Arbitration CAS 2014/A/3807 Qingdao Jonoon FC v. Gustavo Franchin Schiavolin, award of 10 September 2015

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football
Termination of a contract of employment without just cause
Content and rationale of Article 19 of the FIFA Rules on notifications
Filing of the statement of appeal without reservations on the deficiency of notification of the appealed decision

1. **Article 19 of the FIFA Rules Governing the Procedures of the PSC and the DRC provides *inter alia* that *"decisions shall be sent to the parties directly, with a copy also sent to the respective associations"* and that *"Notification is deemed to be complete at the moment the decision is received by the party, at least by fax. Notification of a representative shall be regarded as notification of the party"*. The rationale behind Article 19 of the FIFA Rules is to be able to determine without any doubt the exact date of notification of a decision, triggering the initiation of the time limit to lodge an appeal. To comply with this, FIFA sends a decision to the parties directly, which is the general rule provided in Article 19(1) of the FIFA Rules.**

2. **Even if an appealed decision has not been notified to a party in accordance with Article 19 of the FIFA Rules, this deficiency can be cured by such party's acknowledgement of receipt of the appealed decision and its filing of the statement of appeal without any reservation regarding the incorrect notification of the appealed decision. Determining otherwise would constitute a violation of the legal principle of *venire contra factum proprium*, providing that where the conduct of one party has led to the legitimate expectations on the part of the second party, the first party is estopped from changing its course of action to the detriment of the second party.**

I. PARTIES

1. Qingdao Jonoon Football Club (hereinafter: the "Appellant" or the "Club") is a professional football club with its registered office in Qingdao, China. The Club is registered with the Chinese Football Association (hereinafter: the "CFA"), which in turn is a member of the Fédération Internationale de Football Association (hereinafter: "FIFA").

2. Mr Gustavo Franchin Schiavolin (hereinafter: the "Respondent" or the "Player") is a professional football player of Brazilian nationality.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. On an unspecified date, the Club and the Player entered into an employment contract (hereinafter: the "Employment Contract"), valid as from 1 March 2013 until 30 November 2014.

5. The Employment Contract contains, *inter alia*, the following relevant terms:

> *"ARTICLE 7 Salary and Bonuses*
>
> *(…)*
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> *2. After signing of this contract, when [the Player] reach [the Club] in five days, [the Club] must pay [the Player] one-time payment sign fee of US$ 100,000. And [the Club] must pay [the Player] US $ 50,000 before 30 June 2013.*
> *2013 season [the Club] shall pay [the Player] 30,000 US$ net as salary every month until 30.12.2013 (10 months);*
> *2014 season [the Club] shall pay [the Player] 43,630 US$ net as salary every month until 30.11.2014 (11 months);*
>
> *3. When [the Player] fails to reach the match times, playing time or ratio required by [the Club], the Club has the right to duly subtract the above salary and the subtract methods shall be specified in the Supplementary Agreement. Subtract the approach: reducing 10% playing time in 70% of full game time (…), 20% of the monthly wages will be subtracted, thus decreasing, but other than the team doctor confirmed the injury and except for the tactical arrangements of coaching staff. And player's training and life will be under of management by "foreign aid Qingdao Jonoon Football Club Regulations".*
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> *ARTICLE 11 Termination of the Contract*
>
> *4. If [the Player]'s professional ability cannot be accepted by [the Club]'s request in the season 2013 (appearance rate less than 80%), [the Club] can cancel the contract with [the Player] at the end of the season 2013, and [the Club] do not need to make any compensation".*

6. It is undisputed that the Club paid the Player the signing fee of USD 100,000 and his salaries until and including September 2013.

7. On 10 and 31 July 2013, the Player sent to the Club two default letters in which the Player requested the Club to comply with its payment obligations by paying him the outstanding remuneration of USD 50,000 due on 30 June 2013, which letters remained unanswered.

B. Proceedings before the Dispute Resolution Chamber of FIFA

8. On 11 December 2013, since the amount of USD 50,000 due on 30 June 2013 and the Player's salaries of October and November 2013 allegedly remained unpaid, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (hereinafter: the "FIFA DRC") against the Club requesting payment of USD 589,960. In particular, the Player claimed:

- USD 50,000, corresponding to the payment due on 30 June 2013, plus interest of 5% *p.a.* as from the due date;
- USD 66,000, corresponding to the outstanding salaries of October and November 2013, plus interest of 5% *p.a.* as from the due date;
- USD 479,960, *"as compensation for breach of contract (salary of December 2013 and the season 2014)",* plus interest of 5% *p.a.* as from the due date.

9. On 7 January 2014, the Club submitted a defence with the FIFA DRC rejecting the claim lodged by the Player. The Club alleged that it had not only the right to subtract the salaries pursuant to Article 7.3 of the Employment Contract, but also to terminate the Employment Contract pursuant to Article 11.4 of the Employment Contract. The Club further argued that it was willing to pay the amount of USD 50,000, but the Player refused to accept the payment.

10. On 28 March 2014, the FIFA DRC rendered its decision (hereinafter: the "Appealed Decision") with, *inter alia*, the following operative part:

> *"1. The claim of the* [Player] *is partially accepted.*
>
> *2. The* [Club] *has to pay to the* [Player], *within 30 days as from the notification of this decision, outstanding remuneration in the amount of USD 110,000 plus 5% interest until the date of effective payment as follows:*
>
> *a. 5% p.a. as of 30 June 2013 on the amount of USD 50,000;*
> *b. 5% p.a. as of 1 November 2013 on the amount of USD 30,000;*
> *c. 5% p.a. as of 1 December 2013 on the amount of USD 30,000.*
>
> *3. The* [Club] *has to pay to the* [Player]*, within 30 days as from the notification of this decision, compensation for breach of contract in the amount of USD 283,595 plus 5% interest p.a. on said amount as from 11 December 2013 until the date of effective payment.*
>
> *(…)*

5. Any further claim lodged by the [Player] *is rejected.*

(…)".

11. On 8 October 2014, FIFA communicated the grounds of the Appealed Decision to the Player.

12. Also on 8 October 2014, FIFA communicated the grounds of the Appealed Decision to the CFA, whereby the CFA was informed as follows: *"as we are not in possession of a properly working fax number for the* [Club], *to immediately forward the grounds of this decision to the* [Club] *and to ensure that the date of notification to the* [Club] *can be traced"*. Furthermore FIFA not only requested the CFA to provide it with *"a copy of the relevant notification document for our file",* but also indicated that *"should we not receive any reaction from the* [CFA] *within the next four days, it will be considered that the grounds of the relevant decision have been communicated properly to the* [Club], *within the said timeframe"*. FIFA's request remained unanswered.

13. The grounds of the Appealed Decision determine, *inter alia*, the following:

- The FIFA DRC started its analysis by determining that Articles 7.3 and 11.4 of the Employment Contract are *"unilateral and to the benefit of the [Club] only"*. Such potestative clauses, that *"contain obligations which fulfilment are conditional upon an event that one party entirely controls, cannot be considered since they generally limit the rights of the other contractual party in an excessive manner and lead to an unjustified disadvantage of the latter towards the other"*. Therefore, the FIFA DRC *"agreed that arts. 7.3 and 11.4 of the contract cannot be accepted and thus, shall not have any effect"*.

- In continuation, *"the Chamber noted that the* [Player] *sent to the* [Club] *two default letters dated 10 and 31 July 2013 in which the* [Player] *requested the* [Club] *to pay him the outstanding remuneration due on 30 June 2013, which remained unanswered"*.

- As such, *"the Chamber decided that it could be established that the* [Club] *had seriously neglected its contractual obligations towards the* [Player] *in a continuous and constant manner, i.e. the* [Club] *had failed to remunerate the* [Player] *for a substantial period of time and that, on 11 December 2013, by submitting his claim to FIFA, the* [Player] *terminated the contract with just cause"*.

- Consequently and referring to the general legal principle of *pacta sunt servanda,* the FIFA DRC *"decided that the* [Club] *is liable to pay to the* [Player] *the remuneration that was outstanding at the time of the termination, i.e. the amount of USD 110,000 corresponding to the payment due on 30 June 2013 in the amount of USD 50,000 and the salaries of October and November in the amount of USD 60,000"*.

- Finally, the FIFA DRC, after taking into consideration Article 17(1) of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations") and the fact that the Player had not concluded any employment contract with another club after the termination of the Employment Contract, *"decided that the* [Club] *must pay the amount of USD 283,595 to the* [Player], *which is*

considered by the Chamber to be reasonable and justified amount as compensation for breach of contract".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 30 October 2014, the Club filed a Statement of Appeal dated 29 October 2014 with the Court of Arbitration for Sport (hereinafter: the "CAS") in accordance with Article R47 and R48 of the CAS Code of Sports-related Arbitration (hereinafter: the "CAS Code"). In this submission, the Club requested the CAS Court Office to assign the arbitration to a Sole Arbitrator.

15. On 10 November 2014, the CAS Court Office invited the Player to inform the CAS Court Office whether he agreed to the appointment of a Sole Arbitrator and that in the absence of an answer it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide.

16. On 14 November 2014, the Club requested *"an extension of time pursuant to Rule 32"* to file its Appeal Brief.

17. On 18 November 2014, the CAS Court Office informed the parties that *"in the absence of the appeal brief's filing within the time limit provided by article R51 of the Code, the President of the CAS Appeals Arbitration Division, or his Deputy, will render a Termination Order in due course".*

18. On 20 November 2014, the Player requested the CAS Court Office to assign the arbitration to a panel of three arbitrators.

19. On 24 November 2014, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

20. On 25 November 2014, the Club objected to the CAS Court Office's letter dated 18 November 2014, in which the Termination Order was announced.

21. On 27 November 2014, the CAS Court Office informed the parties to provisionally extend the time limit for filing the Appeal Brief by the Club, because *"[i]n the absence of clarity with regard to the exact date of effective notification of the appealed decision to the* [Club] *initiating the start of the time limit for filing the statement of appeal and, subsequently, the appeal brief, the CAS can neither terminate these proceedings nor confirm that the respective time limits have been respected. The announcement of a Termination Order in the CAS Court Office's letter of 18 November is, thus, to be disregarded under the before-mentioned circumstances. (…) It will be for the Panel, once constituted, to determine the exact date of notification of the appealed decision and the start and end of the time limits for filing the statement of appeal and the appeal brief".*

22. On 1 December 2014, the Player objected against the provisional extension of the Club's time limit for filing its appeal brief.

23. On 3 December 2014, the CAS Court Office – following an identical request from FIFA on 8 October 2014 – asked the CFA to provide it with a copy of proof of delivery of the Appealed Decision to the Club. Both requests remained unanswered.

24. On 5 December 2014, the CAS Court Office suspended the Club's time limit for filing the Appeal Brief after having received a further request for extension.

25. On 8 December 2014, the Club filed a *legal brief (…) pursuant to Rule 51 of the rules of the Court of Arbitration for Sport"*. This document contained a statement of facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

> *"The Decision should be set aside insofar as it relates to the US$283,595 payment plus interest for compensation to the player for the loss of the 2014 season for the following reasons:-*
>
> *i) QJFC was not in breach of its obligation to make payments to the player since it was attempting to make payments of US$50,000 and was entitled to apply the deductions under the contract in respect of the $60,000. To the extent that it is relevant QJFC argues that FIFA was wrong to conclude that the QJFC was not entitled to rely on the terms of the contract that link the Respondent Player's remuneration to the amount of playing time.*
> *ii) Irrespective of CAS' view on the first point, the Tribunal was wrong to conclude that the Respondent Player was entitled to compensation for the loss of the 2014 season because on the correct interpretation of the contract the QJFC was not obliged to continue with the Respondent Player's employment into the 2014 season and would not do so because the Respondent Player failed to achieve the required playing time.*
> *iii) The Tribunal was wrong to ignore the provisions of Article 11(4) of the contract on the ground that it was "unilateral" since that obligation represented part of a package of rights and obligations that each of the parties had or owed to the other. The Tribunal should have interpreted the contract as written and applied the terms because that was the agreement that the parties reached.*
> *iv) The Tribunal was wrong to decide that QJFC had decided not to use the Respondent/Player "to impede him" since there was no evidence to support such a finding".*

26. On 9 December 2014, the Player filed objections against certain procedural steps.

27. On 22 January 2015, the CAS Court Office, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the Panel appointed to decide the present matter was constituted of:

- Mr Manfred Nan, Attorney-at-law in Arnhem, The Netherlands, as Sole Arbitrator.

28. On 5 February 2015, in accordance with Article R55 of the CAS Code, the Player filed its Answer, in which he submitted to have no objection to the appointment of a Sole Arbitrator, and whereby he requested CAS to decide the following:

> *"The above did not file the Player requests the Court of Arbitration for Sport to, preliminarily, not admit the late Appeal, dismissing it or deeming it to have been withdrawn (R5* [sic]*, CAS Code).*

In the merit, the Player requests the Court of Arbitration for Sport to maintain unaltered the decision of the Dispute Resolution Chamber of FIFA, not accepting and dismissing the Appeal filed by the Appellant Qingdao Jonoon Football Club.

Finally, the Player requests the Court of Arbitration for Sport to determine the Respondent to pay procedural costs and Player's attorney at law fees in the amount corresponding to 15% (fifteen percent) of the financial benefit stated on the appealed decision".

29. On 9 February 2015, the Player informed the CAS Court Office that he did not deem it necessary for a hearing to be held.

30. On 16 February 2015, the Club informed the CAS Court Office that it considered it necessary to hold a hearing.

31. On 25 February 2015, the CAS Court Office informed the parties that on 25 November 2014, the Club had sent an "appeal brief" dated 8 November 2014 by courier to CAS, which document was received by CAS on 3 December 2014, but that it was not notified to the parties because the Club advised the CAS Counsel by telephone that it had been in the process of procuring outside counsel who was to file an appeal brief and that, therefore, the appeal brief that it had already sent was to be disregarded.

32. On 25 February 2015, and on behalf of the Sole Arbitrator, the parties were requested to express their position on how the Club's respective briefs of 25 November 2014 and 8 December 2014 were to be interpreted in light of the prerequisites of Articles R51 and R56 of the CAS Code.

33. On 2 March 2015, the Player filed his comments on this issue.

34. On 3 March 2015, the Club filed its comments on this issue.

35. On 9 March 2015, the parties were informed that the Sole Arbitrator deemed it appropriate that the contested matter of the admissibility of the appeal was addressed and decided as a preliminary issue. Therefore, the parties were invited to file any comment or objection to the intended bifurcation of the proceedings and to express whether they would prefer that a hearing on jurisdiction and admissibility of the appeal was held.

36. On 9 March 2015, the Player filed his comments, accepting the proposed bifurcation of the proceedings and submitting *"that there is no need for a hearing to decide the preliminary issue".*

37. On 12 March 2015, the Club filed its comments, submitting that the *"issues surrounding the matters of jurisdiction and admissibility would be best dealt with at an oral hearing where arguments can be fully developed by way of a dialogue with the tribunal. If there is to be an oral hearing we think it sensible for that hearing to deal with both the jurisdiction and admissibility point together with the underlying substance of the appeal".*

38. On 2 April 2015, the parties were informed that the Sole Arbitrator decided to hold a hearing limited to jurisdiction and the admissibility of the appeal.

39. On 30 April 2015, the Club provided the CAS Court Office with copies of jurisprudence on which the Club intended to rely.

40. On 5 and 8 May 2015 respectively, the Player and the Club returned duly signed copies of the Order of Procedure with the CAS Court Office.

41. On 12 May 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed to have no objection as to the constitution and composition of the Panel.

42. In addition to the Sole Arbitrator and Mr Christopher Singer, Counsel to the CAS, the following persons attended the hearing:

    1) For the Club: Mr James Fairbairn, Counsel;

    2) For the Player: Mr Henrique Richter Caron, Counsel.

43. No witnesses or experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

44. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

45. The Sole Arbitrator confirms that he carefully studied and took into account all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

46. The submissions of the Club, in essence, on the issue of admissibility of the appeal may be summarized as follows:

- The Club submits that there has not been any formal notification of the Appealed Decision as prescribed by the FIFA Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber (edition 2014) (hereinafter the "FIFA Rules") *"and therefore the time for completing the appeal brief* [sic] *has not yet started to run"*. FIFA only provided a copy of the Appealed Decision to the CFA with a request that it should be passed on, and thus failed to send the Appealed Decision directly to the Club, which is mandatory pursuant to article 19(1) of the FIFA Rules. As such, the appeal is admissible.

47. The submissions of the Player, in essence, on the admissibility of the appeal may be summarized as follows:

- The Player points out that the Club failed to file its Appeal Brief *"on time (R51). Its request for extension of the deadline was made after the expiration of the deadline (R32.2). Therefore, the Appeal shall be deemed to have been withdrawn or be dismissed"*.

V. JURISDICTION

48. The jurisdiction of CAS, which is not disputed, derives from Article 67 (1) of the FIFA Statutes, as it determines that *"[a]ppeals 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"* and Article R47 of the CAS Code. The jurisdiction of CAS is not contested by the Player and further confirmed by the Order of Procedure duly signed by the parties.

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

VI. ADMISSIBILITY

50. The Player points out that the Club confirmed receipt of the Appealed Decision on 9 October 2014 and never contested the official nature of the received document. As such, the Player maintains that the time limit to file the Appeal Brief started to run on 9 October 2014 and ended on 9 November 2014. The Player argues that although the Club filed its Statement of Appeal in time on 30 October 2014, it failed to comply with the time limit set in Article R51 of the CAS Code for filing its Appeal Brief. Therefore, the Player is of the view that the appeal is inadmissible.

51. The Club, while admitting that a copy of the Appealed Decision was received by fax on 9 October 2015, emphasizes that the appeal is admissible and submits that FIFA failed to follow all procedural steps. FIFA especially did not comply with the clear provisions laid down in Article 67(1) of the FIFA Statutes in conjunction with Articles 14, 15, 16 and 19 of the FIFA Rules. The Club asserts that FIFA did not attempt to send the grounds of the Appealed Decision to the Club directly, but only provided a copy of the grounds of the Appealed Decision to the CFA with a request that it should be passed on to its affiliate club. The Club argues that FIFA thus failed to send the grounds of the Appealed Decision directly to the Club, which is mandatory pursuant to Article 19(1) of the FIFA Rules, arguing that this provision is the "key article" and explicitly states that decisions "shall" be sent to the parties directly instead of using the word "may".

52. The Club asserts that pursuant to Article 19 of the FIFA Rules, the only legally binding manner to notify the grounds of the Appealed Decision is by sending it directly to the Club by fax, registered letter or courier, which was not done by FIFA. The Club maintains that as the FIFA Rules *"do not make provision for any other notification process (…) there is no formal*

notification of the Decision and therefore the time for completing the appeal brief has not yet started to run".

53. The Club refers to CAS case law and to jurisprudence of the Swiss Federal Tribunal in supporting its view that FIFA did not act in strict compliance with the procedural rules. The Club emphasizes that time limits have to be calculated with precision and that FIFA made a fundamental failure by not notifying the grounds of the Appealed Decision to the Club directly.

54. The Club further argues that FIFA violated public policy standards by not attempting to send the grounds of the Appealed Decision directly to the Club. As such, the Club was denied to exercise its right to appeal and access to justice, which is an important right and is not to be taken away lightly.

55. As already mentioned *supra*, the Sole Arbitrator notes that on 8 October 2014, FIFA communicated the grounds of the Appealed Decision by fax to the CFA requesting the CFA the following: *"as we are not in possession of a properly working fax number for the* [Club], *to immediately forward the grounds of this decision to the* [Club] *and to ensure that the date of notification to the* [Club] *can be traced"*. Furthermore FIFA not only requested the CFA to provide it with *"a copy of the relevant notification document for our file",* but also indicated that *"should we not receive any reaction from the* [CFA] *within the next four days, it will be considered that the grounds of the relevant decision have been communicated properly to the* [Club], *within the said timeframe"*. FIFA's request remained unanswered and the CFA did not reply to FIFA.

56. The Sole Arbitrator observes that Article 19 of the FIFA Rules reads as follows:

> *"**Notification of decisions***
>
> *1. Decisions shall be sent to the parties directly, with a copy also sent to the respective associations.*
>
> *2. Notification is deemed to be complete at the moment the decision is received by the party, at least by fax. Notification of a representative shall be regarded as notification of the party.*
>
> *3. Decisions communicated by fax shall be legally binding. Alternatively, decisions may be communicated by registered letter or courier, which shall also be legally binding".*

57. It is the understanding of the Sole Arbitrator that the ratio behind Article 19 of the FIFA Rules is to be able to determine without any doubt the exact date of notification of a decision, triggering the initiation of the time limit to lodge an appeal. To comply with this ratio, FIFA, in principle, shall send a decision to the parties directly, which is the general rule provided in Article 19(1) of the FIFA Rules.

58. Although it is not in dispute that the grounds of the Appealed Decision were not sent to the Club directly, the Club confirmed on three separate occasions that it received the grounds of the Appealed Decision on 9 October 2014:

1) Firstly, the Club confirmed in its Statement of Appeal that it received the grounds of the Appealed Decision on 9 October 2014, stating the following:

*"**On October 9, 2014, the** **[Club]** **received the grounds of the decision passed by the FIFA Dispute Resolution Chamber on 28 March 2014** (…) regarding to the employment-related dispute arisen between the* [Club] *and Brazilian* [Player]. *Since we don't accept partial articles of the aforementioned decision, in accordance to art. 67 par. 1 of the FIFA Statues* [sic]*, we decide to appeal before the* [CAS] *against decision"* [emphasis added by Sole Arbitrator].

2) Secondly, the Club confirmed the acceptance of the grounds of the Appealed Decision via the CFA by fax on 9 October 2014 in its letter dated 14 November 2014, in which the Club states as follows – as relevant:

"(…) Following the decision of FIFA, which was sent to the [CFA] *on 8 October 2014 (**received by fax on 9 October 2014**), our client appreciated it had within 21 days to make a statement of appeal. This was done in time"* [emphasis added by Sole Arbitrator].

3) Thirdly, the Club confirmed at the hearing that it received a copy of the grounds of the Appealed Decision – probably via the CFA – by fax on 9 October 2014.

59. The Sole Arbitrator observes that these confirmations are in accordance with the fact that the Club, together with its Statement of Appeal, filed FIFA's letter to the parties and the CFA dated 8 October 2014 with the grounds of the Appealed Decision, including the *"note relating to the motivated decision (legal remedy)"* and the *"Directions with respect to the appeals procedure before CAS"*.

60. Furthermore, these confirmations of the Club are in accordance with the fact that FIFA did not receive any answer from the CFA regarding its letter dated 8 October 2014, by which FIFA indicated that *"should we not receive any reaction from the* [CFA] *within the next four days, it will be considered that the grounds of the relevant decision have been communicated properly to the* [Club], *within the said timeframe"*.

61. Finally, this is also in accordance with the fact that the Club filed its Statement of Appeal with CAS on 30 October 2014 (dated 29 October 2014), which was the final day of the 21-day time limit to appeal, if it were assumed that 9 October 2014 was the effective date of notification of the Appealed Decision setting the time limit to appeal in motion.

62. In view of the above considerations, the Sole Arbitrator has no hesitation to conclude that the grounds of the Appealed Decision were received by the Club on 9 October 2014.

63. The Sole Arbitrator finds that the Club's acknowledgement to have received the Appealed Decision on 9 October 2014 and the timely filing of the Statement of Appeal cannot be reconciled with the Club's argument that the Appealed Decision was not properly notified and that the time limit to appeal consequently did not start to run.

64. As such, even if it were decided that the Appealed Decision was not notified to the Club in accordance with Article 19 of the FIFA Rules, this deficiency would be cured by the Club's acknowledgement of receipt of the Appealed Decision and the Club's filing of the Statement of Appeal without any reservation regarding the incorrect notification of the Appealed Decision. Determining otherwise would constitute a violation of the legal principle of *venire contra factum proprium*, providing that where the conduct of one party has led to the legitimate expectations on the part of the second party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 98/200).

65. The Sole Arbitrator took note of CAS jurisprudence determining that *"the Panel acknowledges the advantages of the current procedure, given the practical difficulties involved in the service of proceedings and the notification of parties based in certain jurisdictions, so that it is more practical, effective and certain for these procedures to be effected via the national federations or associations, in accordance with the resources at their disposal and the current practice of each jurisdiction"* (CAS 2012/A/2915, §132). If it is established that the national federation or association did not forward the decision to its affiliate club (as in CAS 2012/A/2915), indeed, this would constitute a violation of the right to be heard. In the present case, it is however not in doubt that the Appealed Decision was forwarded to the Club by the CFA.

66. The Club's reference to CAS 2005/A/811 is of no avail to it. Although the arbitral tribunal concluded in such proceedings that the decision was not notified on 17 October 2014 since it was not proven that the fax number used by FIFA was the right and appropriate fax number of the appellant, the panel finally established that the decision was notified on 20 October 2014 based on a recognition of the appellant and, in this respect, confirms the conclusion of the Sole Arbitrator.

67. Furthermore, the Sole Arbitrator finds that the Club's reference to CAS 2007/A/1362 & 1393 is also a confirmation of his conclusion, *i.e.* even though UCI did not follow the regulatory procedure and that the time limit to file the appeal consequently never started to run, the panel finally concluded that the time limit started to run on 24 July 2007, *i.e.* the day it was provided with the decision by fax.

68. Also the Club's reference to CAS 2007/A/1396 & 1402 is of no avail to it, as the UCI-ADR at the time determined that the time limit to appeal only started to run upon receipt of the decision by registered post with proof of payment and that the limit therefore did not start to run upon receipt of the decision by facsimile a few days before. No such provision is incorporated in the FIFA Rules, to the contrary, article 19(2) of the FIFA Rules determines that notification is deemed to be complete at the moment the decision is received by the party, at least by fax.

69. Fourthly, the Club's reference to ATF 4A_392 is of no avail to the Club, as in such case there were no regulatory or contractual provisions determining the type of communication of the arbitral award by CAS and the running of the time limit to appeal such award with the Swiss Federal Tribunal. As mentioned above, article 19(2) of the FIFA Rules determines that notification is deemed to be complete at the moment the decision is received by the party,

at least by fax. As such, it is determined that the time limit to file an appeal with CAS starts to run upon receipt of FIFA's decision by fax.

70. Consequently, the Sole Arbitrator finds that the Appealed Decision was effectively and formally notified to the Club on 9 October 2014.

71. Finally, with reference to the considerations *supra*, the Sole Arbitrator finds that the Club's argument that this constitutes a violation of public policy must be dismissed. Since the Club confirmed receipt of (a copy) of the grounds of the Appealed Decision on 9 October 2015 and filed its Statement of Appeal in time, the Club was not deprived of – or prevented from exercising – its right to appeal and access to justice.

72. Having established that the Appealed Decision was effectively and formally notified to the Club on 9 October 2014, the Sole Arbitrator turns his attention to the question whether the Club complied with the deadline to file its appeal.

73. Pursuant to Article R49 of the CAS Code, an appeal has to be lodged within a certain time limit with specific reference to the statutes and regulations of the federation that issued the decision being appealed. Article 67(1) of the FIFA Statutes contains a deadline to file an appeal, which 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".*

74. While observing that CAS jurisprudence is not entirely consistent on the question when the time limit to appeal commences (HAAS, The "Time Limit for Appeal" in Arbitration Proceedings before the Court of Arbitration for Sport (CAS), German Arb. J., 1/2011, p. 8; In support of the time limit beginning on the day of (due and proper) service: CAS 2002/A/399, in REEB (ed.), Digest of CAS Awards III 2001-2003, pp. 382, 385; by contrast, in support of the time limit beginning on the day following the day of service: CAS 2008/A/1705, margin no. 8.3.3; CAS 2006/A/1176, margin no. 7.2; CAS 2008/A/1583 & 1584, margin no. 7; CAS 2007/A/1364, margin nos. 6.1 *et seq.*), the Sole Arbitrator finds that the time limit shall begin on the day following the day of notification, *i.e.* 10 October 2014 in the case at hand, as it is argued in legal literature that an appellant should have the full 21 days available to file an appeal and because such explanation is in compliance with the legal principles under article 132 in conjunction with article 77(1) of the Swiss Code of Obligations (HAAS, The "Time Limit for Appeal" in Arbitration Proceedings before the Court of Arbitration for Sport (CAS), German Arb. J., 1/2011, p. 9). As such, the time limit to file an appeal expired on 30 October 2014.

75. The Sole Arbitrator observes that it is undisputed that the Club filed its Statement of Appeal with CAS on 30 October 2014, which was within the deadline of 21 days set by article 67(1) FIFA Statutes and this Statement of Appeal complied with all other requirements of Article R48 of the CAS Code.

76. In continuation, the Sole Arbitrator notes that Article R51(1) reads as follows:

> *"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".*

77. As such, pursuant to Article R51 of the CAS Code, the Club was obliged to either file its Appeal Brief within ten days following the expiry of the time limit for the appeal, or to inform the CAS Court Office in writing within the same time limit that the Statement of Appeal shall be considered as the Appeal Brief, failing which the appeal shall be deemed withdrawn.

78. Since the time limit for lodging an appeal expired on 30 October 2014, the ten-day time limit to file the Appeal Brief expired on Sunday 9 November 2014, which is an official non-business day in Switzerland. Therefore, and pursuant to Article R32 of the CAS Code, the time limit for the Club to file its Appeal Brief shall be deemed to expire at the end of the first subsequent business day, which was Monday 10 November 2014.

79. The Sole Arbitrator notes that the Club did not file its Appeal Brief within the so-established deadline of 10 days following the expiry of the time limit for appeal, nor did it inform the CAS Court Office in writing within the same deadline that the Statement of Appeal shall be considered as the Appeal Brief, nor did it file any other communication in this regard within such deadline, *e.g.* a request for a possible extension of the deadline.

80. The Sole Arbitrator notes that there is no evidence on file that the Club had the intention that its Statement of Appeal should be considered as the Appeal Brief. On the contrary, after the Club filed its Statement of Appeal and after the expiry of the time limit for filing the Appeal Brief as established *supra*, the Club explicitly requested for an extension to file its Appeal Brief on 14 November 2014 which the CAS Court Office only provisionally granted by letter of 27 November 2014. As already advised on by the CAS Court Office in such letter, it is for the Sole Arbitrator to determine the start and end date of the time limits for the Statement of Appeal and the Appeal Brief as so executed above. The Sole Arbitrator's finding that the deadline for filing the Appeal Brief expired on 10 November 2015, as such voiding the provisional extension granted on 14 November 2014, by the same token voids the CAS Court Office's suspension for filing the Appeal Brief as pronounced on 5 December 2014.

81. In addition, the Sole Arbitrator observes that the Statement of Appeal did not contain the elements required to be incorporated in an Appeal Brief according to Article R51 of the CAS Code, such as the facts and legal arguments giving rise to the appeal, exhibits and a specification of other evidence upon which it intends to rely.

82. In light of the above, the Sole Arbitrator finds that the Club did not comply with the time limit set forth in Article R51 of the CAS Code, which means that the appeal, in principle, shall be deemed to have been withdrawn.

83. However, the Sole Arbitrator will examine whether any of the reasons adduced by the Club justify an extension of the deadline for filing the Appeal Brief. This may for example be the case if the Club acted in good faith but was induced to miss the deadline or missed the deadline without a fault of its own or if a strict preservation of the time limit would constitute excessive formalism.

84. The Club argues that it filed its Appeal Brief in time, maintaining that the Club *"is not familiar with this procedure (…), did not appreciate that further work was required after sending the statement of appeal (…), promptly took legal advice and then appreciated that further work was required"*.

85. The Sole Arbitrator finds that the fact that the Club is not familiar with the procedure of CAS is no justification for having missed the deadline for filing the Appeal Brief. The Club was already informed of the fact that an Appeal Brief must be filed within 10 days following the expiry of the time limit for filing the Statement of Appeal by means of the "Directions with respect to the appeals procedure before CAS" enclosed to the Appealed Decision. Furthermore, it could be expected from the Club to make reasonable enquiries as to the procedure of CAS and that its misunderstanding of the procedure are in principle the responsibility of the party itself.

86. As such, the Sole Arbitrator finds that the reasons put forward by the Club must be dismissed. Also the Club's request for an extension of the deadline to file its Appeal Brief is of no avail to it as this request was filed after the expiry of the time limit set forth by Article R51(1) of the CAS Code.

87. Consequently, the Sole Arbitrator finds that both the Appeal Brief dated 8 November 2014, but only sent by the Club to CAS by courier on 25 November 2014 and the "Legal Brief" submitted on 8 December 2014, are filed late and that there are no reasons objectively justifying the late submission of the Appeal Brief. It follows that the appeal shall be deemed to have been withdrawn and, therefore, the appeal cannot be entertained.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 30 October 2014 by Qingdao Jonoon Football Club against the decision issued on 28 March 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is deemed to have been withdrawn and shall not be entertained.

(…)

4. All other motions or prayers for relief are dismissed.