



Arbitration CAS 2012/A/2766 FC Spartak v. Fédération Internationale de Football Association (FIFA), award of 29 August 2012

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Disciplinary sanction for failure to comply with a previous decision of a FIFA body

Scope of review of the CAS

Late production of argument

1. **A CAS Panel does not have to ultimately determine whether the FIFA Dispute Resolution Chamber (DRC) should have considered the jurisdiction of a national association's arbitral body and its own jurisdiction if this argument should have been before the CAS on appeal from the DRC Decision and if such appeal is out of time. As the matter at hand is an appeal of the FIFA Disciplinary Committee (DC) decision that had to determine if a club had failed to pay a player even though instructed by the DRC to do so, the CAS panel is unable to entertain an appeal against the DRC Decision, through the back door. The CAS's role is only to review the appealed decision, made by the FIFA DC. As the time for any appeal against the DRC decision had passed, the latter was final and binding upon the club. Therefore, the FIFA DC's role was only to enforce that decision.**

2. **According to art. R56 of the Code of Sports-related Arbitration, unless the parties agree otherwise or the President of the panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument after the submission of the answer.**

1. THE PARTIES

- 1.1 FC Spartak a.s (hereinafter referred to as the "Appellant" or the "Club") is a professional football club with its registered office in Trnava, Slovak Republic. It is a member of the Slovak Football Association (hereinafter referred to as the "SFA") and plays in Slovak's top division, the Premier League.

- 1.2 The Fédération Internationale de Football Association (hereinafter referred to as the "Respondent" or "FIFA") is the world governing body for the sport of football, having its headquarters in Zurich, Switzerland.

2. FACTUAL BACKGROUND

- 2.1 Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his award only to the submissions and evidence he considers necessary to explain his reasoning.
- 2.2 On 26 April 2010, the Senegalese player Babacar Niang (hereinafter referred to as the "Player") lodged a claim with the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") against the Club.
- 2.3 On 26 January 2011, the DRC ruled as follows (hereinafter referred to as "the DRC Decision"):
1. *The claim of the Claimant, Babacar Niang, is partially accepted.*
 2. *The Respondent, FC Spartak Trnava, has to pay to the Claimant, Babacar Niang, the amount of EUR 28,500 within 30 days as from the date of notification of this decision.*
 3. *In the event of non-payment of the aforementioned amount, within the established deadline, interest at the rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision...*
- 2.4 On 6 February 2011, the Club requested the grounds of the DRC Decision.
- 2.5 On 16 August 2011, the Club was provided with the grounds of the DRC Decision.
- 2.6 On 19 October 2011, the Player informed FIFA that he had not received any amount from the Club and requested the intervention of the FIFA Disciplinary Committee (hereinafter referred to as the "FIFA DC").
- 2.7 On 25 October 2011, the FIFA Players' Status Department (hereinafter referred to as the "FIFA PSD") wrote to the Club reminding the Club of its obligations with regard to the DRC Decision and stated that the case will be transferred to the FIFA DC.
- 2.8 On 22 November 2011, the Club sent a letter to the FIFA PSD claiming the DRC had not been competent to deal with the dispute, however the fax was not completely transmitted.
- 2.9 On 23 November 2011, FIFA requested that the Club send the correspondence, of 22 November 2011, again by 30 November 2011.
- 2.10 On 23 November 2011, the Club sent the requested correspondence.

- 2.11 On 30 November 2011, FIFA wrote to the Club informing the Club that the case would be forwarded to the FIFA DC for consideration.
- 2.12 On 23 December 2011, the FIFA DC opened disciplinary proceedings against the Club as it had failed to pay the amount ordered by the DRC in the DRC Decision.
- 2.13 On 10 February 2012, as no answer had been received by the Club, the FIFA DC urged the Club, by way of letter to the SFA requesting that the same be forwarded to the Club, to make payment to the Player and stated that the matter would be referred to the FIFA DC for a determination on 9 March 2012.
- 2.14 On 14 February 2012, the Player informed the FIFA DC that he had still not received payment.
- 2.15 On 24 February 2012, the Club informed the FIFA DC that it maintained its position of 22 November 2011.
- 2.16 On 5 March 2012, FIFA wrote to the Club, via the SFA, informing the Club that the FIFA DC has the sole task of analysing whether a party has complied with a FIFA decision.
- 2.17 On 9 March 2012 the FIFA DC ruled as follows (hereinafter referred to as the “Appealed Decision”):
- “1. *The Club FC Spartak Trnava is pronounced guilty of failing to comply with the decision of a FIFA body in accordance with Article 64 of the FDC.*
 2. *The Club FC Spartak Trnava is ordered to pay a fine to the amount of CHF 5,000. The fine is to be paid within 30 days of notification of the decision....*
 3. *The Club FC Spartak Trnava is granted a final period of grace of 30 days as from notification of the decision in which to settle its debts to the creditor and to FIFA.*
 4. *If payment is not made by the deadline, the creditor may demand in writing from FIFA that three (3) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The Order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
 5. *If the club FC Spartak Trnava still fails to pay the amount due even after deduction of the points in accordance with point III/4, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor’s first team to the next lower division.*
 6. *As a member of FIFA, the Slovak Football Association is reminded of its duty to implement this decision and if so requested, provide FIFA with proof that the points have been deducted. If the Slovak Football Association does not comply with this decision despite being ordered to do so the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*

7. *The cost of these proceedings amounting to CHF 1,000 is to be borne by the club FC Spartak Trnava. The costs shall be paid according to the modalities established under point III/2. above.*
8. *The creditor is directed to notify the Secretariat to the FIFA Disciplinary Committee of every payment received”.*

2.18 On 20 March 2012, the Appealed Decision was notified to the Player and the Club, via the SFA.

2.19 On 17 April 2012, the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) informed FIFA that the Club had lodged an appeal against the Appealed Decision.

2.20 On 23 April 2012, the Club and the Player were informed that the disciplinary proceedings were suspended for the duration of the proceedings before the CAS.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 On 10 April 2012 the Club lodged a Statement of Appeal with the CAS against the Appealed Decision. It submitted the following motion for relief:

“Spartak Trnava requests Court of Arbitration for Sport (CAS) to annul the aforementioned disciplinary decision”.

3.2 On 17 April 2012 the Appellant filed its Appeal Brief with the CAS.

3.3 On 8 May 2012 FIFA submitted its Answer, together with various exhibits, seeking the following requests for relief:

1. *To reject the Appellant’s prayers for relief in their entirety.*
2. *To confirm the decision hereby appealed against.*
3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure”.*

4. THE CONSTITUTION OF THE PANEL AND HEARING

4.1 By letter dated 15 May 2012, the CAS informed the parties that the Panel to consider the appeal had been constituted as follows: Mr Mark Hovell, Sole Arbitrator. The parties did not raise any objection as to the appointment of the Sole Arbitrator.

4.2 A hearing was held on 19 June 2012 at the CAS premises in Lausanne, Switzerland. The attorneys for the Appellant attended the hearing and the Respondent was represented by Ms. Wilma Ritter and Ms. Sarit Ventura. In addition, Mr Fabien Cagneux, Counsel to the CAS, was also in attendance.

- 4.3 There were no witnesses or experts providing evidence or opinions at the hearing.
- 4.4 The parties were given the opportunity to present their cases, and submit their argument and to answer the questions posed by the Sole Arbitrator. A summary of the submissions is detailed below. After the parties' final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to his written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their rights to be heard and to have been treated equally in these arbitration proceedings. The Sole Arbitrator heard carefully and took into account in his subsequent deliberation all the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

5. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

- 5.1 In summary, the Appellant submits the following in support of its appeal:
- 5.2 The FIFA DRC, when examining its jurisdiction, was obliged to investigate the existence of an arbitration tribunal at national level and its jurisdiction as to employment related disputes. Only if such arbitration tribunal is absent at national level should the dispute be taken to FIFA.
- 5.3 Article 22 of the Regulations on the Status and Transfer of Players (edition 2010) (hereinafter referred to as the "FIFA RSTP") states:
- "Without prejudice to the right of any player or club to seek redress before a Civil Court for employment – related disputes, FIFA is competent to hear:*
- ...
- b) *employment related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/ or a collective bargaining agreement;*
- ..."
- 5.4 The DRC when examining jurisdiction was *ex officio* obliged to investigate the existence of arbitration tribunal at national level and its jurisdiction as to the employment related disputes. At the hearing the Appellant submitted that it was not obliged to make any representations on the question of jurisdiction, the DRC had to decide on its own jurisdiction.
- 5.5 The DRC is not competent to deal with the Player's claim, unless the absence of an arbitration tribunal at national level or lack of jurisdiction of such a tribunal is clearly proved. There is no reference in the DRC Decision showing that the DRC dealt with the possible existence of an arbitration tribunal at national level.

- 5.6 The matter should have proceeded to the national arbitration, which was established by the SFA in 2005, in accordance with Article 36 paragraph 1 of the Statutes of the SFA.
- 5.7 In accordance with point 7.3 of the contract between the Club and the Player, the “*contractual parties respect the jurisdiction of the arbitration court recognized by Slovak Football Association according to the statute of the arbitration court*”. Therefore, the matter should have proceeded to the SFA arbitration court as there is direct reference to the arbitration court contained in the contract. The DRC was in possession of the contract and should have been aware that there was an arbitration tribunal competent to deal with the case at national level and deduced jurisdiction. The DRC should have checked the contract.
- 5.8 In accordance with article 3 paragraph 1 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter referred to as the “Procedural Rules”) the DRC should have submitted the matter to the Chairman of the Players’ Status Committee as a lack of jurisdiction had occurred. The DRC was not competent to decide the case unless the Chairman confirmed its jurisdiction. This matter was never submitted to the Chairman of the Players’ Status Committee.
- 5.9 The jurisdiction of the arbitration court takes precedence over the jurisdiction of the DRC in accordance with the FIFA RSTP.
- 5.10 As the claim was lodged with an incompetent body, not authorised to deal with the case, it should be considered null and void.
- 5.11 By letters of 22 November 2011 and 24 February 2012 the Club requested the FIFA DC not to start disciplinary proceedings against the Club as it would be enforcing a decision passed by an incompetent body.
- 5.12 If the FIFA DC concluded that the DRC Decision was not passed in accordance with the FIFA RSTP, it should not have enforced such a decision. At the hearing the Appellant cited a reference to a case of the Swiss Federal Tribunal (ATF 130 III 925 3.1) which it submitted supported its position that if the DRC made a mistake on jurisdiction, then the enforcing body (the FIFA DC) can question the original body’s jurisdiction.
- 5.13 The Appellant acknowledged that it had not appealed the DRC Decision to the CAS. It claimed that its former management team were not skilled enough and did not know the law, rules and regulations of football. It was only after the team had changed that certain cases were discovered.

B. Respondent’s Submissions

- 5.14 In summary, the Respondent submits the following in defence:
- 5.15 Failure of the Appellant to comply with the DRC Decision.

- 5.15.1 According to Article 3 of the FIFA Disciplinary Code (hereinafter referred to as the “FDC”), clubs and players, amongst others, are subject to the FDC. Further the Appellant is a football club affiliated to the SFA and is to be considered a “club” and that the creditor to the said proceedings of the FIFA DC is a professional football player and is therefore considered a “player”; therefore the FIFA DC considered itself competent to deal with the matter which concerned a failure of the Appellant to comply with the decision of the DRC.
- 5.15.2 The FIFA DC took into consideration Article 58 paragraph 3 of the FIFA Statutes, pursuant to which the FIFA DC may pronounce on members, clubs, officials, players and match and players’ agents a sanction described in the FIFA Statutes and in the FDC.
- 5.15.3 The FIFA DC established that anyone who fails to pay another person of FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA will be fined for failing to comply with a decision, will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due and, if it is a club, will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered.
- 5.15.4 The FIFA DC emphasized to the Club that equal to the competence of any enforcement authority, it cannot review or modify as to the substance of a previous decision, which is final and binding and thus has become enforceable.
- 5.15.5 The FIFA DC took a note of the DRC Decision which had become final and binding since no appeal was lodged against it with the CAS.
- 5.15.6 The FIFA DC took note that the Appellant ignored the DRC Decision and withheld the payment to the Player and therefore, the FIFA DC considered the Appellant to be guilty under the terms of Article 64 of the FDC.
- 5.15.7 In view of the circumstances and in particular also by taking into account the outstanding amount due, the FIFA DC decided to impose a fine amounting to CHF 5,000 which is in line with the committee’s well established practice. Furthermore, and in application of the above referenced Article 64 paragraph 1b of the FDC, the Committee considered a final deadline of 30 days was appropriate for the amount to be paid to the Player. Further, in accordance with the FDC, the Club was warned and notified that in case of default within the period stipulated, points would be deducted or relegation to a lower division be ordered. Pursuant to Article 105 of the FDC, the Committee of the FIFA DC decided that costs and expenses of the proceedings amounting to CHF 1,000 should be payable by the Club.

5.16 In response of the submissions of the Appellant:

- 5.16.1 The Club did not make any submissions to the DRC, which could have included arguments in relation to lack of jurisdiction.
- 5.16.2 In the legal note relating to the motivated decision, the Club was informed of the possibility to lodge an appeal to the CAS directly within 21 days of receipt of notification of the DRC Decision. The Club decided not to do so.
- 5.16.3 The first time that the Appellant addressed the alleged lack of competence of the DRC was in correspondence dated 22 November 2011, i.e. correspondence sent more than 3 months following the notification of the grounds of the decision and following a request from the Player for the intervention of the FIFA DC.
- 5.16.4 The Appellant had various occasions during the proceedings in front of the DRC to submit its objection regarding the competence of the DRC. Furthermore, the Appellant had the right to appeal the DRC Decision before the CAS. As the Appellant did not lodge an appeal against the DRC Decision with the CAS, the DRC Decision became final and binding and thus enforceable.
- 5.16.5 The Respondent objected to the citation of the Swiss Federal Tribunal case, referred to at para. 5.12 above. Not only did the Appellant fail to actually provide a copy of the case, it was manifestly late in referring to this case in its submissions, in breach of Article R56 of the Code.
- 5.17 Competence of the DRC
- 5.17.1 The competence of the DRC was only contested on 22 November 2011, 3 months after the notification of the grounds of the DRC Decision. The decision, by then, became final and binding and consequently enforceable by the FIFA DC. The FIFA DC correctly applied Article 64 of the FDC.
- 5.17.2 In accordance with Article 24 paragraph 1 of the FIFA RSTP, the DRC shall adjudicate on any of the cases described under Article 22 paragraphs a, b, d and e of the FIFA RSTP with the exception of disputes concerning the issue of an International Transfer Certificate. In accordance with Article 22 paragraph b of the FIFA Regulations, FIFA is competent to hear employment related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.
- 5.17.3 It is undisputed that this case is an employment related dispute between a Slovak Club and a Senegalese player which is therefore of an international dimension. Thus, the DRC was competent to hear the matter at hand in accordance with Article 22 paragraph b of the FIFA RSTP.

- 5.17.4 As a general rule, the DRC is in a position to assess whether an arbitration tribunal had been established at national level and fulfills the minimum standard pre-requisites established in Article 22 paragraph b of the FIFA RSTP, if asked to do so. In this context, the DRC will be asked to examine whether the requirements for national arbitration tribunal to be recognised by FIFA are fulfilled as set out in Article 22 paragraph b of the FIFA RSTP, and in the affirmative, will have to declare the claim inadmissible. Even if an arbitration tribunal respecting the criteria of Article 22 paragraph b of the FIFA RSTP is established at national level, a tacit acceptance or an exception by action implying intention of the competence of the DRC, by not answering to a claim at all or by submitting an answer as to the substance of the matter, is possible. Thus, in these circumstances, the DRC will have to declare itself competent as long as the conditions of Article 22 paragraph b of the FIFA RSTP are fulfilled.
- 5.17.5 According to Article 12 paragraph 3 of the Procedural Rules, “*any party claiming a right on the basis of an alleged fact shall carry the burden of proof*”. Thus, it is the burden of the party to claim the existence of a national arbitration tribunal fulfilling the necessary requirements and, if possible, to provide the DRC with the relevant evidence, in particular the applicable regulations governing the national arbitration tribunal at stake.
- 5.17.6 The Appellant did not make any submissions to the DRC and by not replying to the claim; the Appellant accepted the competence of the DRC tacitly.
- 5.17.7 Furthermore, the exception of incompetence has to be invoked *in limine litis* i.e. at the beginning of the proceedings, or at the latest before the submission of the case to the deciding body. As a consequence the DRC correctly considered itself competent to hear the matter.
- 5.17.8 The FIFA DC correctly considered itself not in a position to analyse the substance of the dispute and contended itself to examine whether a final and binding decision passed by one of the FIFA deciding bodies had been properly complied with.
- 5.17.9 Furthermore, the Appellant neither in its correspondence nor in its statement of appeal, substantiates the allegation regarding the competence of a national arbitration tribunal or provide relevant evidence.
- 5.17.10 The burden is on the Appellant during the proceedings before the DRC to claim the existence for national arbitration tribunal and to provide the DRC with evidence of the same. It is insufficient to establish the existence of a national arbitration tribunal fulfilling the necessary requirements in accordance with Article 22 paragraph b of the FIFA RSTP with reference to an arbitration clause in an employment contract. Therefore, in the absence of any claim regarding the competence of the DRC, the DRC correctly considered itself as competent to hear the matter.
- 5.17.11 In conclusion, the FIFA DC was legitimated to enforce this correct and lawful decision and, as the Appellant still failed to pay the outstanding amount to the Player, lawfully

pronounced the Appellant guilty of failing to comply with the DRC Decision in accordance with Article 64 of the FDC.

6. JURISDICTION OF THE CAS

6.1 Art. R47 of the CAS Code of Sports-related Arbitration and Mediation Rules (hereinafter referred to as “the Code”) provides as follows:

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

6.2 Art. 63 par. 1 of the FIFA Statutes in force at the time of the Appellant’s appeal reads as follows:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues, shall be lodged with CAS within 21 days of notification of the decision in question”.

6.3 Art. 64 par. 5 of the FDC states that:

“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.

6.4 Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. Therefore, the Sole Arbitrator is satisfied that the requirements set forth in Art. R47 of the Code are met, and that the Sole Arbitrator has jurisdiction to decide the present dispute.

7. APPLICABLE LAW

7.1 Art. R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

7.2 Art. 62.2 of the FIFA Statutes provides 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”.

7.3 The Appellant did not make any written submissions in relation to the applicable law however the Sole Arbitrator noted that the Appellant referred to various FIFA regulations including the FIFA RSTP and the Procedural Rules. The Respondent referred to Article 62 paragraph 2 of the FDC shall apply. Further, the Respondent submitted that pursuant to the same article

and considering that the Appealed Decision was issued by the FIFA DC, whose corporate seat is in Zurich, Switzerland and that the Appellant is a member of the SFA which is a member of FIFA, the Sole Arbitrator should apply the various regulations of FIFA and additionally Swiss Law.

- 7.4 At the hearing the Appellant agreed with the Respondent's submissions, and, as there is no dispute to the law which applies, the Sole Arbitrator confirms that in this case, the FIFA regulations will be applied primarily, and Swiss law shall be applied subsidiary.

8. MERITS OF THE APPEAL

- 8.1 The Appellant has appealed the FIFA DC decision and acknowledged that it failed to appeal the DRC Decision within the 21 days of receipt of the full grounds from the Respondent. The Respondent quite rightly states that the Appellant is out of time to appeal the DRC Decision.
- 8.2 However, the Appellant's main submissions here are that the DRC should have refused the Player's claim, as in accordance with Article 22 paragraph b, it did not have jurisdiction to hear that claim.
- 8.3 The Sole Arbitrator notes the parties' arguments. On the one hand the Appellant states that as the DRC had the contract between the Player and the Club, it should have looked to see if there was a contractual obligation for the parties to go to the dispute resolution chamber of the national association. On the other hand, FIFA argues that all the DRC is obliged to do is to see if the parties are player and club from different countries and that the dispute is an employment-related one. If so, it only has to consider the "unless" element of Article 22 paragraph b if requested to by one of the parties; which party, pursuant to Article 12 paragraph 3 of the Procedural Rules, then has the burden of proof to show whether there is or is not an independent arbitration tribunal operating within the national association, which guarantees fair proceedings, respects equal representation of the parties etc. Here the Appellant made no representations to the DRC regarding the contract, the Slovak arbitral body or on jurisdiction whatsoever.
- 8.4 The Sole Arbitrator also notes the Appellant's arguments regarding the provisions of Article 3 paragraph 1 of the Procedural Rules, which states "...the DRC shall examine their jurisdiction in particular in the light of arts 22 to 24 of the RSTP...". There is a genuine dispute between the parties as to jurisdiction and responsibility for reviewing and challenging it.
- 8.5 The Sole Arbitrator, however, does not have to ultimately determine whether the DRC should have considered the national association's arbitral body and its own jurisdiction; this argument should have been before the CAS on appeal from the DRC Decision and the Appellant is out of time to bring such an appeal. The matter at hand is an appeal of the FIFA DC decision and the Sole Arbitrator is unable to now entertain an appeal against the DRC Decision, through the back door.

- 8.6 The Appellant has then raised arguments that the FIFA DC can still review the jurisdiction of the DRC, who's decision it was enforcing. A citation of a Swiss Federal Tribunal case was made, however, no copy of the case was provided and the citation was made late, at the hearing itself. The Respondent referred to Article R56 of the Code. It did not agree with the Appellant supplementing its arguments after the Answer had been filed, nor did the Appellant make any case for or even mention any "exceptional circumstances" for only being able to produce such arguments at the hearing. The Sole Arbitrator agrees with the Respondent and determines that the additional line of argumentation of the Appellant was in breach of Article R56 of the Code and could not be allowed.
- 8.7 In summary, the Appellant had realised that its arguments related solely to the jurisdiction of the DRC, it failed to appeal the DRC Decision at the appropriate time and is, in the matter at hand, attempting to now raise those arguments. The Sole Arbitrator's role in this matter is to review the Appealed Decision, made by the FIFA DC. The FIFA DC applied Article 64 of the FDC. It had to determine if a club had failed to pay a player even though instructed by the DRC to do so. The time for any appeal had passed, the DRC Decision was final and binding upon the Club, the FIFA DC's role was to enforce that decision, which, in the Sole Arbitrator's determination, it did properly.

9. CONCLUSION

- 9.1 The Sole Arbitrator determines to dismiss the Appellant's appeal and uphold and confirm the Appealed Decision.
- 9.2 The Sole Arbitrator determines that all other claims or prayers for relief are hereby dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by FC Spartak a.s on 10 April 2012 against the decision of FIFA Disciplinary Committee dated 9 March 2012 is dismissed.
2. The decision of the FIFA Disciplinary Committee dated 9 March 2012 is upheld and hereby confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.