



Arbitration CAS 2015/A/4260 Al Hilal Saudi Club v. Asian Football Confederation (AFC) & Al Ahli Club, award of 4 February 2016 (operative part of 4 November 2015)

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

Football

Eligibility to play

Conditions for a player to play the AFC Champions League

Burden of proof

Registration of players during the transfer period according to the FIFA RSTP

1. **In order to play within the AFC Champions League, a player needs to be duly registered with the AFC pursuant to the AFC regulations, duly registered by the participating club with its member association pursuant to its transfer rules, and all those rules and regulations have to comply with those set out in the FIFA Regulations for the Status and Transfer of Players (RSTP).**
2. **According to the AFC Disciplinary Code, in a disciplinary procedure involving a sanction (forfeit-loss), the burden of proof lies on the AFC. In a procedure where a party derives rights from the allegation that a player was not eligible to be fielded during a match, the burden of proof with respect to the player's ineligibility lies with the party alleging this.**
3. **The FIFA RSTP rules set forth in Article 5 and 6 shall be implied within the regulations of FIFA members (Article 1 para. 3 lit. a of the FIFA RSTP). Clubs are only allowed to register players during the transfer period. As an exception, unemployed players may be registered outside the transfer period under certain circumstances. There are no other exceptions to this rule.**

I. PARTIES

1. The Al Hilal Saudi Club (the "Appellant" or "Al Hilal") is a professional football club from Riyadh, Kingdom of Saudi Arabia, and affiliated with the Saudi Arabian Football Federation ("SAFF") and the Asian Football Confederation.
2. The Asian Football Federation (the "First Respondent" or "AFC") is the governing body of professional football in Asia. Its headquarters are located in Kuala Lumpur, Malaysia.

3. The Al Ahli Club (the “Second Respondent” or “Al Ahli”) is a professional football club from Dubai, United Arab Emirates, and affiliated with the United Arab Emirates Football Association (“UAEFA”) and the AFC.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings 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.
5. On 20 January 2015, during a transfer period, the Second Respondent signed the professional player O. (the “Player”) to its club. The SAFF issued an international transfer certificate (ITC) to the UAEFA.
6. The Second Respondent and the Player then entered into an employment agreement effective 11 January 2015 to 11 July 2018. Thereafter, the Player was registered with the UAEFA and played for the Second Respondent during the season 2014/2015.
7. On 15 July 2015, the transfer period 2015/2016 for the UAEFA opened.
8. On 18 August 2015, the Second Respondent sent a registration application of the Player to UAEFA in order to have him eligible to play in both national and international competitions. This was approved by UAEFA. Additionally, the Player was registered by the Second Respondent with the AFC in the AFC Champions League 2015 Edition in order to replace an injured player.
9. On 2 September 2015, the Second Respondent signed another player of foreign nationality.
10. On 3 September 2015, the Second Respondent sent a replacement application to UAEFA in order to replace the Player in the local competition with the other foreign player. Additionally, the Second Respondent sent a registration application to the UAEFA for the Player for international competition only. Both applications were approved by UAEFA the same day.
11. On 21 September 2015, the transfer window closed.
12. The Player played the following matches for the Second Respondent during the AFC Champions League:
 - Naft Tehran (IRN) vs. Al Ahli (UAE) on 26 August 2015
 - Al Ahli (UAE) vs. Naft Tehran (IRN) on 16 September 2015

- Al Hilal (KSA) vs. Al Ahli (UAE) on 29 September 2015
 - Al Ali (UAE) vs. Al Hilal (KSA) on 20 October 2015 (the “Match”)
13. On 20 October 2015, after the Match, the Appellant lodged a protest with the AFC match commissioner alleging that the Second Respondent fielded the Player who was not duly registered for this competition.
 14. On 26 October 2015, the AFC disciplinary committee dismissed the protest submitted by the Appellant. This decision was confirmed by the decision of the AFC appeal committee dated 29 October 2015 (the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 29 October 2015, the Appellant filed a statement of appeal seeking to appeal the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). Within its statement of appeal, the Appellant sought to have this appeal heard on an expedited basis in accordance with Article R52 of the Code. Moreover, the Appellant stated its preference that a Sole Arbitrator be appointed to hear this appeal.
16. On 30 October 2015, the CAS Court Office acknowledged receipt of the Appellant’s appeal and invited, *inter alia*, the First and Second Respondent to comment on the Appellant’s request for an expedited procedure, as well as its request to refer this appeal to a Sole Arbitrator.
17. Later that same day, the Respondents agreed in principle to an expedited timetable for written submissions and the appointment of a Sole Arbitrator by the President of the Appeals Arbitration Division in accordance with Article R54 of the Code. Separately, the Second Respondent requested that the UAEFA be joined as a party to this appeal in accordance with Article R41.2 of the Code. The Appellant and First Respondent were invited to comment on such request accordingly.
18. The same evening, the First Respondent informed the CAS Court Office that it consented to the joinder of the UAEFA.
19. As a final order of business that evening, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Dr. Marco Balmelli, attorney-at-law in Basel, Switzerland as Sole Arbitrator in accordance with Article R54 of the Code.
20. The next day – 31 October 2015 – the CAS Court Office, based on the mutual agreement of the parties, confirmed the following expedited briefing schedule:
 - Appellant to file its Appeal Brief no later than 31 October 2015 at 19.00 CET
 - Respondents to file their Answers no later than 3 November at 19.00 CET

21. On 31 October 2015, the Appellant filed its appeal brief in accordance with Article R51 of the Code.
22. That same day, the UAEFA filed a request for intervention in accordance with Article R41.3 of the Code. In turn, the parties were invited to comment on such request accordingly no later than 2 November 2015.
23. On 2 November 2015, the Appellant filed its objection to both the Second Respondent's request that the UAEFA be joined as a party, as well as the UAEFA's request for intervention.
24. Later that day, the Sole Arbitrator informed the parties that the UAEFA's request for intervention, as well as the Second Respondent's request to join the UAEFA, was denied. However, the Sole Arbitrator invited the UAEFA to file an *amicus curiae* in accordance with Article R41.4 of the Code.
25. Under separate cover that same day, the Sole Arbitrator, after considering the parties' respective positions on whether a hearing is necessary, called the parties to a telephonic hearing on 4 November 2015.
26. On 3 November 2015, the Respondents filed their respective answers in accordance with Article R55 of the Code.
27. That same day, the UAEFA filed an *amicus curiae* submission. Moreover, the parties signed and returned the Order of Procedure in this appeal.
28. On 4 November 2015, a telephonic hearing took place. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, CAS Counsel, and was joined by the following attendees:

For the Appellant
Mr. Marcos Motta
Mr. Stefano Malvestio

For the First Respondent
Mr. Benoit Pasquier
Mr. James Kitching

For the Second Respondent
Mr. Salvatore Civale
Mr. Mario Vigna
29. At the beginning of the hearing, the parties confirmed that they did not object to the appointment of the Sole Arbitrator or to the CAS procedure itself. At the conclusion of the hearing, the parties confirmed that they were satisfied how the hearing was conducted and that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

30. The parties all refer to the same provisions being relevant:

Article 26 of the AFC Champions League competition regulations

Each participating club shall ensure, that all players:

- 1.1 are duly registered with the AFC pursuant to these regulations; and*
- 1.2 are duly registered by the participating club with its member association pursuant to its transfer rules and those set out in the FIFA regulations on the status and transfer of players.*

Individuals who meet the criteria set out in Article 26.1 are participating players and eligible to participate in the competition, subject to the provisions of the AFC disciplinary code.

Article 36 of the UAE RSTP

- 1. Clubs are committed to the Electronic Registration System (FA-Net).*
- 2. Players may only be registered during one of the two annual registration periods fixed by the Federation. As an exception, players may be registered outside these periods of accordance with the following:*
 - A) Professionals whose contract has expired prior to the end any of the registration based on a request from the club provided due consideration is given to the sporting integrity.*
 - B) Pro League clubs may register two (2) non-local players during or outside the registration periods with a condition not to participate in any local competition.*

31. The Appellant's submissions, in essence, may be summarized as follows:

- The burden of proof lies with the Second Respondent as it derives rights from the Player's alleged eligibility.
- The Player is not on the list of the UAEFA. The Player was *deregistered* on 3 September 2015 with the UAEFA in order to register another player.
- The provisions article 2-8, 10, 11, 12bis, 18, 18bis, 18ter, 19 and 19bis of the FIFA RSTP must be included without any modification in the national RSTP. However, Article 36 UAE RSTP was amended by inserting the clause, allowing Pro League Clubs to register two non-local players under the condition that they are not allowed to participate in domestic matches. Therefore, Article 5 and 6 FIFA RSTP were wrongfully amended.
- Article 5 of the FIFA RSTP clearly holds that a player must be registered with an association. Furthermore, a player may only be registered during the transfer window. The only exceptions are stated in Article 6 of the FIFA RSTP. The exception made in

Article 36 para. 2 lit. b of the UAE RSTP is not mentioned in the FIFA RSTP and therefore void.

- Including this exception at the request of the big clubs of the Pro League is against sporting integrity.
- It distorts the competition on a national level as only the clubs playing international matches may benefit from such clause. Additionally, it distorts the international competition as it is possible for the club to keep a foreign player although another was signed and the contingent of non-local players is exhausted.
- Therefore, the Player was never duly registered according to the AFC Regulations, the UEA FA, or the FIFA RSTP.
- As the Player was not duly registered, he was not eligible to play in the Match. According to Article 55 of the AFC Regulations, the Match shall be considered a 3:0 forfeit win by the Appellant.

32. In its appeal brief, the Appellant made the following requests for relief:

- (a) *That the Appeal of Al Hilal is admissible;*
- (b) *that the entire file related to the Appealed Decision be transferred to the Sole Arbitrator;*
- (c) *[sic] that the Appealed Decision is set aside;*
- (d) *that the protest filed by Al Hilal be appealed and applying articles 55 and 31 of the AFC Disciplinary Code, therefore sanctioning Al Ahli with the forfeit of the match held on 20 October 2015 resulting in a free -0 loss for Al Ahli;*
- (e) *that consequently Al Hilal shall proceed to the next round of the 2015 AFC Champions League, being the 2015 AFC Champions League Final;*
- (f) *Order Respondents' to bear any and all legal costs and attorneys' fees incurred by the appellant in connection with the present proceedings, as well as during the lower instances in an amount not lower than CHF 10'000.00 (ten thousand Swiss francs);*
- (g) *Order Respondents' [sic] to reimburse the administrative fees paid by the appellant in the lower instance proceedings and to bear all costs related to the present arbitration.*

33. The First Respondent's submission, in essence, may be summarized as follows:

- The letter from the UAEFA dated 28 October 2015 clearly holds that Article 36 para. 2 lit. b of the UAE RSTP was drafted to (a) give the clubs the opportunity to sign more foreign players but (b) to make it clear that they may only participate in international competitions in order to respect the domestic rule regarding the number of foreigners eligible to play in domestic matches.

- There is no obligation for clubs to register all players for domestic and international matches.
- The Player was registered according to the UAE RSTP. He was also registered in line with the transfer rules of the UAEFA.
- The CAS should not uphold the Appellant's request as this would also affect a third party who is not part of the procedure, *i.e.* the other CFA Champions League finalist Guangzhou Evergrande. As the first leg of the final is about to take place in Riyadh, Saudi Arabia, Guangzhou Evergrande has already made travel and logging arrangements. Such plans may not be changed to another city on such short notice.
- The AFC's autonomy may not be infringed by the CAS. However, the AFC is not the right body to enforce the compliance with the FIFA rules.
- The Player was duly registered according to the AFC Regulations and UAE RSTP.
- The sporting integrity is not infringed as the possibility to register foreign players who are only eligible to play in international matches does not prevent the clubs participating in any competition to comply with the rules of said competition.
- Therefore, the Appeal Committee was correct to reject the Appellant's protest and appeal.

34. In its answer, the First Respondent made the following requests for relief:

110.1 The appeal of the Appellant is rejected in full;

110.2. the decision of the AFC Appeal Committee dated 29 October 2015 is confirmed in full; and

110.3 the Appellant be ordered to pay the legal costs and expenses of the First Respondent in the amount of USD 5'000.

35. The Second Respondent's submission, in essence, may be summarized as follows:

- The Appellant improperly alleges that the Player was "deregistered". After 3 September 2015, the Player was not eligible to play in domestic matches but he was still registered with the UAEFA. The process may be described as *reclassification*.
- The Player played several matches after the reclassification. On 29 September 2015, he was fielded in the first leg of the semi-final against the Appellant. The Appellant did not allege ineligibility after this match. The Appellant's behavior desperately shows that it tried to reach the finals although it lost in a fair semi-final.
- The Appellant changed its strategy. In the proceedings before the AFC Appeal Committee, the Appellant alleged a different translation of the UAEFA Regulations. Now, it claims that the FIFA RSTP are violated.

- The burden of proof lies with the Appellant, since it derives rights from the alleged fact that the Player was not eligible to play.
- The UAEFA lists provided by the Appellant are only the domestic lists. The Player appears on the list for the players who are only allowed to play in international competitions.
- The UAEFA confirmed the registration of the Player.
- Article 36 para. 2 lit. b of the UAE RSTP does not violate the FIFA RSTP: Article 5 and 6 FIFA RSTP state that players may only be registered during the transfer windows. Furthermore, Article 6 RSTP provides for an exception to this rule with regard to unemployed players. In the case at hand, however, the Player was registered *during* the transfer period. Therefore, Article 6 FIFA RSTP is not violated. The Appellant tries to confuse the Sole Arbitrator by suggesting that the Player was registered outside the transfer period.
- The “3+1 foreign player rule” set forth at AFC level was never infringed by the Second Respondent.
- The club has the right to confide in the validity of the federation’s regulations. Furthermore, the CAS may not amend national regulations due to non-compliance with the FIFA regulations but may impose sanctions on the federation.
- The Player was duly registered, hence the appeal shall be dismissed.

36. In its answer, the Second Respondent made the following requests for relief:

- a) *The appealed decision of AFC appeal committee No. WTC 20151029 AC01 is upheld;*
- b) *the Appellant’s motions for relief are inadmissible ad/ or dismissed;*
- c) *the Second Respondent is entitled to receive from the Appellant a contribution towards its legal fees and other expenses incurred in connection with this arbitration in the amount not lower than CHF 12’000.00 (twelve thousand Swiss francs). In this regard, the Second Respondent respectfully requests the possibility to serve and file its bill of costs.*

37. The *amicus curiae* filed by the UAEFA is summarized as follows:

- The eligibility of the Player has been confirmed by the UAEFA and AFC.
- Even if the UAE RSTP contradicts the FIFA RSTP, the Second Respondent may not be punished for relying on the UAE’s regulations.
- The Player was registered during the transfer window.

- The FIFA RSTP are misinterpreted: Article 5 and 6 refer to the registration as the moment when the bond between a player and a club is established.
- Article 36 para. 2 lit. b of the UAE RSTP only provides for the possibility to change the status of eligibility within local or national competition. Hence, there is no violation of the FIFA RSTP.

V. ADMISSIBILITY

38. Article R49 of 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.

39. Article 65 para. 1 and 2 AFC Statutes provides as follows:

1. Any final decision made by an AFC body may be disputed exclusively before CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration.

2. Recourse may only be made to CAS after all other internal AFC channels have been exhausted. Appeals shall be lodged with CAS within twenty-one (21) days of notification on the decision in question.

40. The grounds of the Appealed Decision were notified to the parties on 29 October 2015. The appeal was filed by the Appellant on the same day is, therefore, admissible.

VI. JURISDICTION

41. 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.

42. Article 61 of the AFC Statutes provides as follows:

1. AFC recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between the AFC and the other Confederations, Member Associations, Leagues, Clubs, Players, Officials, Intermediaries and licensed match agents.

2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings.

3. *The CAS shall apply the various regulations of the AFC, and additionally where relevant, the laws of Malaysia.*

43. The jurisdiction of the CAS, which was not disputed by the parties, derives from articles 61 and 65 of the CFA Statutes. Therefore, the Sole Arbitrator concludes that CAS is competent to adjudicate the present case.

VII. APPLICABLE LAW

44. Article 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.

45. Considering that the parties made not assertions to the contrary, and based upon the parties' submissions, the Sole Arbitrator considers that the Regulations of FIFA, AFC and UAE shall apply.

VIII. MERITS

46. The Sole Arbitrator considers the principal issue for determination is whether the Player was eligible to play in the Match.

47. In order to play within the AFC Champions League, a Player needs to be:

- duly registered with the AFC pursuant to these regulations;
- duly registered by the participating club with its member association pursuant to its transfer rules; and generally, all those rules and regulations have to comply with those set out in the FIFA regulations on the status and transfer of players (FIFA RSTP).

A. Burden of proof

48. The parties disagree regarding the question whether the burden of proof lies with the Appellant or with the Respondents. The Appellant claims that the club shall be responsible for providing sufficient evidence that the players on the pitch are eligible to play. The Respondents state that since the Appellant derives rights from the allegation that the Player was not eligible, the burden of proof lies with the Appellant.

49. The Sole Arbitrator considers Article 26 para. of the 3 AFC Regulations, which provides:

(...) each participating club is responsible for and bears the onus of fielding only eligible participating players in a match (...).

50. Furthermore, Article 99.1 of the AFC Disciplinary Code provides the following:

The burden of proof regarding disciplinary infringements rests on AFC.

51. Taking these rules into account, the Sole Arbitrator emphasises that the Appellant lodged a protest after the Match in order to initiate disciplinary sanctions (forfeit-loss) upon the Second Respondent. The Sole Arbitrator therefore deems it evident that in such procedure, the burden of proof lied on the AFC and not on the Second Respondent.

52. In the proceeding before the CAS, the Appellant derives rights (*i.e.* the appeal being upheld and the Second Respondent being sanctioned) from the allegation that the Player was not eligible to be fielded during the Match. Therefore, the Sole Arbitrator concludes that the burden of proof with respect to the Player's ineligibility lies with the Appellant.

B. Registration with the AFC

53. With regard to the question whether the Player was duly registered with respect to the AFC Regulations, the Sole Arbitrator notes that First Respondent confirmed that all registration formalities and deadlines were met. As this statement is supported by evidence and not challenged by the Appellant, the Sole Arbitrator is convinced that the Player was duly registered for the AFC Champions League with respect to the AFC regulations.

C. Registration with UAE

54. It is undisputed that the Player was duly registered during the first transfer period of the year 2015 with the UAE. On 3 September 2015 (during a transfer period), the Second Respondent applied for a change of the registration with regard to the Player's eligibility on a domestic level. The UAE confirmed such reclassification relying on Article 36 para. 2 lit. b of the UAE RSTP. The UAE confirmed that the Player was duly registered the whole time. The Appellant, on the other hand, does not provide convincing arguments or evidence why the Player was not duly registered with the UEA. Therefore, the Sole Arbitrator deems it evident – both based on the evidence provided (and the lack thereof) that the Player was duly registered according to the UEA RSTP when he was fielded in the Match.

D. Registration according to the FIFA RSTP

55. The Appellant claims that the Article 36 para. 2 lit. b of the UAE RSTP is not in line with Article 6 FIFA RSTP and therefore, the Player could not have been registered according to such rule. Specifically, the Appellant points out that this exception regarding foreign players who may be registered *during or outside the transfer period* contradicts Article 6 of the FIFA RSTP as the exceptions set forth by FIFA are final and binding.

56. Considering the FIFA RSTP, the Sole Arbitrator holds that the rules set forth in Article 5 and 6 shall be implied within the regulations of FIFA members (Article 1 para. 3 lit. a of the FIFA RSTP). The Sole Arbitrator further recognizes that clubs are only allowed to register players

during the transfer period. As an exception, unemployed players may be registered outside the transfer period under certain circumstances. There are no other exceptions to this rule.

57. The Sole Arbitrator further takes into account that the Player was registered with the UAE in January 2015 during the transfer period. Furthermore, the change of status of eligibility was granted by the UAE on 3 September 2015, *i.e.* during another transfer period. The Appellant neither explains nor provides evidence why the Player was not duly registered according to Articles 5 and 6 of the FIFA RSTP, which hold that a player shall only be transferred during a transfer period; in fact, the Player has not been registered outside a transfer window. But the Sole Arbitrator deems it relevant that all events regarding the Player's registration and eligibility took place during a transfer period. Therefore, the Sole Arbitrator notes that the Player was duly registered according to the FIFA RSTP, regardless the question whether Article 36 para. 2 lit. b UAE RSTP is in line with the FIFA RSTP.
58. Regarding the last question to be examined, whether Article 36 para. 2 lit. b of the UAE RSTP is in line with the FIFA RSTP, the Sole Arbitrator notes that the Appellant has not provided for any regulations or other evidence that such rule contradicts any FIFA regulations or the AFC Regulations. The Sole Arbitrator notes further that the FIFA RSTP does not address the question whether foreign players may be registered for international matches only, and above all, does not contain any restriction in this regard.
59. To conclude, the Sole Arbitrator holds that there is no evidence produced that the Player was not eligible to play the Match. Therefore, the First Respondent's decision to reject the Appellant's protest was correct. Hence, the appeal shall be fully dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Al Hilal Saudi Club on 29 October 2015 is dismissed.
2. The decision of the Asian Football Confederation Appeal Committee dated 29 October 2015 (VTC 20151029AC01) is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.