



**Arbitration CAS 2012/A/3039 Trevor McGregor Steven v. Fédération Internationale de Football Association (FIFA), award of 29 August 2013**

Panel: Mr Chris Georghiades (Cyprus), President; Mr Bruce Buck (United Kingdom); Mr Lars Hilliger (Denmark)

*Football*

*Violation of the FIFA Regulations on players' agents*

*Burden of proof that the player's agent acted in violation of the FIFA Regulations*

*Definition of a player's agent according to the FIFA Regulations*

*Tipping off a third party and violation of the FIFA Regulations*

1. For any activity characterized as a player's agent activity, the burden is on FIFA to prove that the player's agent acted in violation of the FIFA Regulations.
2. According to the FIFA Regulations, a "players' agent" is "*a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations*". The sole fact that a player's agent tipped off a third person about the transfer of a player cannot by itself constitute a "normal agency work" according to the above-mentioned definition.
3. FIFA seems to accept that a licensed "Players' Agent" may pay a fee for receiving a tip from a third party. In this respect, a player's agent does not automatically violate the FIFA Regulations when paying (or deciding to pay) a fee (or a part of the fee) to a third party, if such party restricts himself to the introduction of the player and was not involved whether directly or indirectly in any activity which is to be considered or fall within the definition of "Players' Agent". It is irrelevant whether the fee was a small or a significant amount or whether or not a legally binding agreement was concluded as between the player's agent and a third person.

**I. THE PARTIES**

1. Mr. Trevor McGregor Steven (the "Appellant") is an officially licensed football "Players' Agent".
2. The Federation Internationale de Football Association (the "Respondent" or "FIFA") is the international governing body of football, with its registered office in Zurich, Switzerland.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established after due consideration of the Parties' written submissions and associated documents, and the evidence presented in the course of the proceedings. Additional facts will be set out, where relevant, in connection with the legal discussion which follows. While the Panel has considered all the factual allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the present award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 15 August 2011, The Football Association of England (the "FA") transmitted to FIFA a briefing document of its investigation regarding the transfer of the professional football player T. (the "Player") to the English football club of Middlesbrough FC (the "Club").
5. The FA submitted the briefing document to the Players' Status Department of FIFA for consideration under the Disciplinary Code pursuant to Article 32 of the FIFA Players' Agents Regulations 2008 (the "Regulations").
6. Based on the information collected by the FA, the latter expressed the view that there may have been breaches of the Regulations by the Appellant, the details of which were provided in the bundle of documents submitted. In summary, it would appear that there may have been breaches of the Regulations including, but not limited to Article 2.2 of the Regulations.
7. The FA requested, pursuant to Article 30.3 of the Regulations, that the Players' Status Committee submit the matter to the FIFA Disciplinary Committee for consideration.
8. The Secretariat to the FIFA Disciplinary Committee considered the FA briefing document and liaised with the FA. On 20 October 2011, the Secretariat to the FIFA Disciplinary Committee initiated a pre-investigation requesting the Club, the Appellant, the Player and the Player's former club (Gyori Eto) to provide clarifications concerning the matter.
9. As between 22 October and 3 November 2011, correspondence was exchanged as between the said parties.
10. On the 13 December 2011, disciplinary proceedings were initiated against the Appellant in respect of an alleged violation of Articles 23(2) and 3(1) of the Regulations for having paid to a certain Mr. Valja (a person who was not a licensed "Players' Agent") an amount of GBP 23.000 in connection with the transfer of the Player to the Club.
11. The Appellant was informed accordingly and was provided with the FA briefing document and was invited to submit his position to the FIFA Disciplinary Committee.
12. On the 5 January 2012, the Scottish Football Association provided FIFA with the Appellant's submission dated 3 January 2012.
13. On 11 January 2012, the Appellant was informed that the matter would be submitted to FIFA Disciplinary Committee to meet on the 7 February 2012.

14. On 7 February 2012, the FIFA Disciplinary Committee met and considered the matter whereupon it decided that the Appellant was guilty of failing to comply with Article 23(2) and Article 3(1) of the Regulations and imposed upon the Appellant a warning as per Article 10(a) of the FIFA Disciplinary Code and a fine of CHF10'000. The decision was notified to the Appellant on 9 March 2012.
15. On 12 March 2012, the Appellant lodged an appeal against the decision of the FIFA Disciplinary Committee.
16. On the 16 March 2012, the Appellant submitted his appeal brief and on the 5 July 2012, by way of a telephone conference, the FIFA Appeal Committee rejected the appeal with the decision notified to the Appellant on 10 July 2012 (the "Appeal Decision").
17. On the Appellant's request, filed on 16 July 2012, the grounds of the Appeal Decision were provided on 4 December 2012.
18. On 21 December 2012, the Appellant lodged an appeal with the Court of Arbitration for Sport (the "CAS") with respect the Appeal Decision.

### **III. PROCEEDINGS BEFORE COURT OF ARBITRATION FOR SPORT**

19. On the 27 December 2012, the CAS Court Office informed the Parties in writing of the receipt of the Appellant's Statement of Appeal filed on 21 December 2011 and made particular reference to the Appellant's request for the appointment of a sole arbitrator. It was however understood that, in the event the Respondent would object to such request, the Appellant agreed to a Panel composed of three arbitrators and nominated Mr. Bruce Buck of England, as arbitrator.
20. On 3 January 2012, FIFA responded objecting to the appointment of a sole arbitrator and requesting a panel of three arbitrators, nominating Mr. Lars Hilliger of Denmark, as arbitrator.
21. On 2 January 2012, the Appellant filed his Appeal Brief and supporting documents, requesting that the Appeal Decision be set aside. In summary, the Appellant's position is as follows:
  - The Appellant is fully aware of the provisions governing the transfer of players and has fully complied with these whilst he has provided an accurate and detailed explanation of his dealing in the matter, consequently there is no breach of Article 23(2) of the Regulations.
  - The Appellant, acting for the Club, carried out the transfer of the Player. Mr. Valja was not involved in the transfer negotiations. The Player was not represented by anyone in the negotiations; consequently, there is no breach of Article 3(1) of the Regulations and of Article 23(2) of the Regulations.

- The Appellant stated his arrangement with Mr. Valja that there was no contractual agreement whether in writing or orally and that on conclusion of the transfer he alone decided what would be a reasonable introduction fee.
  - There is no provision in the Regulations stipulating what is or is not an acceptable introduction/tip off fee. There is no provision stating that a licensed agent cannot pay an introduction/tip off fee. Introducing a player to a players' agent does not constitute an agency activity. Paying a tip off fee for such introduction does not by itself constitute a breach of the Regulations. Whether or not the introduction/tip off fee was generous as stated by FIFA is immaterial.
22. On 4 February 2013, following the request for extension sought by the Respondent which had been granted by the Deputy President of the CAS Appeals Arbitration Division, FIFA submitted its Answer.
23. FIFA's prayers for relief were as follows:
- (1) To reject the Appellants prayers for relief in their entirety
  - (2) To confirm the decision hereby appealed against
  - (3) To order the Appellant to bear all costs incurred.
24. On 8 April 2013, the CAS informed the Parties that the Panel for the present dispute was constituted as follows:
- Mr. Chris Georghiades - President
  - Mr. Bruce Buck – arbitrator
  - Mr. Lars Hilliger - arbitrator
25. On 4 July 2013, the CAS delivered the Order of Procedure to the Parties, setting out, among others, the composition and the seat of the Panel, the language of the proceedings and the law applicable to the merits of the dispute. The Order of Procedure was duly signed and returned by the Respondent on the 4 July 2013 and the Appellant on the 5 July 2013. The Parties also expressly confirmed that their right to be heard had been respected.

#### **IV. DISCUSSION**

##### **1 CAS Jurisdiction**

26. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes and it determines that *“appeals against final decisions passed by FIFA legal bodies and decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in*

*question*” and Article R47 of the Code of Sports-related Arbitration (the “CAS Code”). The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

27. It follows that CAS has jurisdiction to decide on the present dispute.

## **2 Law Applicable to the Merits**

28. Article R58 of the CAS Code provides the following:

*“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”.*

29. The Panel notes that Article 62(2) of the FIFA Statutes stipulates the following:

*“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law”.*

30. The Parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## **3 The Panel’s Findings as to the Merits**

31. This dispute arises by reason of the investigation of the FA and its referral to the FIFA Players’ Status Committee of a briefing document for consideration by the FIFA Disciplinary Committee.

32. The FA investigation was triggered by several tabloid newspapers in England which in their publications made reference to Mr. Valja as an agent of the Player. This caused the FA to institute an investigation into the transfer of the Player from Gyori Eto of Hungary to the Club.

33. The Appellant, a licensed Players’ Agent in Scotland, acted on behalf of the Club in the transaction.

34. The main issue is whether or not Mr. Valja actually did perform any activity which in legal terms can be characterized as a player’s agent activity in connection with the Player’s transfer from Gyori Eto to the Club or otherwise whether the Appellant allowed Mr. Valja, a person who was not a licensed “Players’ Agent”, to perform activities of a player’s agent.

35. The burden is on FIFA to prove that the Appellant acted in violation of the Regulations and in this respect the Panel makes reference to certain undisputed facts, these being:

- Mr. Valja was a friend of the Player; this is confirmed by the Player in his letter of 3 August 2011 to the FA. No evidence to the contrary was provided.

- Mr. Valja was the person who contacted the Appellant and suggested he take a look at certain videos of the Player as the latter was interested in moving to England.
  - Mr. Valja had no other role in the process that led to the Player signing for the Club. This is confirmed by the Chief Executive of the Club who clearly stated that he had no interaction with Mr. Valja.
  - The Appellant made his own contacts so as to establish whether football clubs in England might be interested in contracting with the Player. In these efforts, there is no evidence of any involvement of Mr. Valja.
  - At one of the meetings in Hungary where a multitude of protagonists were present, Mr. Valja was not in attendance. It is interesting to note that at the said meeting, a representative of the football agency International Football Manager Ltd was present; however, the FA causes to understate or otherwise dismiss their presence considering it as a “consultancy arrangement” with the selling club, and does not question their role in any depth.
  - The Player negotiated his contract and other personal arrangements directly with the Chief Executive of the Club.
  - The Appellant, only after the conclusion of the transfer agreement, determined that he would pay half of his fee to Mr. Valja as a tip off or introduction fee.
36. The FA stated that it believed the Appellant had made a payment to Mr. Valja “potentially acting for the Player” in breach of the requirements of the Regulations.
37. The Regulations are relatively straight forward and clear with regard the definition of “Players’ Agent”:
- “a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations”.*
38. If the Panel compares the “work” done by Mr. Valja (which, according to the evidence presented, only consisted of tipping off the Appellant about the Player) with what constitutes “normal agency work” according to the above-mentioned definition, the Panel finds it impossible to conclude that Mr. Valja actually did perform any activity which could be held to be contrary or in violation of the provisions of the Regulations and particularly the definition “Players’ Agent”. If Mr. Valja did not act as a “Players’ Agent” within the meaning of the Regulations, then the Appellant was not paying him for so doing.
39. FIFA appears to accept that a licensed “Players’ Agent” may pay a fee for receiving a tip from a third party. Based on the said acceptance, the Panel does not find that the Appellant breached the Regulations when paying (or deciding to pay) a fee (or a part of the fee) to Mr. Valja. The Panel is of the opinion that it is irrelevant whether the fee was a small or a significant amount

or whether or not a legally binding agreement was concluded as between the Appellant and Mr. Valja.

40. From the facts of the case, the Panel does not see that Mr. Valja performed any of the activities detailed in the definition of a “Players’ Agent” in which case he cannot be viewed as having acted as an unlicensed “Players’ Agent”.

41. FIFA in its Answer raises two additional points:

(i) FIFA is concerned with the magnitude of the payment saying that it was such that one must conclude that Mr. Valja was carrying on a “Players’ Agent” activities without being licensed. Once again it should be stressed that FIFA accepts that the Appellant could have paid Mr. Valja a tip off fee without breaching the Regulations; but it concludes that the magnitude of the amount paid in this case meant that it must have been something more than a tip off fee. The Panel notes that as a percentage of fee, the amount paid to Mr. Valja was significant as a percentage of the Appellant’s fee but it was not a significant amount generally.

As already mentioned in para 39 the Panel believes it is inappropriate and irrelevant for it to determine what is or is not an appropriate level of tip off fee.

(ii) FIFA concludes that there was a contract between the Appellant and Mr. Valja which therefore results in a violation of the Regulations. In this respect, FIFA makes reference to the Swiss Code of Obligations where it is stated that an oral contract is enforceable. The Panel accepts this, but it does not believe that this is in itself sufficient to show that all of the elements necessary to form a contract (oral or written) under Swiss law are present. The Panel does not need to reach a definitive view on this because it does not believe or accept that Mr. Valja engaged in activity which can be performed only by a licensed “Players’ Agent”. According to the facts presented, Mr. Valja restricted himself to the introduction of the Player and was not involved whether directly or indirectly in any activity which is to be considered or fall within the definition of “Players’ Agent”.

42. On the basis of the above and taking into due consideration all the evidence produced and all the arguments made, the Panel finds that the Appellant did not breach the provisions of Articles 23(2) and 3(1) of the Regulations and consequently the Appellants appeal shall be upheld.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The request for arbitration filed by Mr. Trevor McGregor Steven on 2 January, 2012 is upheld.
2. The Appeal Decision issued on the 5 July 2012 by the FIFA Appeal Committee is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.