUR 225,000 had not been credited to its bank account.
37. As a result, the Committee concluded that the Respondent had failed to pay the Claimant the outstanding amounts due to it under the Settlement Agreement and had therefore breached art. 21 FDC.
38. In other words, the Committee found that the Respondent, by its conduct as described above, is considered guilty of non-compliance with a financial decision under the terms of art. 21 FDC and should be sanctioned accordingly.

## II. The determination of the sanction

39. As a preliminary remark, the Committee emphasized that the Respondent unlawfully withheld the amounts from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the total amounts due.
40. 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.
41. Notwithstanding the above, the Committee recalled 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, in so far that the latter:
  - (i) will be fined and receive any pertinent additional disciplinary measure (lit. a); and
  - (ii) will be granted a final deadline of 30 days in which to pay the amount due (lit. b);
  - (iii) (in the case of clubs 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 registering new players will be issued until the complete amount due is paid or the non-financial decision is complied with (lit. d).
42. Consistently with the above, and with respect to the fine to be imposed, the Committee underlined that, in line with art. 6 (4) FDC, it shall range between CHF 100 and CHF 1,000,000.
43. In this respect, the Committee pointed out that Annexe 1 FDC provides for a list of specific disciplinary measures which may be taken into consideration in case of failure to respect financial decisions. As such, after analysing the circumstances pertaining to the present case, whilst taking into account the outstanding amounts in light of Annexe 1 FDC, the Committee decided to impose a fine of CHF 15,000 on the Respondent.
44. Furthermore, and in application of art. 21.1.b) FDC, the Committee granted a final deadline of 30 days to the Respondent in order to pay the amounts due to the Claimant.
45. Finally, and consistently with art. 21.1.d) FDC, the Respondent is hereby warned and notified that, in the case of default within the period stipulated, a registration ban (at national and international level) will be automatically imposed until the complete amounts due are paid. For the sake of good order, the Committee recalled that a deduction of points or relegation to a lower division may later be ordered in addition to the registration ban 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 present decision).



## IV. DECISION

1. **Yukatel Kayserispor is found responsible for failing to comply in full with the Settlement Agreement entered into on 9 August 2023 with Boavista FC in the scope of the proceedings FPSD-5662 and FDD-11642.**
2. **Yukatel Kayserispor is ordered to pay to Boavista FC as follows:**
  - **EUR 225,000 as "settled amount".**
3. **Yukatel Kayserispor is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount 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.**
4. **Yukatel Kayserispor is ordered to pay a fine to the amount of CHF 15,000.**
5. **The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Arnaud DUMONT (France)**

Member of the FIFA Disciplinary Committee

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### **NOTE RELATING TO THE LEGAL ACTION:**

According to art. 58 (1) of the FIFA Statutes reads together with arts. 52 and 61 of the FDC, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. 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 the CAS.

### **NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:**

The Respondent, Yukatel Kayserispor, is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment made and to provide the relevant proof of payment.

The Creditor, Boavista FC, is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment received.

### **NOTE RELATING TO THE REGISTRATION BAN:**

The registration ban mentioned in para. 3. of the present decision will be implemented automatically and immediately at national and international level by the Turkish Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. In such case, the Turkish Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the registration ban has been implemented at national level, any failure to do so being subject to potential sanctions (which can lead to an expulsion from FIFA competitions) being imposed by the FIFA Disciplinary Committee.

The registration ban shall cover all men eleven-a-side teams of the Respondent – first team and youth categories –.

The Respondent shall only be able to register new players, either nationally or internationally, upon the payment to the Creditor of the complete amount due. In particular, the Respondent may not make use of the exception and the provisional measures stipulated in art. 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

A deduction of points or relegation to a lower division may be ordered in addition to the registration ban 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.

### **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 the abovementioned case number.