



**Arbitration CAS 2016/A/4910 Sport Luanda e Benfica FC v. Fédération Internationale de Football Association (FIFA), award of 8 May 2017**

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

*Football*

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

*Scope of disciplinary proceedings and of its review at appeal level*

*Proportionality of disciplinary sanction (fine)*

1. As a general principle, the FIFA Disciplinary Committee (FIFA DC) has to take into account only the facts arising after the date on which the underlying decision became final and binding, as the disciplinary proceedings are designed to assess only the compliance with said final decision. As a result, only submissions relating to the sanction imposed by the FIFA DC, such as its legal basis and quantum, can be heard at appeal level by a CAS panel and one appellant's arguments as to the substance of said underlying decision cannot be considered.
2. The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed only when the sanction is evidently and grossly disproportionate to the offence. In this respect, while the significance of one appellant's level of culpability (time span of the breach-related proceedings and in compliance with payment reminders) is a relevant factor for the assessment of the proportionality of a disciplinary sanction, payment-related additional difficulties (if proven) resulting of the fluctuation of currency shall not necessarily lead to the conclusion that the relevant sanction is disproportional. Likewise, one appellant's argument that it had no prior disciplinary record needs to be rejected, for stakeholders are expected to comply with the applicable rules. On the other hand, the opposite situation stands as an aggravating factor (aggravating circumstance of "*repeated offender*"). Finally, since the rationale of a fine is to serve as a deterrent to parties who decide not to comply with decision of FIFA deciding bodies, even if one appellant had paid any of the amounts due after the FIFA DC's appealed decision was issued, the imposed sanctions should not be reduced on such basis.

**I. PARTIES**

1. Sport Luanda e Benfica FC (the "Appellant" or "Sport Luanda") is a football club with its registered office in Luanda, Angola. Sport Luanda is affiliated with the Angolan Football

Federation, which in turn is affiliated to the Fédération Internationale de Football Association (“FIFA”).

2. The Fédération Internationale de Football Association (FIFA) (the “Respondent” or “FIFA”; the Appellant and the Respondent hereinafter jointly referred to as the “Parties”), is the world governing body for football. It exercises regulatory, supervisory, disciplinary and coordinating functions over national associations, clubs, officials and players at worldwide level. FIFA is an association under Swiss law and has its seat in Zurich.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings. 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 analysis. 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.

### A. Background facts

4. On 14 March 2016, the Single Judge of the FIFA Players’ Status Committee (hereinafter referred to as the “FIFA PSC”) issued a decision against the Appellant and, *inter alia*, ordered Sport Luanda to pay to AEL Limassol (Cyprus) the total amount of EUR 25,000 – as well as interest at a rate of 5% per year as from 2 December 2015 until the date of the effective payment – corresponding to the second instalment not paid by the Appellant for the transfer of the player A.
5. Furthermore, Sport Luanda was ordered to pay a fine in the amount of CHF 5,000 together with the final costs of the proceedings in the amount of CHF 5,000 (CHF 1,000 to AEL Limassol and the remaining part to FIFA) within 30 days as of the date of the notification of the decision.
6. The FIFA PSC decision was notified to the Parties involved on 17 March 2016 and, in the absence of an appeal to the Court of Arbitration for Sport (the “CAS”), the decision became final and binding.
7. On 26 May 2016, in the absence of payment by the Appellant, the FIFA Players’ Status and Governance Department invited Sport Luanda to pay without delay the relevant amounts due, as ordered by the FIFA PSC decision.
8. By letter dated 3 June 2016, the Angolan Football Association submitted to the FIFA Players’ Status and Governance Department a letter from the Appellant dated 5 June 2016 in which Sport Luanda claimed, *inter alia*, to have paid all the outstanding amounts due to AEL Limassol.

9. Notwithstanding the above, on 7 June 2016, AEL Limassol informed once again the FIFA Players' Status and Governance Department that Sport Luanda had failed to comply with the decision of the FIFA PSC.

#### **B. Proceedings before the FIFA Disciplinary Committee**

10. As the amounts due were not paid to AEL Limassol nor to FIFA, on 26 July 2016 the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Appellant. Moreover, Sport Luanda was asked to pay the total amounts due according to the FIFA PSC decision by 9 August 2016 and was informed that the case would be submitted to the FIFA Disciplinary Committee (the "FIFA DC") for a final decision on 22 September 2016.
11. On 22 August 2016, AEL Limassol informed the secretariat to the FIFA DC that no payments had been received from the Appellant.
12. On 22 September 2016, the FIFA DC issued a decision (the "Appealed Decision"), finding the Appellant guilty of failing to comply with a decision of a FIFA body in accordance with Article 64.1 of the FIFA Disciplinary Code (the "FDC"). Pursuant to the Appealed Decision, the Appellant was ordered to pay a fine of CHF 5,000 to FIFA within 30 days as from notification of the decision. Furthermore, the Appellant was granted a final 30-day grace period as from the date of notification of the decision to settle its debt towards AEL Limassol and FIFA. The Appealed Decision also provided, *inter alia*, that if payment was again not made by the applicable deadline, AEL Limassol could request that 3 points be deducted from the Appellant's first team in the domestic league championship. The terms of the Appealed Decision were notified to the Appellant via the Angolan Football Association on 18 October 2016.
13. Upon request from the Appellant, the grounds of the Appealed Decision were duly notified to the Parties on 24 November 2016. The Appellant was notified via the Angolan Football Association.
14. By letter dated 22 January 2017, AEL Limassol informed FIFA that the Appellant had not yet paid the amounts that it owed and requested that the 3-point deduction sanction be enforced.
15. On 30 January 2017, FIFA informed AEL Limassol and the Appellant that the enforcement of the Appealed Decision was suspended as a result of the appeal filed by the Appellant before the CAS.

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

16. On 15 December 2016, Sport Luanda lodged a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2016) (the "Code"). In this submission the Appellant requested, *inter alia*, for a stay of the execution of the Appealed Decision and asked that the case be referred to a sole arbitrator.

17. On 21 December 2016, the Respondent informed the CAS that it accepted the proposal to refer the case to a sole arbitrator as long as he/she would be chosen from the so called “Football list”. In addition, FIFA communicated that it did not oppose the request to stay the execution of the Appealed Decision. Considering the agreement of the Parties, the CAS Court Office confirmed on the same day that the effects of the Appealed Decision were stayed.
18. On 22 December 2016, the Appellant confirmed its agreement that a sole arbitrator be appointed from the so called “Football list”.
19. On 23 December 2016 Sport Luanda filed its Appeal Brief, pursuant to Article R51 of the Code.
20. On 13 January 2017, the Parties were informed that the Sole Arbitrator appointed to decide the present matter was Mr Jacopo Tognon, professor and Attorney-at-Law in Padova, Italy.
21. On 10 February 2017, FIFA filed its Answer, pursuant to Article R55 of the Code.
22. On 15 February 2017, the Respondent informed the CAS Court Office that it preferred that a decision be issued solely based on the Parties’ written submissions.
23. On 21 February 2017, the Appellant informed the CAS Court Office that it also preferred that a decision be issued solely based on the Parties’ written submissions.
24. On 2 March 2017, the Parties were informed that the Sole Arbitrator had decided not to hold a hearing in these proceedings.
25. By returning signed Orders of Procedure on 7 and 8 March 2017, the Parties confirmed their agreement that this matter be decided on the basis of the Parties’ written submissions and confirmed CAS’ jurisdiction to hear the appeal.

#### **IV. SUBMISSIONS OF THE PARTIES**

26. Sport Luanda’s submissions may be summarised, in essence, as follows:
  - The fine decided by the FIFA DC is sixteen (16) times higher than the minimum limit. With regard to this, the FIFA DC did not state a single word about the financial conditions of the Appellant, including the circumstance that Sport Luanda is a semi-amateur club and that this case was the first disciplinary offence perpetrated by the club.
  - The FIFA DC simply ignored the extreme exchange crisis that Angola is facing since the end of 2015. As a consequence, it is almost impossible to exchange currency since the exchange rates are increasing day by day.
  - In relation to the 3-point deduction sanction, the Appellant stated as follows: *“three points are what a team conquers with a win game, which requires an entire week of preparation, an entire day of concentration, the mobilization of a lot of other resources of the team and, at the end, to score one more*

*goal than the opponent, on the pitch. Thus, by sanctioning the Appellant in the deducting of those points, the decision is erasing all the effort, emotions and strength and time that every player, coaches and team supporters dedicated to that match”* (paras. 16 and 17 of the Statement of Appeal and para. 7 of the Appeal Brief).

- The Appellant argues that the Appealed Decision violated the principle of proportionality and referred to certain CAS jurisprudence.
- The Appellant argues, in particular, that the Appealed Decision did not take into account that the Appellant had paid the total amount agreed for the transfer of the player A to AEL Limassol and that evidence of this payment had been provided to the Respondent by means of a letter dated 5 June 2016. The Appellant argued that, although the proof of payment *“is unuseful to change the Players’ Status Committee decision, for sure that the proof of payment is useful, and had to be considered, to set the degree of the guilt now”*.
- The Appellant argues that, by having solely taken into account the amount due by the Appellant, the Appealed Decision breached Article 39.4 of the FDC which provides that *“The body shall take into account of all relevant factors in the case and the degree of the offender’s guilt when imposing the sanction”*.

27. The Appellant requested CAS:

- To accept the appeal.
- To replace the Appealed Decision with a new decision only sanctioning the Appellant with a CHF 300 fine, pursuant to Article 15.2 of the FDC.

28. FIFA’s submissions may be summarised, in essence, as follows:

- The spirit of Article 64 of the FDC is to enforce decisions comparable to judgments that had been rendered by a body, a committee or an instance of FIFA, or CAS in a subsequent appeal decision, which are final and binding.
- The disciplinary proceedings could be regarded as the enforcement proceedings pursuant to Swiss Law and consequently the FIFA DC could be regarded as acting similar to an “enforcement authority”. Nonetheless proceedings under Article 64 of the FDC are to be considered not as an enforcement, but rather as the imposition of a sanction for breach of the rules of the association.
- Consequently, the FIFA DC has the sole task to analyse if the debtor complied with the final and binding decision of the relevant body and cannot review the substance of a previous decision which is final and binding. The FIFA DC has to (and can only) take into consideration all possible facts arising after the date on which the decision has been rendered.

- Even assuming that Sport Luanda had effectively paid the total amount due (as per letter of the Angolan Football Federation of 3 June 2016. However, AEL Limassol by letters of 4 April, 9 May, 7 June, 22 July and 22 August 2016 contested this payment), when that argument was brought forward by the Appellant, the relevant decision of the FIFA PSC was already final and binding at that point: *“therefore, besides being unproved by the Appellant, is completely irrelevant at this stage of the proceedings, as corresponds to facts that had occurred before the decision of the Single Judge of the Players’ Status Committee was passed”* (section 2, par. 11, FIFA Answer).
- In both FIFA proceedings (the first one before FIFA PSC and the second one before FIFA DC), the Appellant decided not to participate.
- As for the principle of proportionality, FIFA states that the Sole Arbitrator shall amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy.
- The FIFA DC considered that in the present case a fine in the amount of CHF 5,000 is appropriate and proportionate in light of the outstanding debt. A higher fine may not be proportionate and could contradict the longstanding jurisprudence of the FIFA DC. A lower fine, however, would fail to encourage the prompt fulfilment of obligations, notably considering that the FIFA PSC decision was based on Article 12bis of the Regulations on the Status and Transfer of Players.
- The Appellant does not bring any evidence to suggest that the amount of the fine is unfair, disproportionate or even arbitrarily high.
- The Appealed Decision is in compliance with the principle of proportionality as well as with FIFA DC’s longstanding jurisprudence.
- Moreover, the fine set is not oppressive and is justified by the Appellant’s attitude, which never participated in the disciplinary proceedings.
- In conclusion, the Respondent states as follows: *“CAS has regularly confirmed the legality and the proportionality of the enforcement system created by FIFA and the sanction related thereto, in particular the point deduction. Especially, it should be noted that the CAS has regularly confirmed that the wording of art. 64 FDC provides with a clear statutory basis and precisely reflects the principle of proportionality: a first decision may only include the deduction of points, since it is less severe and therefore proportionate sanction for a first infringement of the obligation to comply with a decision of FIFA, however, in case of continued failure to comply with said decision, a more severe sanction must be possible, in order to take account of the continued disrespect of FIFA’s judicial authority (cf. inter alia CAS 2005/A/944, CAS 2011/A/2646 and CAS 2012/A/3032)”* (section 2, par. 34, FIFA’s answer).

29. FIFA requested CAS:

- To reject the Appellant's appeal in its entirety.
- To confirm the Appealed Decision.
- To order the Appellant to bear all costs incurred with these proceedings and to cover all its legal expenses.

## V. JURISDICTION

30. Article R47 of the Code provides, *inter alia*, as follows:

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

31. The jurisdiction of the CAS derives from Articles 64.5 of the FDC and 58 of the FIFA Statutes (2016 edition).

32. The jurisdiction of the CAS was not contested by either party and is further confirmed by the Order of Procedure which was duly signed by both Parties.

## VI. ADMISSIBILITY

33. Article R49 of the Code provides, *inter alia*, 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

34. The appeal was filed within the deadline of 21 days set by Article 58.1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code.

## VII. APPLICABLE LAW

35. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its*

*decision*”.

36. Article 57.2 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”.*

37. Pursuant to Article 58 of the Code and Article 57.2 of the FIFA Statutes, CAS shall, as to the substance of the appeal, apply primarily the last edition of the FDC (2011) and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. MERITS

### A. The main issues

38. The main issues to be resolved by the Sole Arbitrator are the following:

- i. Has Article 64.1 of the FDC been breached by the Appellant?
- ii. Are the sanctions imposed upon Sport Luanda in breach of the principle of proportionality and/or of Article 39.4 of the FDC?

39. After having carefully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Sole Arbitrator considers that the appeal lodged by Sport Luanda is groundless.

#### *i. Has article 64.1 of the FDC been breached by the Appellant?*

40. First and foremost, the Sole Arbitrator notes that it remained undisputed that Sport Luanda did not lodge an appeal against the FIFA PSC decision, which was notified to the Parties on 17 March 2016.

This means that the decision became irrevocable, final and binding upon the Parties.

41. As correctly stated by the Respondent, the FIFA DC – as a FIFA sanctioning and enforcement body – lacks the competence to review the substance of final and binding FIFA PSC decisions when it imposes sanctions for the non-fulfilment of those decisions.

42. Indeed, the FIFA PSC decisions are subject to a separate appeal before the CAS in accordance with Article 58 of the FIFA Statutes. As the Sole Arbitrator notes above, no appeal against the FIFA PSC decision was filed by the Appellant before the CAS.

43. Moreover, the Sole Arbitrator further notes that, bearing in mind the function and the scope of the FIFA DC, the only task that this judicial body can carry out is to verify whether or not the

debtor has complied with the final and binding decision of the relevant body.

44. In light of the above, it is therefore important to underline that – as a general principle – the FIFA DC has to take into account only the facts arising after the date on which the decision became final and binding, as the disciplinary proceedings are designed to assess only the compliance with the final decision rendered by the relevant FIFA body. This is the scope of the FIFA disciplinary proceedings.
45. As a result, only submissions relating to the sanction imposed by the FIFA DC, such as its legal basis and quantum, can be heard by this Sole Arbitrator and the Appellant’s arguments as to the substance of the FIFA PSC decision cannot be considered.
46. As stated by the Panel in in the arbitration *CAS 2008/A/1610*<sup>1</sup>:  
*“the object of [an] appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the FIFA Disciplinary Committee, hence, only submissions relating to the fine imposed by the FDC, such as its legal basis and quantum, can be considered. The Panel cannot consider requests concerning the debt owed by Appellant, the issues relating thereto having been decided by the FDC decision which is final and binding”.*
47. Bearing in mind these clear principles, there are some aspects that the Sole Arbitrator wishes to address.
48. First, the Sole Arbitrator finds that after the FIFA PSC decision was notified to the Parties (the decision was issued on 14 March 2016 and was notified to the Parties on 17 March 2016) there is no evidence and indeed no allegation that the Appellant completed the payments which it was obliged to make. Indeed, the communication forwarded by the Angolan Football Federation of 5 June 2016 was notified after the FIFA PSC decision had been issued and refers to events that allegedly happened before that decision was taken. Indeed, the Appellant claimed that Mr. R collected all the money due to AEL Limassol between 9 April and 20 May 2015 but, even if that circumstance would be true (since it is contested by AEL Limassol) these facts arose before the date in which the FIFA PSC decision was rendered.
49. The Sole Arbitrator wishes to note that, assuming these allegations made by the Appellant concerning the payment are correct, had they been introduced during the FIFA PSC proceedings they could have potentially had an impact on the FIFA PSC decision. However, at this particular stage those circumstances are totally irrelevant for the simple reason that they were submitted after the FIFA PSC decision became irrevocable and binding.
50. Indeed, it is worth emphasising that the Appellant decided not to participate at all in the FIFA proceedings. As a result, it was impossible for FIFA to assess the club’s position on the original claim.
51. In conclusion, the Sole Arbitrator is satisfied that the Appellant did not comply with the FIFA

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<sup>1</sup> CAS 2008/A/1610, para. 5.12. See also, CAS 2010/A/2148, para. 5.10.

PSC decision and therefore violated Article 64.1 of the FDC.

***ii. Are the sanctions imposed upon Sport Luanda in breach of the principle of proportionality and/or of Article 39.4 of the FDC?***

52. The Appellant requests that the sanctions imposed in the Appealed Decision (a fine of CHF 5,000 and a three-point deduction in case of non-payment) be replaced by a single fine of CHF 300, on the grounds that the sanctions are excessive.
53. The Respondent argues that the sanctions are proportionate and should be maintained.
54. From the outset, the Sole Arbitrator wishes to emphasise that, according to CAS' well established jurisprudence, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules, should be reviewed only when the sanction "*is evidently and grossly disproportionate to the offence*"<sup>2</sup>.
55. The fine was imposed by the FIFA DC pursuant to Article 64.1 (a) of the FDC. In accordance with Article 64.1 (a) in conjunction with Article 15.2 of the FDC, the FIFA DC possesses the discretion to impose a fine within the range of CHF 300 (as the minimum) and CHF 1,000,000 (as the maximum) as it deems appropriate in the circumstances.
56. The Sole Arbitrator recalls that, in addition to the EUR 25,000 debt towards AEL Limassol, the Appellant was also ordered to pay to the Cypriot club the amount of CHF 1,000 and to FIFA a fine in the amount of CHF 5,000 and procedural costs in the amount of CHF 4,000. The amounts at stake are therefore not insignificant.
57. In this regard, the Sole Arbitrator also notes that, despite the time span that elapsed during the proceedings before the FIFA PSC and the FIFA FDC and despite the several reminders, the Appellant still has not paid all amounts that it owes. The Sole Arbitrator therefore considers that, taking into consideration the purpose of the rule in question (timely and prompt compliance with decision of FIFA bodies) the Appellant's level of culpability in the offence at stake is therefore significant.
58. The Respondent argues that the FIFA DC did not take into account the currency exchange issues in Angola, the fact that the Appellant is a semi-amateur club and the circumstance that the Appellant has no prior offences.
59. Firstly, the Sole Arbitrator emphasises that the Appellant chose not to bring forward any of these arguments during the FIFA DC proceedings.
60. Concerning the currency exchange issues, the Sole Arbitrator notes that the Appellant limited itself to submitting a press article about the issues surrounding the Angolan currency in November 2015, as well as an indication of the exchange rate in December 2016, but has failed

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<sup>2</sup> See, for example, CAS 2007/A/1217, para 12.4.

to establish exactly how those circumstances would have affected the Appellant to such a degree that it should lead to a conclusion that the fine is grossly disproportionate as a result. In any event, the Sole Arbitrator is of the view that the fact that the conjuncture of a given country at a certain point in time may cause additional difficulties in complying with a sanction does not necessarily mean that said sanction is disproportional.

61. In relation to the alleged semi-amateur status of the Appellant, again the Sole Arbitrator wishes to note that the Appellant has failed to specify exactly and in practice how this circumstance (even if correct) would imply the gross disproportionality of the imposed sanction.
62. Concerning the absence of a disciplinary record, the Sole Arbitrator is of the view that stakeholders are expected to comply with the applicable rules. The absence of a disciplinary record should, in the Sole Arbitrator's view, be more a reason not to increase the sanction due to the absence of aggravating circumstances than a reason to reduce it due to the existence of mitigating ones. Abiding by the rules should be the norm.
63. In light of the above and particularly considering the range of fines and other sanctions that could have potentially been imposed, the Sole Arbitrator considers that the fine of CHF 5,000 does not seem to be oppressive and appears to be justified by the attitude of the Appellant who has failed to timely comply with its payment obligations towards the Cypriot Club and towards FIFA.
64. Indeed, the amount of CHF 5,000 as determined by the Appealed Decision cannot be said to be disproportional in light of the purpose for which it was imposed and considering the amounts owed by the Appellant. The rationale of the fine is to serve as a deterrent to parties who decide not to comply with decisions of FIFA bodies.
65. Therefore, in view of the Appellant's non-compliance with the FIFA PSC Decision, the Sole Arbitrator holds that the preconditions for the fine to be imposed on the Appellant by the FIFA DC had been met and that the fine is not excessive. Likewise, for the reasons set out above, the Sole Arbitrator holds that it has not been established that the Respondent breached Article 39.4 of the FDC when imposing the sanctions.
66. The Sole Arbitrator takes comfort in the information presented by the Respondent as to sanctions imposed upon clubs in the context of other disciplinary proceedings, which appears to demonstrate that there is a certain consistency in the application of sanctions to offences of similar level as that for which the Appellant has been sanctioned.
67. As far as the three-point deduction in case of persistent non-payment is concerned, the Sole Arbitrator notes that it is fully in the hands of the party subject to a threat of point deduction to avoid its enforcement. All that is required is the timely payment of the outstanding debt. The Sole Arbitrator therefore finds this to constitute an additional reason not to consider the imposed sanctions as disproportional, let alone grossly disproportional.
68. Finally, for the sake of completeness, the Sole Arbitrator wishes to note that, even if the

Appellant had paid any of the amounts due after the Appealed Decision was issued, it does not appear that the imposed sanctions could be reduced on that basis. Indeed, Article 64 of the FDC cannot be interpreted as meaning that a fine imposed by the FIFA DC may be subject to a later reduction or abatement if the outstanding payment is finally made, however late it may be.

69. In this regard, this Sole Arbitrator fully agrees with the grounds of another CAS award which, *inter alia*, reads as follows: “Whether a substantially late payment may serve to reduce a DC fine is also a question of policy. In this respect the Panel fully embraces the submission of FIFA, i.e. if the Appellant’s late payment were accepted as “mitigating circumstances” to reduce the fine, this would provoke a trend for debtors to disrespect the decisions of the DRC or other FIFA bodies and to only pay prior to the rendering of the CAS’ decision in the appeal proceedings on the fine. Debtors would then become reliant on the later reduction of fines imposed by the DC. This would somehow undermine the dispute resolution and enforcement system as set out by the FIFA Statutes and Article 64 of the FDC. This Panel holds that this cannot have been the intention of the drafters of Article 64 of the FDC” (CAS 2010/A/2148, para. 5.21).

## **B. Conclusion**

70. Based on the foregoing, the Sole Arbitrator holds that:
- i. The Appellant’s behaviour was in breach of Article 64.1 of the FDC;
  - ii. The sanctions imposed on Sport Luanda e Benfica FC are in compliance with the principle of proportionality and were not imposed in breach of Article 39.4 of the FDC.

## **ON THESE GROUNDS**

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

1. The appeal filed on 15 December 2016 by Sport Luanda e Benfica FC against the decision issued on 22 September 2016 by the FIFA Disciplinary Committee is dismissed.
2. The decision issued on 22 September 2016 by the FIFA Disciplinary Committee is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.