



Arbitration CAS 2017/A/5395 Techiman City FC v. Ghana Football Association (GFA), award of 23 April 2018

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Football

Dismissal of a request for review of a decision

Partial admissibility of an appeal

De novo ruling

Registration of player already contractually bound to another club

1. A request for reconsideration of a decision is not equal to an appeal. Therefore, the fact that an appellant files a request for reconsideration of a decision does not restart the time limit to appeal such decision before CAS. However, if the relevant “review decision” deals with the merits of the appellant’s case, *i.e. in casu* it confirmed that the underlying decision was not erroneous on points of law and/or facts, and that the facts on which it was based had been adequately considered, the appellant’s appeal is admissible, to the extent it seeks an examination of points of law and of facts on which the underlying decision was based, as confirmed by the review decision.
2. Based on art. R57 para. 1 of the CAS Code, any and all of an appellant’s submissions that the deciding body who rendered the appealed decision failed to address its arguments cannot lead by themselves to the setting aside of the appealed decision and to an award in its favour. A CAS panel hears the case *de novo* and is allowed to conduct a full rehearing of the merits of all disputed issues.
3. The mere existence and validity of a contract of employment between a club and a football player does not *per se* prevent said player’s registration with another club or implies that, once made, his registration with a second club is invalid. The player’s signature of a new contract of employment amounts to a termination of the contract of employment in force at that time, even though without just cause; therefore, the first contract of employment is not an impediment to a registration on the basis of the second contract of employment. The football system, as based on the rules adopted by FIFA, does not allow for any possibility that a player be forced to remain with, and play for, the old club. However, such player’s signature of another contract with another club could amount to a breach of his first contract of employment and could expose the player to a liability claim or to sporting sanctions.

I. THE PARTIES

1. Techiman City FC (“Techiman”, the “Club” or the “Appellant”) is a football club with seat in Techiman, Ghana, affiliated to the Ghana Football Association.
2. The Ghana Football Association (“GFA” or the “Respondent”) is the national football federation in Ghana, affiliated to the Fédération Internationale de Football Association (FIFA).
3. Techiman and the GFA are hereinafter referred to as the “Parties”.

II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 25 June 2017, a football match was played in Techiman, Ghana (the “Match”) between the Club and Techiman Eleven Wonders FC (“Eleven Wonders”), valid for the GN Bank Division One League championship.
6. On 29 June 2017, the Club filed a protest against Eleven Wonders with respect to the Match, alleging that Eleven Wonders had fielded three players not regularly registered pursuant to the applicable provisions of the GFA General Regulations. More specifically, with respect to one of those players, Mr Martin Kyeremeh (the “Player”), Techiman submitted the following:

“Player Martin Kyeremeh who still has a running contract with Techiman City FC (Petitioner) and was duly registered by us in the 2015/2016 League season when we were in Premier Division never returned to camp at the beginning of the 2016/2017 league season.

He only surfaced when we saw him play in the match on 25th June, 2017 at the Obene Ameyaw Park. His registration by the Respondent was dubious and fraudulent since Techiman City FC per our records did not transfer the player to Eleven Wonders FC at any point in time and there has been no transfer agreement signed by officials of the two clubs to effect any transfer.

The registration of the player was irregular and in breach of Article 27 (1b) of the GFA General Regulations. The resultant effect is that the player Martin Kyeremeh was not qualified to be fielded by the Respondent in the said match”.

7. On such basis, Techiman requested the Disciplinary Committee of GFA (the “Disciplinary Committee”) to sanction Eleven Wonders.
8. In its answer before the Disciplinary Committee, Eleven Wonders requested it to dismiss the

protest filed by Techiman, noting, with respect to Mr Kyeremeh, that, since he was a free agent, the Player was duly registered by Eleven Wonders in the 2015/2016 season for a period of two years. According to Eleven Wonders, the registration was done in accordance with Article 27(1)(h) of the GFA General Regulations. At the same time, Eleven Wonders contended that the claim by Techiman that the Player had been registered by Techiman for the 2015/2016 season was false.

9. On 9 August 2017, after a hearing held on 24 July 2017, the Disciplinary Committee issued a decision (the “DC Decision”) finding, in the portion relating to Mr Kyeremeh, as follows:

- “1. That on March 11, 2015, the player Martin Kyeremeh seized to be a player of Unity FC immediately the player was declared as a Floating Player by the Players’ Status Committee of the GFA and that from that day any purported transfer of Martin Kyeremeh by Unity FC to any club was null and void.*
- 2. That on January 18, 2016 the player, Martin Kyeremeh as a Free Agent (Floating Player) signed a contract with Techiman City FC for a period of Three (3) years given the club his economic and transfer rights and that from that day any purported transfer of Martin Kyeremeh by Unity FC was null and void.*
- 3. That for the reasons in Decision 1 and Decision 2 above the purported transfer on June 3, 2016 of the player, Martin Kyeremeh to Techiman Eleven Wonders FC from Unity FC with the Transfer Agreement between Unity FC and Techiman Eleven Wonders FC signed by Boakye Prince, CEO for Unity FC and Nana Ameyaw Manu, CEO for Berlin FC (now Techiman Eleven Wonders FC) was null and void and of no effect.*
- 4. That consequently the player Martin Kyeremeh is hereby declared as an unqualified player and Techiman Eleven Wonders is hereby ordered to return to registration card A (player’s license) to the Ghana Football Association with immediate effect.*
- 5. That for fielding an unqualified player, Martin Kyeremeh (in jersey No. 26) in the Matchday 19 by Techiman Eleven Wonders FC, Techiman Eleven Wonders FC shall forfeit the match in accordance with Article 34(1)(e) of the GFA General Regulations of the GFA.*
- 6. That having been found to have forfeited the match, Techiman Eleven Wonders FC shall be considered as having lost the match in accordance with Article 34(2) and accordingly, three (3) points and three (3) goals are hereby awarded in favour of Techiman City FC in accordance with Articles 34(2) and 34(10) of the General Regulations of the GFA.*
- 7. That in addition, being the offending club, Techiman Eleven Wonders FC is hereby fined Two Thousand and Five Hundred Ghana Cedis (GH¢2,500.00) payable to the GFA, 50% of which shall be paid to Techiman City FC pursuant to Article 34(5)(a) of the General Regulations of the GFA.*
- 8. That in addition, being the offending club, Techiman Eleven Wonders FC shall lose three (3) points from the club’s accumulated points from their previous matches pursuant to Article 34(5)(a) of the*

General Regulations of the GFA.

9. *That the amounts of money mentioned in Decision 7 above, shall be paid to the GFA within fourteen (14) days upon receipt of this Ruling, failing which Techiman Eleven Wonders FC shall forfeit their subsequent matches after the said deadline in accordance with Articles 39(8)(b) and 39(8)(d) of the First Amendment to the GFA General Regulations.*
10. *That should any party be dissatisfied with or aggrieved by this Decision, the party has within three (3) days of being notified of this Ruling to appeal to the Appeals Committee of the Ghana Football Association (See Article 37(11) of the General Regulations of the GFA)”.*

10. In support of the DC Decision, the Disciplinary Committee:

i. preliminary noted that:

“The Petitioner stated that the Respondent should suffer forfeiture under Articles 27(1)(b) and 34(1)(e) of the General Regulations of the GFA. The said Article 34(1)(e) of the General Regulations reads as follows:

“A team commits an offence punishable by forfeiture of a match where it fields an unqualified player(s)”.

Also per Article 29(2)(a) of the General Regulations of the GFA, an unqualified player shall not play in a match. Article 29(2)(a) of the GFA General Regulations reads:

“An unqualified player shall not take part in any competition organized by the Association”.

It is the case of the Petitioner that Techiman Eleven Wonders FC fielded three unqualified players by name: Martin Kyeremeh (in jersey No. 26), Yusif Hussein (in jersey No. 24) and Abdul Wahab (in jersey No. 16) in the said match against Techiman City FC.

Article 29(2)(b) of the GFA General Regulations reads:

“For the avoidance of doubt, a player shall not be deemed to have been fielded in a match unless he actually played in the match”.

In the instant matter, both parties were in agreement that all three players were fielded in the match”;

ii. then considered the position of Mr Kyeremeh as follows:

“a. the player, Martin Kyeremeh was a registered player of Unity FC, as a professional player, from March 29, 2012.

b. on March 11, 2015, Martin Kyeremeh’s application to be declared as a floating player was granted by the GFA Player’s Status Committee by a Declaration of Status Letter dated

March 11, 2015 with reference number GFA/SC/PSC/VOL.026 (C097). This Letter was given to Martin Kyeremeh by the GFA.

- c. the player, Martin Kyeremeh then on January 18, 2016 signed a Contract with Techiman City FC for a period of Three (3) Years and submitted his Declaration of Status Letter (Floating Status Letter).
- d. Techiman City FC then loaded the Contract, the Floating Letter and Medical Certificate of the player Martin Kyeremeh into the FIFA Connect system but did not complete the registration because a query was raised by the GFA which the club failed to respond to the query.
- e. on June 3, 2016 player, Martin Kyeremeh was registered by Techiman Eleven Wonders FC as a professional player, from Unity FC with a Transfer Agreement between Unity FC and Techiman Eleven Wonders FC (Boakye Prince, CEO signed for Unity FC and Nana Ameyaw Manu, CEO signed for Berlin FC now Techiman Eleven Wonders FC) from June 3, 2016 to (yet to expire).

Following from the findings of this Committee, it is very clear to this Committee that on March 11, 2015 the Player Martin Kyeremeh became from Unity FC. Unity FC therefore did not hold the transfer rights of the player. The Players' Status Committee in the grant of the floating status actually stated to Martin Kyeremeh that with the Floating Letter "you are therefore free to join any club of your choice per Article 32 of the GFA Regulations" with Unity FC on copy.

It is also clear to this Committee that the Player Martin Kyeremeh signed a three year contract with Techiman City FC on January 18, 2016 after his receipt of the Floating Status letter from the GFA.

This means that Techiman City FC therefore now owns the economic and transfer rights of the player Martin Kyeremeh. It must be noted that the failure to successfully register the player does not terminate the economic rights of Techiman City FC.

Both situations clearly means that Unity FC does not have the legal rights to transfer the player to Techiman Eleven Wonders FC without reference to Techiman City FC, the rightful owners of the rights of the player.

This Committee also notes that the player obtained a second copy of the Floating Letter from the GFA and same was handed to Techiman Eleven Wonders FC, which the club put into evidence as the document used to register the player.

Article 27 (1)(b) of the GFA General Regulations stipulates the requirements for registering a player with a Free Agent Status. Article 27(1)(b) of the GFA General Regulations states as follows:

Free Agent Players

- (i) Letter from the GFA Players Status Committee indicating that the said player is a free

agent.

- (ii) A contract between the player and the club duly signed by both parties (where applicable).*
- (iii) Online registration completed by the parties and submitted.*
- (iv) Medical Certificate.*
- (v) Proof of last contract and date signed by the former club of the player with the name and title and designation of the official and/ or a Free Agent letter from the Players' Status Committee.*

The Committee finds as disingenuous the evidence given by Techiman Eleven Wonders FC that the registration was done with the Floating Letter because the FIFA Connect system clearly does not have that document but rather the Agreement between Unity FC and Techiman Eleven Wonders FC. Techiman Eleven Wonders FC clearly violated Article 27(1)(b) of the GFA General Regulations.

This Committee holds that due to the prior agreement between the player, Martin Kyeremeh and Techiman City FC, registering the player with even the Floating Letter at that point would still be flawed, null and void.

It is also the position of this Committee that since Techiman Eleven Wonders FC were in possession of the Floating Letter of the player, the club cannot benefit from the provisions of Article 29(2)(c) of the General Regulations.

The said regulations states as follows:

“Without prejudice to the generality of the foregoing provision of this Article, the Association shall in all cases locate and punish the guilty party/ parties. In the event of the player being the sole guilty party, the results of the match which he played shall stand”.

In light of the foregoing, the Committee holds that the purported registration of Martin Kyeremeh by Techiman Eleven Wonders FC was deceitful, irregular and violation of the provisions of the GFA General Regulations and therefore null and void.

Consequently, this Committee declares the player, Martin Kyeremeh as an unqualified player to play in any official GFA match including but not limited to GN Bank Division One League match against Techiman City FC in accordance with Articles 27(1)(b), 29(1)(a) and 29(2)(a) of the General Regulations. The protest of Techiman City FC shall therefore succeed in relation to player Martin Kyeremeh”.

11. The DC Decision was challenged by Eleven Wonders before the Appeals Committee of GFA (the “Appeals Committee”), which, on 12 September 2017 issued a decision (the “AC Decision”) as follows:

- “1. *The appeal is hereby upheld.*
 2. *The player MARTIN KYEREMEH was qualified to play for appellant in the match between appellant and respondent on 25/06/2017.*
 3. *The results of the match played between appellant and respondent on 25/06/2017 shall remain the same.*
 4. *Cost of GH¢3000.00 against respondent”.*
12. In support of such conclusion, the Appeals Committee held that:
- “1. *Any party desirous of filing an appeal must clearly state the grounds of appeal on the appropriate form and where the space provided on the form is inadequate, on an additional sheet of paper.*
 2. *The record of the player MARTIN KYEREMEH with the GFA does not support the finding by the D.C that the said player is a player of the respondent.*
 3. *This committee found that at the end of the hearing of this matter before the D.C, both parties rightly urged the D.C. to rely on the records in the FIFA Connect System to adjudicate the matter which was succinctly captured at page 4 of the decision of the D.C as follows:*

“Both parties urged the Disciplinary Committee to rely on the record in the FIFA connect system to adjudicate the matter in accordance with the Court of Arbitration for Sports decision concerning Tema Youth FC and Dreams FC on the reliance on the information in the transfer system at the Association”
 4. *The findings of the Disciplinary Committee are NOT supported by the data available at the National Secretariat of the Ghana Football Association (GFA).*
 5. *The purported contract between respondent and the player which is the basis upon which the D.C held that the player is the player of respondent, has not been deposited with the GFA in accordance with article 30(2) of the General Regulations of the GFA and does not form part of the data available at the GFA.*
 6. *The finding by the D.C that respondent loaded the contract of the player onto the FIFA connect system but did not complete the registration because a query was raised by the GFA which respondent failed to respond is unsupported by the data available at the GFA.*
 7. *This committee found per the WORK TASK LOG on the FIFA Connect System, that it was respondent itself which under the “task” tab rejected or discontinued the registration of the player MARTIN KYEREMEH after attempting to register the player.*
 8. *There is no evidence before this committee that the list of players of appellant was published by the GFA in accordance with Article 28(1) and (c) of the General Regulations of the GFA”.*

13. On 27 September 2017, the Club filed with the Appeals Committee an application for the review of the AC Decision, alleging that it was “*full of factual inaccuracies and lacked credibility in terms of application of the Regulations*”, and therefore that, reviewing the AC Decision, the Appeals Committee should uphold the DC Decision.
14. On 24 October 2017, the Appeals Committee issued a decision (the “Review Decision”) dismissing the application for review, because:
 - “1. *The applicant has not been able to put across any new matter which was not duly considered in reaching the decision of 12th September 2017.*
 2. *The applicant has not been able to show how the decision delivered by this committee on 12th September 2017 was erroneous on point of law or on the facts.*
 3. *The committee is satisfied that the facts upon which the decision of 12th September 2017 was taken were adequately considered.*
 4. *It is our view that there are no exceptional circumstances urged on this Committee to warrant a review of the decision”.*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 13 November 2017, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), Techiman filed with the Court of Arbitration for Sport (“CAS”) a statement of appeal against the AC Decision and the Review Decision (the “Appealed Decisions”). The statement of appeal named GFA as respondent and contained, *inter alia*, the request that the arbitration be conducted on an expedited basis and that a sole arbitrator be appointed.
16. On 14 November 2017, the CAS Court Office forwarded the statement of appeal to the Respondent, inviting it to state within two days whether it accepted that the arbitration be conducted on an expedited basis in accordance with Article R52 of the Code.
17. In a letter of 17 November 2017, the CAS Court Office noted that the Respondent, within the deadline granted, had not expressly consented to the Appellant’s request for an expedited procedure, and therefore that no expedited procedure would be implemented.
18. On 23 November 2017, the Appellant filed its appeal brief pursuant to Article R51 of the Code. The appeal brief contained, *inter alia*, the request that three witnesses be heard.
19. On 24 November 2017, following the failure by the Respondent to express its position on the Appellant’s request for a sole arbitrator to be appointed, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided to submit the dispute to a sole arbitrator.
20. On 28 November 2017, the appeal brief was forwarded to the Respondent. In the cover letter,

the CAS Court Office drew the Respondent's attention to the time limit set by Article R55 of the Code for the submission of an answer to the appeal. The appeal brief was received by the Respondent by DHL on 30 November 2017.

21. On 22 December 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Professor Luigi Fumagalli, Sole Arbitrator. At the same time, the CAS Court Office noted that Respondent had failed to submit an answer within the deadline prescribed by Article R55 of the Code.
22. On 28 December 2017, the Respondent informed the CAS Court Office that the appeal brief had been forwarded to Eleven Wonders for comments and that Eleven Wonders, in a letter dated 9 December 2017 (attached to the correspondence with CAS), had expressed its intention to "*affirm [its] position as interested party*" and that it would "*file to join proceedings of the issue at CAS*". As a result, the CAS Court Office was advised that the Respondent was waiting for Eleven Wonders to take steps to join the dispute, and therefore was requested to grant an extension of the deadline to submit an answer.
23. In an email of 29 December 2017, the Appellant expressed its opposition to the requested deadline extension and to the intervention of Eleven Wonders in the arbitration.
24. On the same 29 December 2017, the Appellant informed the CAS Court Office that it had instructed its counsel to allow the Sole Arbitrator to render an award without a hearing.
25. On 3 January 2018, the CAS Court Office advised the Parties, *inter alia*, that:
 - i. *in view of the fact that the deadline for the Respondent to file its answer had already expired when the request for extension was filed, no new deadline could be granted pursuant to Article R32 of the Code;*
 - ii. *on the basis of the Respondent's correspondence dated 28 December 2017, it appeared that Eleven Wonders had expressed to the Respondent its intention to intervene in the arbitration on 9 December 2017. Therefore, by that date at the latest Eleven Wonders became aware of the pending arbitration. As a result, any application to intervene would be considered to be manifestly late pursuant to Article R41.3 of the Code, under which any application to intervene has to be filed "within 10 days after the arbitration has become known to the intervenor".*
26. On 29 January 2018, the CAS Court Office informed the Parties that, in accordance with Article R57 of the Code, the Sole Arbitrator deemed himself sufficiently well informed to render an award on the basis of the written submissions, without holding a hearing.
27. On 30 January 2018, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the "Order of Procedure"), which was accepted and signed by Techiman on 6 January 2018. The Respondent failed to sign and return the Order of Procedure within the prescribed deadline.

IV. THE POSITION OF THE PARTIES

28. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The position of the Appellant

29. In its statement of appeal, the Club requested the CAS to:

- “1. Allow the Appeal;*
- 2. Order the immediate re-instatement of the points award and deducted ordered by the Disciplinary Committee;*
- 3. Order the GFA thereby promotes Techiman City and not Eleven Wonders; alternatively,*
- 4. Remit the matter to a fresh Appeal Committee of the GFA; and/or*
- 5. Order the GFA and/or Eleven Wonders pay Techiman City compensation for its loss.*
- 6. Order the GFA pays Techiman City's costs of this appeal”.*

30. Such requests were confirmed in the appeal brief.

31. In support of its requests for relief, the Appellant submitted that the AC Decision is *“flawed”*. More specifically, in the Appellant's opinion, the Appeals Committee did not consider all the arguments submitted and did not even deal with all the findings of the Disciplinary Committee, and found against Techiman only because it considered that its employment contract was not validly registered with the GFA. However, according to the Appellant, regardless of whether Mr Kyeremeh was validly registered with Techiman (because of a failure of GFA), Mr Kyeremeh was not validly registered with Eleven Wonders in any event because:

- i. even if the employment contract between Techiman and the Player was not registered, it was a valid employment contract, and the Player was not free to join Eleven Wonders or to be registered by it;
- ii. the registration of the Player was invalid in any event, because it was done on the false and misleading basis of a purported transfer agreement between Unity FC and Eleven Wonders, that was not valid, because the Player was not registered with Unity FC at the time, and could not be properly relied upon, as found by the Disciplinary Committee;
- iii. the Appeals Committee failed to *“engage with this point”*, even though it was one of the main points in support of the DC Decision.

32. In the Appellant's opinion, had the Appeals Committee properly considered the evidence before it, it would have confirmed the DC Decision, which should therefore be restored by CAS, and the Appellant be entered immediately in the Premier League. In fact, as a result of the DC Decision, the Club would have been promoted to the Ghana Premier league instead of Eleven Wonders. In fact, at the end of the 2016-2017 football season (ending on 28 September 2017), Eleven Wonders had 60 points and the Club had 54 points, while, as a result of the DC Decision Eleven Wonders would have had 54 points and the Club 57 points.
33. In any case, in the Appellant's opinion, the case could be sent back to the Appeals Committee for a new decision. In the alternative, *"to the extent that any procedural or practical obstacle prevents Techiman from being promoted"*, then an order from CAS is sought granting Techiman compensation for the financial loss suffered, caused by the GFA's failure to promote it.

B. The position of the Respondent

34. The Respondent filed no answer to the appeal filed by Techiman and did not request that a hearing be held in this case.

V. JURISDICTION

35. 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 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 him prior to the appeal, in accordance with the statutes or regulations of that body".

36. The jurisdiction of CAS is contemplated by Articles 73 and 91 of the GFA Disciplinary Code as follows:

Article 73: "Certain decisions passed by the Appeals Committee may be appealed against before the Court of Arbitration for Sport"

Article 91: "Any party aggrieved by a decision of the Appeals Committee of the GFA may appeal to the Court of Arbitration for Sport in Lausanne, Switzerland as the final arbiter in all sports-related litigation".

37. The Sole Arbitrator, therefore, finds that he has jurisdiction to decide on the appeal filed by Techiman against the Appealed Decisions.

VI. ADMISSIBILITY

38. The statement of appeal complied with the requirements of Article R48 of the Code and was filed by Techiman within the deadline set by Article 49 of the Code, counted from the date the Review Decision was issued.

39. The Sole Arbitrator, at the same time, notes that, at the time the statement of appeal was filed (on 13 November 2017), the 21-day deadline set by Article R49 of the Code had already elapsed with respect to the date on which the AC Decision was issued (on 12 September 2017). In that regard, the Sole Arbitrator remarks that, in accordance with the CAS jurisprudence (CAS 2010/A/2315), the fact that an appellant has filed a request for reconsideration of a previous decision by the internal body does not “*restart the limitation clock*” with respect to such previous decision: a request for reconsideration cannot be equated to an appeal and therefore it does not extend the time limit to challenge it before CAS.
40. As a result, based on the above, the appeal filed by Techiman would be belated, *viz.* inadmissible, in the portion regarding the AC Decision. The appeal would be admissible only to the extent it challenges the Review Decision.
41. The Sole Arbitrator, however, notes that the Review Decision dealt with the merits of the Appellant’s case, as it confirmed that the AC Decision was not erroneous on points of law and/or fact, and that the facts on which it was based had been adequately considered.
42. The appeal is therefore admissible, to the extent it seeks a review of points of law and of fact on which the AC Decision was based, as confirmed by the Review Decision.

VII. SCOPE OF THE PANEL’S REVIEW

43. According to Article R57, first paragraph of the Code,

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
44. In light of the foregoing, any and all submissions of the Appellant, concerning the Appeals Committee’s failure to address the point Techiman had raised before it, cannot lead by themselves to the setting aside of the Challenged Decisions and to an award in favour of the Appellant. A CAS panel hears the case *de novo* and is allowed to conduct a full rehearing of the merits of all disputed issues.

VIII. APPLICABLE LAW

45. The law applicable in the present arbitration is identified by the Sole Arbitrator in accordance with Article R58 of the Code.
46. Article R58 of the Code provides the following:

“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

47. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, those contained in the GFA rules, because the appeal is directed against decisions issued by the Appeals Committee of GFA, which were passed applying the GFA regulations.
48. As a result, the GFA regulations shall apply primarily. Ghanaian law, being the law of the country in which the GFA is domiciled, applies subsidiarily.

IX. MERITS

A. The issues

49. The object of this arbitration are the issues considered in the Challenged Decisions, which eventually found that the protest filed by the Appellant had to be dismissed, since Eleven Wonders was entitled to field Mr Kyeremeh at the Match. The Appellant seeks in this arbitration an award setting aside the Challenged Decisions and finding that Mr Kyeremeh was not qualified to play for Eleven Wonders, with all ensuing sporting consequences, as indicated in the DC Decision.
50. The Appellant’s case is based mainly on the signature on 18 January 2016 of an employment contract, under which Mr Kyeremeh undertook to play for the Appellant for three years (the “Employment Contract”), after that Mr Kyeremeh on 11 March 2015 had been declared by the GFA to be free of any contractual obligations towards his former club, Unity FC. According to the Appellant, even if the Employment Contract was not registered by the GFA, it was valid and therefore prevented the Player from joining Eleven Wonders or being registered by it. At the same time, in the Appellant’s opinion, the registration of the Player was invalid in any event, because it was done on the basis of a transfer agreement between Unity FC and Eleven Wonders, that was not valid, because the Player was not registered with Unity FC at the time, and could not be properly relied upon.
51. The Sole Arbitrator notes that it is undisputed that the Employment Contract was not registered with the GFA: the point was noted both in the DC Decision and in the AC Decision, and is not challenged by the Appellant, which only ascribes the failed registration to a fault of the GFA. As a result, the Player was never registered with the GFA for Techiman. Indeed, it appears (in the absence of a contrary contention of the Appellant) that Mr Kyeremeh never played for Techiman. In fact, the Appellant accepts that already on 3 June 2016, *i.e.* one year before the Match, the Player was registered by the GFA for Eleven Wonders.
52. As a consequence, no previous registration with Techiman prevented the registration of the Player with Eleven Wonders.
53. In the same way, the Sole Arbitrator does not accept the Appellant’s submission that the mere existence and validity of the Employment Contract *per se* prevented the registration of the Player with Eleven Wonders, and implies the invalidity of such registration, once made. Indeed, the signature by the Player of a new contract with Eleven Wonders could amount to a breach of the Employment Contract and could expose the Player to a liability claim or to sporting

sanctions. In any case, the signature of the new contract amounts to a termination of the contract in force at that time, even though without just cause: therefore, the old contract is not an impediment to a registration on the basis of the new contract. The football system, as based on the rules adopted by FIFA (the Regulations on the Status and Transfer of Players), does not allow for any possibility that a player be forced to remain with, and play for, the old club. As noted in the Commentary to the FIFA Regulations on the Status and Transfer of Players (p. 49 footnote 83), “*a player who breaches an employment contract by wrongly and prematurely withdrawing from it may be liable to damages or sporting sanctions but not to an injunction to remain in the employment contract*” (citing CAS 2004/A/678, order on provisional measures).

54. The Appellant, however, contends that the registration of the Player was invalid in any event, because the Player was registered for Eleven Wonders on the basis of a transfer from Unity FC, that was not valid, because the Player was not registered with Unity FC at the time.
55. The Sole Arbitrator, however, notes that, when the Player was registered for Eleven Wonders, he was not bound by any registration with another club: therefore, even assuming the invalidity of a transfer agreement from Unity FC to Eleven Wonders (for lack of “object”, because Unity FC had no right to transfer, or any other reason), the Player could be registered as a free agent. As a result, the registration for Eleven Wonders appears valid and effective.
56. In summary, the Sole Arbitrator finds that the Player was properly registered for Eleven Wonders on 3 June 2016. Thus, Eleven Wonders was entitled to field the Player at the Match. The Challenged Decisions that so found have to be confirmed.
57. As a result of the foregoing, the Sole Arbitrator finds that the appeal has to be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Techiman City FC on 13 November 2017 with respect to the decisions of the Appeals Committee of the Ghana Football Association of 12 September 2017 and 24 October 2017, to the extent in which it is admissible, is dismissed.
2. The decisions of the Appeals Committee of the Ghana Football Association of 12 September 2017 and 24 October 2017 are confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.