



**Arbitration CAS 2013/A/3403, 3404 & 3405 SASP Stade Rennais FC v. Al Nasr FC, award of 12 June 2014**

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

*Football*

*Solidarity contribution*

*Right to appeal with CAS*

*Validity of internal arrangements concerning payment of solidarity contribution*

1. **The Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber do neither contain any rulings on the conditions to name someone an "intervening party" nor on the status and procedural rights of such "intervening party". Regardless of the question whether a party was rightly or wrongly named as intervening party in the DRC proceedings, that party has a right to appeal with CAS, if it was substantively adversely affected by the DRC decision.**
2. **The mechanism of the solidarity contributions is not compulsory as far as a mutual agreement between two parties does not circumvent the duty to pay the solidarity contributions to the entitled clubs.**

**I. PARTIES**

1. Stade Rennais Football Club ("Stade Rennais" or the "Appellant") is a French Association Football Club based in Rennes, currently competing in the First Division of the French Football League. It is a member of the Fédération Française de Football, which is affiliated to the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").
2. Al Nasr Sports Club ("Al Nasr" or "Respondent") is an Emirati football club which competes in the United Arab Emirates Etisalat Pro League (first division). It is a member of the United Arab Emirates Football Association ("UAEFA"), which is affiliated to FIFA.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions and evidence adduced. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While 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.
4. The award mainly concerns the interpretation and implementation of the solidarity contribution mechanism in terms of art. 21 and appendix 5 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP").

Article 21 FIFA RSTP has the following wording:

*"Solidarity Mechanism - if a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations".*

Article 2 annex 5 FIFA RSTP has the following wording:

*"1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.*

*2. It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.*

*3. If a link between the professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the association(s) of the country (or countries) where the professional was trained. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question.*

*4. The Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this annexe".*

5. The factual background of the case is undisputed and summarises as follows:
6. On 2 September 2010, Stade Rennais and Al Nasr entered into a transfer agreement concerning the player I. ("the Player"). The agreement stated that the Player is transferred from Stade Rennais to Al Nasr for a transfer fee in the amount of net EUR 7'000'000.00. With regard to the transfer fee due, the transfer agreement contained the following wording:

*“Article 3 Transfer Fee – Under this agreement, as the counter party to the departure of the PLAYER and his definitive transfer fee from THE STADE RENNAIS FOOTBALL CLUB, THE NEW CLUB undertakes to pay THE STADE RENNAIS FOOTBALL CLUB a fixed and total sum of (seven million) 7’000’000 Euros net of any taxes other fees, expenses etc.*

*All taxes and expenses, including those relating to the FIFA rules (5% solidarity contribution) will be borne by THE NEW CLUB, and will not be deducted from the above transfer fee.*

[...]”.

7. Before his engagement with Stade Rennais, the Player was playing for Atlético Club de Coléah (“Coléah“, a Guinean football club / until 2003), Gazelec FC Olympique Ajaccio (“Ajaccio“, a French football club / 2003-2005), UC Le Mans (a French Football Club / 2005-2007) and FC Dynamo Kyiv (“Dynamo“, an Ukrainian football club / 2007-2010) – all together referred to as “training clubs”.

## **B. Proceedings before the Dispute Resolution Chamber of the FIFA (“DRC”)**

8. On 19 January 2011, Dynamo lodged a claim against Al Nasr in front of FIFA’s Dispute Resolution Chamber (“DRC”), claiming its proportion of the solidarity contributions in connection with the transfer of the Player from Stade Rennais to Al Nasr. On 27 January 2011, Ajaccio lodged a claim against Al Nasr, claiming its proportion of the solidarity contributions and on 21 May 2011, Coléah did the same.
9. On 29 April 2012, Al Nasr sent a letter to FIFA, declaring that it would pay the solidarity contributions due to the Player’s training clubs and claiming the reimbursement of the according sums by Stade Rennais to Al Nasr. Al Nasr hereby stated to have paid the transfer sum completely to Stade Rennais without deducting the 5% solidarity contribution owed to the Player’s training clubs as provided for in the solidarity mechanism outlined in art. 21 FIFA RSTP.
10. On 6 July 2012, the DRC sent a letter to Al Nasr, the training clubs and to Stade Rennais, asking Al Nasr to pay the solidarity contributions due and invited Stade Rennais to reimburse the corresponding amount to Al Nasr. On 23 July 2012, Stade Rennais sent its response, indicating that it refused to reimburse the solidarity contributions with regard to the clear ruling in the transfer agreement between Stade Rennais and Al Nasr (*“All taxes and expenses, including those relating to the FIFA rules (5% solidarity contribution) will be borne by The New Club, and will not be deducted from the above transfer fee”*).
11. In its decisions in these three cases, all dated 15 March 2013, the DRC introduced Stade Rennais as “intervening party” and decided in three separate decisions that Al Nasr had to pay EUR 61’915.00 to Ajaccio, EUR 35’000.00 to Dynamo and EUR 87’500.00 to Coléah within 30 days. Furthermore, the DRC decided in all three cases that Stade Rennais had to reimburse the corresponding amounts to Al Nasr within 30 days (paragraphs 7, 8 and 9 of each DRC decision).

12. On 6 November 2013, the three written decisions (“DRC decisions”) were issued to the parties. In their merits, the DRC mainly stated that the solidarity mechanism lined out in Article 21 of the FIFA RSTP and its Annex 5 is considered compulsory and therefore cannot be set aside by a transfer agreement. Therefore, Stade Rennais shall reimburse the corresponding amounts to Al Nasr.

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

13. On 27 November 2013, the Appellant filed three statement of appeal against each of the DRC decisions, namely against Al Nasr, Dynamo, Ajaccio and Coléah, with the Court of Arbitration for Sport (“CAS”) in accordance with Article R48 of the Code of Sports-related Arbitration Rules (the “Code”). On 3 December 2013, the President of the CAS referred the three cases to the same panel.
14. On 11 December 2013, the Appellant submitted its appeal brief in French and on 17 December 2013 in an English translation. The Appellant (referring to itself as SRFC) requested for relief as follows:

Principally:

- (i) *To set aside partially the three decisions of the FIFA Dispute Resolution Chamber, dated 15 March 2013, in that they decided SRFC had to be considered as an intervening party;*
- (ii) *and, consequently, to rule that the contested decisions are not legally binding on SRFC.*

Alternatively to rule that:

- (i) *the three aforementioned decisions ordered SRFC to reimburse Al Nasr for the sums of EUR 87’500.00, EUR 61’915.00 and EUR 35’000.00, following the respective claims of Coléah, Ajaccio and Dynamo as former training clubs, are to be cancelled for this part;*
- (ii) *in all circumstances, Al Nasr is the only one liable for the payment of the solidarity contribution to the former training clubs, without being entitled to claim back any refund from SRFC.*

As a further alternative:

*In the event that the three decisions issued by the Dispute Resolution Chamber of FIFA on 15 March 2013 would be confirmed, to decide that the interests owed on the sums claimed for reimbursement begin to run within a period to be fixed as of the notification of the CAS decision to SRFC.*

As a complementary alternative of the above, SRFC is asking the arbitration panel:

- (i) *to order Al Nasr to pay all the costs of arbitration;*
- (ii) *to order Al Nasr to pay EUR 10’000.00 to SRFC to cover its legal expenses”.*

15. On 11 December 2013, the DRC informed CAS that FIFA renounces its right to request its possible intervention in the present arbitration proceeding.
16. With letter dated 30 December 2013, the Respondent stated the following: “[...] *since the transfer agreement which was signed between Al Nasr FC and SASP Stade Rennais FC provides that the solidarity contribution which are owed to the training clubs of the player shall not be deducted from the transfer fees, we, hereby withdraw our demands to reimburse the amounts of the solidarity contribution from Stade Rennais FC*”. Furthermore, the Respondent filed a letter dated 30 December 2013 sent to Stade Rennais, declaring that Al Nasr is withdrawing its demands to reimburse the solidarity contributions and that it will not participate in further CAS-proceedings.
17. Taking the statement of the Respondent into account, the Managing Counsel & Head of Arbitration to the CAS noted with letter dated 30 December 2013 that the Respondent will not participate in the proceedings and invited Stade Rennais to let the CAS know whether it will maintain its appeals with CAS.
18. After the Appellant stated with letter dated 31 December 2013 that it cannot withdraw its appeals without signing a bilateral agreement with Al Nasr regarding the DRC decisions, the case was suspended with notification to the parties dated 31 December 2013 in order to give the parties time to solve the case by a settlement agreement or withdrawal of the claim by the Appellant.
19. On 22 January 2014, Al Nasr informed CAS again that it withdraws its financial demands to reimburse the corresponding amounts of the solidarity contributions from the Appellant and that it will not participate in the proceedings.
20. On 3 February 2014, the Appellant informed CAS that Al Nasr did not respond to its settlement proposal and therefore the Appellant was not in a position to withdraw its appeal against the DRC decisions. Namely, the Appellant declared to maintain its appeal against Al Nasr but to withdraw the claims with regard to Dynamo, Ajaccio and Coléah. Furthermore, the Appellant requested that the case shall be decided by a Sole Arbitrator.
21. On 4 February 2014, the parties were informed that Dynamo, Ajaccio and Coléah shall not be considered as parties anymore and Al Nasr shall be the sole Respondent.
22. On 12 February 2014, the parties were informed that the President of the CAS Appeals Arbitration Division had decided that the case at hand shall be submitted to a sole arbitrator.
23. On 27 February 2014, the Respondent filed a statement, mainly confirming that it withdraws its demands from Stade Rennais and that Stade Rennais should have provided the DRC with the aforementioned transfer agreement. The Respondent further claimed that therefore it was the fault of Stade Rennais that the DRC issued the appealed decisions.
24. On 5 March 2014, the Appellant provided CAS with several letters sent to Al Nasr in order to reach a settlement agreement and stated that Al Nasr failed to end the current proceedings

before CAS. Furthermore, the Appellant stated that the transfer agreement was already submitted before the DRC and that the DRC decisions clearly refer to it.

25. On 11 March 2014, the parties were informed that Dr. Marco Balmelli was appointed as Sole Arbitrator.
26. On 27 March 2014, the parties were informed that the Sole Arbitrator had decided not to hold a hearing in the present case. The Order of Procedure was signed by the parties on 31 March 2014 (Appellant) and 15 April 2014 (Respondent). Furthermore, the Respondent requested that all arbitration costs and legal fees shall be borne by the Appellant.

#### **IV. ADMISSIBILITY**

27. Article R49 of the Code of Sports-related Arbitration (the “Code”) provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

28. The written DRC decisions were rendered on 6 November 2013. The Appeals were filed on 26 November 2013. Therefore, the Appeals were submitted in a timely manner.

#### **V. JURISDICTION**

29. Article R47 of 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”.*

30. Jurisdiction before the CAS is established under Regulation 66 (1) and 67 (1) of the FIFA Statutes. Moreover, the parties have accepted CAS jurisdiction by signing the Order of Procedure. Therefore, CAS has jurisdiction over the present cases.

#### **VI. MERITS**

31. Regarding the Appellant’s requests for relief lined out under “principally”, the Sole Arbitrator notes that the DRC named Stade Rennais as “intervening party” in its decisions. With regard to the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (“DRC Rules”), the Sole Arbitrator notes that the DRC Rules do neither contain any rulings on the conditions to name someone an “intervening party” nor on the status and procedural rights of such “intervening party”. However, regarding the outcome of the case

at hand hereafter, the Sole Arbitrator concludes that the question whether the DRC was allowed to introduce Stade Rennais as “intervening party” can be left open.

32. Considering the Appellant’s right to appeal with CAS, the Sole Arbitrator notes that Stade Rennais was substantively adversely affected by the DRC decisions and therefore is entitled to appeal to CAS, regardless the question, whether it was named as intervening party in the DRC proceedings correctly.
33. As to the request for relief “alternatively”, the Sole Arbitrator notes that the Respondent has accepted the prayers for relief stated by the Appellant. Namely, Al Nasr acknowledged that the transfer agreement between Stade Rennais and Al Nasr clearly states that all fees, including the solidarity contributions, have to be paid by Al Nasr and shall not be deducted from the transfer fee. With regard to the DRC decisions, the Sole Arbitrator further notes that CAS jurisprudence exists where it is mentioned that the mechanism of the solidarity contributions is not compulsory as far as a mutual agreement between two parties does not circumvent the duty to pay the solidarity contributions to the entitled clubs. Since Al Nasr has confirmed its duty to pay the solidarity contributions to the training clubs, the Sole Arbitrator considers that the mechanism of solidarity contribution was not circumvented by the mutual transfer agreement between the parties. Hence, the Sole Arbitrator considers it inaccurate to overrule the bilateral transfer agreement and the acknowledgement of the Appellant’s prayers for relief (alternatively) by the Respondent in the case at hand.
34. The Sole Arbitrator therefore concludes that the three appealed DRC decisions dated 15 March 2013, which ordered Stade Rennais to reimburse Al Nasr for the sums of EUR 87’500.00, EUR 61’915.00 and EUR 35’000.00, following the respective claims of Coléah, Ajaccio and Dynamo as former training clubs, are set aside for this part; namely paragraph 7, 8 and 9 of each decision.
35. Considering this conclusion, the Sole Arbitrator notes that the Appellant’s “alternative” request for relief to rule that in all circumstances, Al Nasr is the only one liable for the payment of the solidarity contributions to the former training clubs, without being entitled to claim back any refund from Stade Rennais, is already covered by the ruling in paragraph 34 aforementioned. Upon approval of the request as set out in paragraph 34, the judgement of the “further alternative” request for relief becomes devoid of propose.

## **ON THESE GROUNDS**

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

1. The appeals filed by Stade Rennais Football Club against the Decisions of the Dispute Resolution Chamber of FIFA (all three cases joined under ref. no. 11-00250) are upheld.
2. Paragraphs 7, 8 and 9 of the Decisions of the Dispute Resolution Chamber of FIFA (all three cases joined under ref. no. 11-00250) dated 15 March 2013 are set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.