



Arbitration CAS 2019/A/6367 Paris Saint-Germain & Neymar Da Silva Santos Junior v. Union des Associations Européennes de Football (UEFA), award of 17 February 2020 (operative part of 17 September 2019)

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

*Football*

*Disciplinary sanction against a player for abusive language addressed at a match official*

*Admissibility of new submissions or documents before the CAS*

*Admissibility of harsher sanctions in the context of “competition matches”*

*Scope of “competition matches” and duty of loyalty of a player in such context*

*Assessment of the gravity of the infraction*

*Mitigating and aggravating circumstances*

1. According to Article R57(1) of the CAS Code, CAS proceedings are *de novo* proceedings. Consequently, the Parties – in principle – are not restricted when filing their legal and factual submission before the CAS. Therefore a new submission or a new document shall be admitted in the CAS proceedings even if it was not part of the case file before the previous instances.
2. It makes sense to provide for harsher sanctions in the context of a match competition as misbehaviour displayed such connection will – in principle – arouse much more attention from either spectators or the media and, consequently, bring about greater harm to the interests of the federation. As a result, a player is under a higher duty of loyalty and correct behaviour while in the spotlight of competition matches.
3. The term “competition matches” shall not be construed too narrowly. The term covers all incidents in the stadium that are, timewise, closely connected to the match. Thus, the term is not restricted to the 90 (or 120) minutes of the game, but also covers certain periods before and after the match, including e.g. the post-match press conference. Furthermore, the term “competition matches” is not restricted to occurrences on the pitch but covers all incidents in the stadium that are “*visible in the public eye*”, because any such incident will be picked up by spectators and the media and, as a result, be intensified and draw widespread attention. A player who is not fielded to play in a match competition due to an injury but attends the match in the stadium, in the official stands of the club, is bound to observe duties that go beyond the obligations imposed on a mere “fan” or the “general principles of conduct” expected of a player.
4. When assessing the gravity of the infraction, a CAS panel must follow an objective standard. Thus, it is not important how a specific social group might interpret statements that may constitute abusive or insulting language. Such statements must be interpreted and assessed from the viewpoint of an objective third person, not least in

**order to ensure equal treatment of all stakeholders. However, the application of an objective standard does not imply that a CAS panel is prevented from taking into account the individual circumstances of the case.**

5. **While showing remorse might constitute a mitigating circumstance, the lack of remorse, however, is not an aggravating circumstance. As the applicable standard when assessing the gravity of the infraction is – in principle – objective, it applies independently of whether the player is famous (and has a great number of followers) or not.**

## **I. PARTIES**

1. Paris Saint Germain (“the Club” or “the First Appellant”) is a successful French football club. The Club is associated to the French Football Federation, which in turn is associated to Union des Associations Européennes de Football.
2. Mr Neymar Da Silva Santos Jr (“the Player” or “the Second Appellant”) is a professional footballer for the Club.
3. Union des Associations Européennes de Football (“UEFA” or “the Respondent”) is the governing body of European football. UEFA is an association under Articles 60 et seq. of the Swiss Civil Code and has its seat and headquarter in Nyon, Switzerland.
4. The Club and the Player are referred to as “the Appellants”. The Club, the Player and UEFA are referred together as “the Parties”.

## **II. FACTUAL BACKGROUND**

5. The relevant facts according to the Parties’ submissions are briefly summarized below, without prejudice to any eventual findings of fact by the Sole Arbitrator.

### **A. The Match**

6. On 6 March 2019, the Club played at its own stadium against Manchester United. The match was the second leg of the UEFA Champions League round of 16 fixture (“the Match”). The Club had won the first leg on 12 February 2019 by two goals to nil.
7. The Player did not participate in the Match due to an ankle injury. He attended the Match as a spectator, watching from a part of the stadium reserved for player and team officials.

8. In the first half of the Match Manchester United scored a goal in the second minute. The Club scored the second goal in the twelfth minute, making the aggregate score 3-1 in favour of the Club. In the thirtieth minute, Manchester United scored again making the aggregate score 3-2 in favour of the Club.
9. In the first minute of added time in the second half, Diogo Dalot from Manchester United took a shot at the Club's goal. The shot was blocked by one of the Club's players, Presnel Kimpembe. The referee signalled for a corner kick to Manchester United. A few seconds later, however, the referee halted the play and indicated that he had been contacted by the Video Assistant Referees ("VAR") who had recommended that he review the video footage of the blocked shot. The referee reviewed the footage on the pitch-screen for about 60 seconds. After concluding his review, the referee awarded a penalty to Manchester United. Some of the players of the Club remonstrated with the referee and there was a clash between some of the Club's and Manchester United's players. The penalty was converted by Manchester United resulting in an aggregate score of 3-3. In view of Manchester United's three away goals vis-à-vis the Club's two away goals scored in the first leg, Manchester United proceeded to the next round of the competition whereas the Club was eliminated from the tournament.

## B. The Player's Statements

10. Shortly after the Match, the Player posted an image of the blocked shot to his Instagram story accompanied by the following statement in Portuguese ("the Statements"):

*"Isso é uma vergonha!!*

*Ainda colocam 4 caras que não entendem de futebol pra ficar olhando lance em camera lenta ... Isso não existe!!!*

*Como o cara vai colocar a mão de costas? Ah vá pá pap".*

11. The Parties disagree as to the correct translation and, thus, the true meaning of the Statements. The Appellants submit that the Statements translate as follows:

*"It's a disgrace!!*

*They've actually put four guys who do not know anything about football to just stand and watch the kick in slow motion ... Are they for real?!!*

*How is the guy going to put his hand on his back? Oh, for [God's] OR [f\*\*k's] sake!"*

12. The Respondent submits the following translation for the Statements:

*"This is a disgrace!!*

*They put four guys who know nothing about football to watch the incident in slow motion ... It can't be!!!*

*How can he handle the ball when his back's turned? Oh, go f\*\*k yourselves".*

13. The Player’s post on Instagram immediately got wide attention. At the post-Match press conference, e.g., the Coach of the Club was promptly asked about the Statements. The Coach responded as follows:

*“Sometimes when you remember yourself in a big, big fight and being very emotional sometimes you use words and you react in a way that you take back some hours later [...] so don’t be too harsh on him. I would not over-interpret the use of his words in the heat of the challenge and the moment of the decision. It is quickly typed into a smartphone [...]”.*

14. The Player’s Statements were also widely reported and commented on by the international press.

**C. The Proceedings within UEFA**

15. On 13 March 2019, the UEFA Ethics and Disciplinary Inspector (“EDI”) initiated a disciplinary investigation with regard to the Player’s Statements.
16. On 14 March 2019, the EDI notified the Player and Club of the investigation. The Appellants were invited to state their position in the matter.
17. On 20 March 2019, the Club and the Player replied to the EDI by separate letters. The letter by the Player read as follows:

I was informed by the club that an investigation was opened against me after the match against Manchester United and a comment published in my Instagram story. As the subject of the investigation, and for being my duty and my responsibility, I asked the club allow me to send you this letter of apology for the exaggeration comment on my social network and personal that automatically took place of a supporter frustrated by what happened with the VAR.

In fact, after reviewing my post at the time of the exalted nerves I realized the exaggeration and reiterate my sincere apology for knowing that this behavior does not match a professional football athlete, besides, it is not of all kind of behavior that I have demonstrated since the beginning of my career. I can only highlight the exceptional circumstances I had to face, with enormous frustration, impotence and a disappointing last 16 round of the world's biggest club competition.

The sad scenario of the game can not justify such a post on the social network and I finally had the correct view to delete this post during the day following the launch, but the damage has already been done, especially with the close monitoring of my life of journalists. Such a behaviour is not a habit for me as well as such an investigation, and I would sincerely apologize to you, for the ethics and disciplinary of UEFA and for the arbitral body. I did not want to be offensive and I am sincerely sorry.

The present investigation is a real sanction to me and I would be very grateful if you could accept my apologies and decide to terminate the process. This experience should be for sure my last and only deviation of behaviour.

I sincerely thank you for your consideration and concern and I'd like to ask you forgiveness for my basic English.



18. The Club's letter reads – *inter alia* –as follows:

Dear Ethics and Disciplinary Inspector,

In the context of the disciplinary investigation you have initiated regarding the comments made on social media by the player Neymar Da Silva Santos Junior on 6 March 2019, I would like, on behalf of the Club, to add further comments to the apology letter of the player.

Indeed, if the letter clearly shows regrets and repentance of the player, it could be useful to highlight the various reasons of the frustration and disappointment driving the player to "go sideways". The topic is not to justify this social media comment, especially as the Club already warned the player about it, but only to better explain you the context of the concerned game for the player.

More precisely, the frustration invoked in the player's letter is obvious for him but need to be clarified as it results from several Club's contexts.

...

Back on the Pitch for the season 2018/2019 with a lot of motivation, the player's main concern was to highly perform in UEFA Champions League, the only competition that Paris Saint-Germain lost in 2017/2018.

Unfortunately, during a preparation game against Dijon at the end of January, few days before the first match of the UEFA Champions League last 16 round in Manchester, Neymar was injured again. Such an injury needed a long recovery period and his participation to the two games against Manchester United became out of scope.

**Such a sad repetition should be obviously considered as a huge frustration reason for any player.**

...

With such a comfortable first leg result and such a lack of usual starting eleven Manchester players, Paris Saint-Germain had placed one foot in the quarter finals.

Then, this qualification of Manchester United have ineluctably resulted in a significant disappointment of Parisian players, including Neymar. In the same time, it has resulted in a heightened euphoria of the many Manchester United former players invited in the same stadium area than Neymar. Especially, we could denounce a certain lack of modesty from a part of them (a minor part but a very loud part).

**Such an atmosphere, after such an unexpected and illogical defeat, has inevitably a terrible negative impact on any player's behavior and nerves.**

...

In addition to the horrific game scenario, a controversy erupted surrounding the use of "VAR". This polemic came during the last minutes of the game, after several refereeing mistakes during the course of the match.

You'll find a short compilation of the most apparent mistakes hereafter: <https://we.tl/t-gtWUe81BRc>

Those mistakes could already generated an increased frustration after the present unexpected result.

Nevertheless, this situation was surely aggravated with the final decision of the main referee by using the VAR system.

Indeed, the action driving to the penalty was anything but obvious. More precisely, many experts didn't understand this decision. Among them, three former big stars of Manchester United, Rio Ferdinand, Owen Hargreaves and Michael Owen spontaneously expressed their stupefaction on air with BT Sport. The famous English referee Mark Clattenburg had the same reaction and blasted UEFA in Daily Mail: "*It should not have been a penalty*".

The status of each of these experts leaves no doubt on their impartiality. Neymar's feeling was naturally the same.

**Such a controversy, with such a decisive effect on the final result of the game, inevitably generates a heavy sense of injustice for any player.**

...

In this contractual setting, the Football Sport Director of Paris Saint-Germain, Mr. Antero Henrique called Neymar for an exceptional meeting immediately after being informed of this non acceptable comment. At the occasion of that interview, Neymar was officially warned by the Club. It should be noticed that this convocation intervened before the notification of the present investigation.

***Taking into account this in-house disciplinary action that Neymar already underwent, considering the accumulation of the unusual mitigating circumstances hereabove-mentioned, and in view of the damage that Paris Saint-Germain could suffer in case of any additional absence of Neymar, we should be grateful if you would determine to take no further action and close the file.***

We sincerely hope that the present precisions shall raise your awareness and we stay at your disposal for any additional precision.

19. On 21 March 2019, the EDI provided his report to UEFA. Therein, the EDI stated – *inter alia* – as follows:

3. Following the Match, Mr. Neymar posted a story in Portuguese on his personal page of the social media network Instagram, with the following comment:



4. This can be translated into English as:

*“This is a disgrace!!*

*They put four guys who know nothing about football to watch the incident in slow motion... It can't be!!!*

*How can he handle the ball when his backs turned?*

*Oh, go f\*\*k yourselves»*

5. The Player has over 110 million followers on his Instagram account. In general, a posted story is seen of approximately 20% of the followers. In this case, anticipated more than 20 million people.
6. Besides the Player's Instagram account, the story has received widespread media attention, being reported on many news sites:

<https://www.90min.com/posts/6313538-neymar-hits-out-at-match-officials-on-instagram-after-var-drama-in-champions-league-exit-to-man-utd>

...

21. It has been established that the Player has committed violations of the principles of conduct that all footballers subject to the DR must abide with, by insulting the referees of the match, a misconduct of the Player hence violated Article 15 (1)(d) DR.
22. Moreover, the widespread diffusion through the media and social networks, undoubtedly constitute an aggravating circumstance that shall be considered. Top level footballers not only have the duty of abiding with the regulations of their sport; they must also set an example for the public, especially the younger supporters who are easily influenced by the behavior of the players that they idolize.
23. It shall be added that the Player's actions did not take place on the field of play. The player did not participate in the match but were present ringside. This should have allowed him to think his actions through before writing an insulting and inappropriate comment and posting it on Instagram.
24. In the Disciplinary case 28072-UCL-2014/15, the UEFA Control, Ethics and Disciplinary Body decided to suspend the Paris Saint-Germain player Serge Aurier for three (3) UEFA competition matches for which he would be otherwise eligible.
25. Mr. Neymar's Instagram posting is directly comparable to the Serge Aurier case. The processing of the case against Mr. Aurier is indicative.
26. In view of the inappropriate behavior of the footballer, the violation of the above-references provisions of the DR, it is hereby recommended that it is opened disciplinary proceedings against Mr. Neymar.
- ...
30. Based on the above and in accordance with Art. 55. (1) d) DR, I the undersigned ethics and disciplinary inspector, requests that it is opened disciplinary proceedings against Mr. Neymar for violation of Art. 15(1)(d) DR, and that the Control, Ethics and Disciplinary Body decides to impose on Mr. Neymar the sanction that it deems appropriate given the seriousness of the offence committed.
- It is hereby proposed that Mr. Neymar:
- Is suspended for the next three (3) UEFA competition matches for which he would otherwise be eligible.
20. On 22 March 2019, UEFA informed the Club that disciplinary proceedings had been initiated in accordance with Article 55 of the UEFA Disciplinary Regulations ("DR").
21. On 27 March 2019, the Club submitted its statements in response to the charges.
22. On 25 April 2019, the UEFA Control, Ethics and Disciplinary Body ("CEDB") took a decision whereby it ruled as follows:

*“1. To suspend the Paris Saint-Germain player Neymar Da Silva Santos Junior for three (3) UEFA competition matches for which he would be otherwise eligible, for insulting match officials.*

*2. The club ensures the player is informed personally of this decision”.*

23. On 3 May 2019, the CEDB provided the grounds for its decision to the Club.
24. On 10 May 2019, the Appellants filed an appeal against the decision of the CEDB with the UEFA Appeals Body (“UEFA AB”).
25. On 18 June 2019, the UEFA AB issued the following decision (“the Appealed Decision”):

*“1. The appeal lodged by Paris Saint-Germain is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 25 April 2019 is confirmed.*

*2. The costs of the proceedings, totalling EUR 1,000 (minus the appeal fee) are to be paid by the Appellant.*

*3. The French Football federation is jointly and severally liable for the payment of the costs of the proceedings”.*

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

26. On 18 July 2019, the Appellants filed an appeal against the Respondent with the Court of Arbitration for Sport (the “CAS”) with respect to the Appealed Decision. The Appellant requested that the appeal be submitted to a Panel of three arbitrators. The Appellants nominated Mr. Ulrich Haas, Professor in Zurich as an arbitrator.
27. On 25 July 2019, the Appellants filed their Appeal Brief.
28. On 2 August 2019, the Respondent informed the CAS Court Office that it nominated Mr Alexis Schoeb as an arbitrator in these proceedings.
29. On 12 August 2019, the Appellants informed the CAS Court Office that a decision by the CAS was needed before *“this season’s Champions League tournament are scheduled to take place on 17 and 18 September 2019 (Matchday One)”*.
30. With letter dated 22 August 2019, the CAS Court Office advised the Parties that the arbitrator appointed by the Respondent was unable to offer any availability for a hearing date early enough to allow for the award to be issued before the deadline indicated by the Appellants in their correspondence of 12 and 20 August 2019. The CAS Court Office, therefore, invited the Parties to consider whether the present dispute might be submitted to a sole arbitrator, rather than to a panel, in order to accelerate the procedure.

31. With letter dated 23 August 2019, the Appellants informed the CAS Court Office that *“the parties thus respectfully request the CAS to afford them the opportunity to confer so that they may try to agree on the identity of the sole arbitrator”*.
32. On 23 August 2019, the CAS Court Office informed the Parties that they were granted until 27 August 2019 at 12:00 CEST to inform it about the outcome of their discussions.
33. On the same day, the Respondent informed the CAS Court Office that for *“the avoidance of doubt, UEFA confirms that it agrees to the matter being heard by a sole arbitrator and that the parties have been in contact with respect to a potential agreement on jointly nominating an arbitrator for this purpose”*.
34. On 27 August 2019, the Appellants and the Respondent informed the CAS Court Office that the Parties had agreed to the appointment of Prof. Ulrich Haas as Sole Arbitrator for the present proceedings.
35. On 26 August 2019, the Respondent filed its Answer.
36. On 28 August 2019, the CAS Court Office invited the Parties to state by 2 September 2019 whether they wished for a hearing to be held in this matter.
37. On 2 September 2019, the Appellants informed the CAS Court Office that their preference was in favour of a hearing.
38. On the same day, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division had confirmed the appointment of Prof Dr Ulrich Haas as Sole Arbitrator in this matter.
39. Still on 2 September 2019, the Respondent informed the CAS Court Office that *“it was happy for the sole arbitrator to decide the case based solely on the parties’ written submissions, it has no objection to a hearing being fixed and would make itself available for such hearing”*.
40. On 5 September 2019, the file in these proceedings was transmitted to the Sole Arbitrator. In a separate letter of the same day, the CAS Court Office confirmed that the hearing would be held on 13 September 2019 at the CAS Court Office in Lausanne.
41. On 9 September 2019, the CAS Court Office sent an Order of Procedure (“OoP”) to the Parties and invited them to return a signed copy thereof by 11 September 2019.
42. On 11 September 2019, both the Appellants and the Respondent returned a signed copy of the OoP to the CAS Court Office.
43. A hearing was held in this matter on 13 September 2019 at the CAS headquarters in Lausanne. Besides the Sole Arbitrator and the Counsel of the CAS, Mr. Daniele Boccucci, the following persons were present:

On behalf of the Appellants:

- Mr. Grégory Durand, the Club's Director of Sports Legal Affairs and Institutional Relations (representative of the Club);
- Mr Neymar Da Silva Santos Junior (by video conference);
- Ms Jimena Martinez Rojas, Professional Translator (expert by teleconference);
- Mr William Sternheimer, Counsel for the Appellants, Morgan Sports Law;
- Mr Nil Anteson, Counsel for the Appellants, Morgan Sports Law;
- Ms Melanie Klemm (interpreter).

On behalf of the Respondent:

- Mr Jacques Bondallaz, UEFA's Chief of Regulatory and Disciplinary (representative of UEFA);
- Mr Arturo Galván Tomillo, UEFA's Disciplinary Lawyer;
- Prof. Antonio Rigozzi, counsel for UEFA, Lévy-Kaufmann-Kohler;
- Mr Claudinei Nunes da Silva, expert on Portuguese Language (expert).

44. On 17 September 2019, the operative part of the Award was communicated to the Parties by the CAS Court Office.

#### **IV. POSITION OF THE PARTIES**

##### **A. The Position of the Appellants**

45. In their Appeal Brief the Appellants have requested the CAS as follows:

*“... to set aside the UEFA Decisions and:*

- (a) Eliminate – or otherwise reduce as far as possible – the suspension imposed upon the Player; and*
- (b) Order the Respondent to reimburse the Appellants their legal costs and other expenses pertaining to this appeal”.*

46. The submissions of the Appellants may be summarized as follows:

- (a) The CAS has jurisdiction to decide the case. CAS jurisdiction derives from Articles 62 seq. of the 2018 UEFA Statutes. Furthermore, the 10-day time limit for filing the appeal to the CAS according to Article 62(3) of the 2018 UEFA Statutes has been met.
- (b) The regulations applicable to the merits of the case are the UEFA regulations, in particular the DR. According to the Appellants, Swiss law is applicable subsidiarily. Furthermore, certain general principles of law, which have become part of the so-called *lex sportiva*, are also applicable. Among these principles the following are potentially

relevant according to the Appellants: the principle of *contra proferentem*, the principle of the right to equal treatment and the principle of legal certainty.

- (c) The burden of proof that the Player committed a sanctionable violation of the applicable regulations rests with the Respondent. The applicable standard of proof derives from Article 24 DR. According thereto, the Respondent must prove to the “comfortable satisfaction” of the adjudicatory body that the Player committed a sanctionable violation.
- (d) The Statements are a mere and reasonable observation. The Appellants submit that the translation provided by the EDI is incorrect. In particular, the Appellants submit that the contents of the acronym “pqp” meaning “puta que pariu” may vary according to the specific circumstances. The acronym may be understood as an insult, if addressed to a specific person. Indicative for the latter would be the inclusion of the personal pronoun “te”. However, the expression “*puta que pariu*” or “*vai pra puta pariu*” is not meant as an insult, but rather stands for “*for f\*\*k’s sake*”. The view held by the Appellants is backed by the sworn affidavit of Ms Jimena Martinez Rojas (“Ms Rojas”). Ms Rojas is an experienced professional translator for the French Court of Appeal. Consequently, the Appellants find that by using the acronym “pqp” the Player was only expressing general exasperation and was not directing an attack on the VAR team. Thus, the CEDB and the UEFA AB had not classified the contents of the Statements appropriately.
- (e) According to the Appellants, the Player’s remark that the VAR was constituted of “*four guys who do not know anything about football*” was the result of a factual misunderstanding on the part of the Player. The latter had incorrectly assumed that the initial video review was carried out by four video operators who were not match officials. It is further clear, that the words “*This is a disgrace*” were not directed at any of those officials, but merely intended to express the Player’s exasperation with the system. Irrespective of the Player’s understanding any alleged reproaches against the VAR system amount – at the worst – to mere and reasonable observations, which are not prohibited by the DR.
- (f) The awarding of penalties often occurs on the basis of facts that are very difficult to assess and to establish. This was also true in the incident during the Match. Upon review of the video the referee decided that one of the Club’s players had deliberately made contact with the ball. The Player took a different view. The Appellants submit that the Player was not the only one to hold that the referee erred when awarding the penalty. The Player may have been clumsy in his choice of words. However, he did not intend to insult any of the Match officials nor to act in any sanctionable way.
- (g) Alternatively, i.e. in case the translation provided by the EDI was correct, the Appellants submit that Article 15 DR is not applicable. The provision “*clearly concern conduct during or at the match or capable of being committed by a player, other club personnel or match official while participating in the relevant match*”. The Player, however, did not participate in the Match. Consequently, only Article 11 DR may be applied to the case. The Appellants’ view that in this case Article 11 supersedes Article 15 DR also follows from the principle of legal

certainty, the principle of *contra proferentem*, and the right of equal treatment. The Appellants submit that the present disciplinary case closely resembles other cases which UEFA dealt with by applying Article 11 DR. The Appellants refer to the cases of Mr. Lovren, Mr. Carvalho, Mr. Simeone and Mr. Ronaldo.

- (h) Even if Article 15 DR was applicable, the Appellants submit on an alternative basis that the Statements were at the very most “abusive language” within the meaning of Article 15(1) lit. b DR and not “insulting language” according to Article 15(1) lit. d. The Appellants note that in the French language version of the DR, Article 15(1) lit. b and Article 15(1) lit. d DR are worded in identical terms, indicating that there is little practical difference between them. Fairness requires that the provisions must be interpreted and construed *contra proferentem*.
- (i) The Appellants submit that the CEBD and the UEFA AB failed to properly take into account mitigating circumstances. The Appellants claim in this respect that
- The Player deleted the post containing the Statements shortly after having posted them;
  - The Player was already internally disciplined by the Club for the post;
  - The sanction imposed by UEFA on the Player is disproportionate, and
  - The sanction failed to take into account that the Statements were made “*in the heat of the moment during a stressful situation on the pitch*”.
- (j) Finally, the Appellants submit that the cases referred to in the decision of the CEBD are not comparable to the case at hand. Imposing such a harsh sanction on the Player exceeds the usual practice adopted by UEFA in comparable cases.

## **B. The Position of the Respondent**

47. In its Answer dated 26 August 2019, the Respondent requests the CAS to decide as follows:

“(…)

- (a) *Rejecting the reliefs sought by the Appellants;*
- (b) *Confirming the Decision under Appeal;*
- (c) *Ordering the Appellants to pay a significant contribution towards UEFA’s legal costs in the matter”.*

48. The Respondent’s submissions may be summarised as follows:

- (a) The Respondent does not dispute that CAS has jurisdiction in relation to the appeal filed by the Appellants pursuant to Article 62 of the UEFA Statutes.
- (b) As for the law applicable to the merits, the Respondent submits that the UEFA regulations, in particular the DR, apply and, subsidiarily, Swiss law.
- (c) In relation to the general principles invoked by the Appellants, the Respondent submits that
- There is no room for applying the principle *contra proferentem* in the context of the DR (in particular Article 15 DR), since the relevant rule is clear, precise and predictable. There is no ambiguity to be interpreted against UEFA;
  - there is no issue of unequal treatment to the detriment of the Appellants. The cases referred to by the Appellants are not “closely related” and clearly cannot be compared to the Player’s abusive and insulting post; and
  - there is no lack of legal certainty that requires to be construed against UEFA as the legislator. In any event the threshold for legal certainty must not be set too high. This follows from CAS jurisprudence (cf. CAS 2014/A/3665-3667). According thereto *“it is not necessary for the principles of predictability and legal certainty ... that an individual should know, in advance of his infringement the exact rule he may infringe, as well as the measure and kind of sanction he is liable to incur because of the infringement”*.
- (d) UEFA submits that the translation submitted by it is the correct one. It is obvious that the Player made the Statements in a state of frustration over what transpired when a penalty kick was given to Manchester United in the final minutes of the Match. Already the first two sentences of the Statements would suffice to constitute a violation of Articles 15(1) lit. b and d DR. The language is both abusive and insulting toward match officials. This is all the more true with regard to the final sentence of the Statements.
- (e) The Respondent submits that the best way to interpret the *“Ah vâ pâ pqp”* comment is to look at how the millions of the Player’s followers and the press across the world understood the comment. The Respondent refers in this regard to excerpts from articles of the Telegraph, the Guardian, the Independent, AS, Bleacher Report, Goal.com, RT, Sport Illustrated, Sky Sports, Figaro, etc. When looking at these examples, there can be no doubt that what the Player expressed in the Statements was *“go f\*\*k yourselves”*. This is also evident when looking at the Brazilian press. UEFA disagrees with the translation proposed by the Appellants’ expert Ms Rojas. It relies on the translation provided by its own expert. Thus, contrary to the Appellants, the Player did not express “general exasperation”, but used insulting and abusive language aimed at match officials.
- (f) The Respondent submits that the Player is a very experienced sports professional and, therefore, well aware that the VAR review was not only performed by video assistants,

but rather by qualified match officials. Nothing in the Statements was “*mere*” or “*reasonable*”. Instead, the reference to “*the four guys who know nothing about football*” and the labelling of their decision as a “*disgrace*” qualifies as a sanctionable behaviour.

- (g) According to the Respondent Article 15 DR applies in the case at hand. The provision is *lex specialis* vis-à-vis the general principles enshrined in Article 11 DR. Article 15 applies “*for competition matches*”. The provision does not require that a player within the meaning of said provision participates in the match in question or is physically present at the stadium. There is no specific geographical element contained in Article 15 DR. Moreover, it has been the practice of UEFA to sanction players under Article 15 DR for insulting and/or abusive language directed at match officials, irrespective of whether or not they were physically present at the match in question. Furthermore, the Club was aware of this, since one of its players (Mr. Serge Aurier) had been previously sanctioned under Article 15 DR for improper posts on social media. According to the Respondent, Article 15 is applicable to all incidents either “*during a match or at the relevant stadium in connection to a match*”.
- (h) In light of the foregoing, the prerequisites of Article 15 DR are fulfilled. The Player uploaded the post shortly after the Match so that the post was already a focal point in the post-match press conference. Thus, there is a sufficient link to a match within the meaning of Article 15 DR.
- (i) The Statements are clearly insulting. This is true – according to the Respondent – even without the final expletive attack “*pqp*”. It is difficult to envisage a more clear-cut example of abusing and insulting a match official than what the Player stated. The Appellants’ reference to the French language version is of no avail here, since Article 79 DR makes it clear that in case of any discrepancy in the interpretation of the English, French or German versions of the regulation, the English text shall prevail.
- (j) There are no mitigating circumstances to be taken into account. It is unproven whether or not the Player deleted the litigious messages since Instagram stories automatically expire after 24 hours. There is no evidence on file that the Player actively deleted the post. In any event, the post was not withdrawn “fast” as submitted by the Appellants, as it was still visible 17 hours after it was posted. In view of the fact that the Player has over 120 million followers his passivity is clearly an aggravating factor. The allegation that the Player was already disciplined internally by the Club is not proven. Finally, the Player did not show remorse at any time. On the contrary, the Player in the Appeal Brief still contends that he did nothing improper and that the Statements were “*mere and reasonable observations*”.

## V. JURISDICTION

49. The jurisdiction of the Panel follows from Article R47 of the Code of Sports-related Arbitration (“the Code”). The provision reads in its pertinent parts as follows:

*“An appeal against a decision of a federation ... may be filed with CAS if the statutes or regulations of the said body so provide ...”.*

50. Article 61 of the UEFA Statutes provides as follows:

*“The CAS shall have exclusive jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration:*

*a) disputes between UEFA and associations, leagues, clubs, players or officials”.*

51. Furthermore, Article 62(1) of the UEFA Statutes provides:

*“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.*

52. It is undisputed that UEFA, the Club and the Player have submitted themselves to the above provisions. Consequently, the Sole Arbitrator finds that he has jurisdiction to decide the case. The view held here is reinforced by the fact that none of the Parties has raised any objection to CAS jurisdiction. Furthermore, all Parties have signed the OoP without any reservations.

## **VI. ADMISSIBILITY**

53. Article R49 of the Code provides that absent any other provision in the rules and regulations of the respective sports organisation (whose decision is under appeal), the time limit to file an appeal is 21 days as of receipt of the decision. Article 62(3) of the UEFA Statutes provides that the *“time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.*

54. In the case at hand the Appealed Decision was notified to the Appellants on 8 July 2019. The Appellants filed their appeal on 18 July 2019. Consequently, the appeal was filed in time. Furthermore, the Sole Arbitrator notes that the timeliness of the appeal is not in dispute between the Parties.

## **VII. OTHER PROCEDURAL ISSUES**

55. In the hearing before the CAS, the Appellants objected to the certified translation by Mr. Esteves-Ferreira submitted by the Respondent. The Appellants argue that this translation shall not be admitted in the CAS proceedings because it was not part of the case file before the previous instances. The Sole Arbitrator does not concur with this view. These proceedings are – according to Article R57(1) of the Code *de novo* proceedings. The provision states that the *“Panel has full power to review the facts and the law”.* Consequently, the Parties – in principle – are not restricted when filing their legal and factual submission before the CAS. The Sole Arbitrator is aware of Article R57(3) of the Code that provides as follows:

*“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered”.*

56. The Sole Arbitrator notes that this provision accords a wide margin of discretion whether or not to exclude evidence in a CAS proceedings. The Sole Arbitrator finds that in the case at hand there are no valid reasons to exclude the expert evidence submitted by the Respondent. If the Sole Arbitrator were to take a different approach, the principle of equal treatment would demand that the Appellants’ expert testimony/report be equally excluded. However, the purpose of this proceeding is to establish – *inter alia* – the true content of the Statements. Thus, in order to dispose of this issue, the Sole Arbitrator finds it not only helpful, but necessary to rely on the Parties’ respective expert reports. He, therefore, denies the Appellants’ request.

#### **VIII. APPLICABLE LAW**

57. Article R58 of the Code reads 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”.*

58. The applicable rules within the above meaning are the UEFA regulations, in particular the DR. Article R58 of the Code provides in addition, that the rules of law chosen by the Parties shall apply subsidiarily. In the case at hand, the Parties have agreed – by referral in Article 64(1) of the UEFA Statutes – to the application of such subsidiary rules of law. The provision reads that “[t]hese Statutes shall be governed in all respects by Swiss law”. Neither the UEFA regulations nor Swiss law excludes the application of general principles of law (as long as they form part of either the UEFA regulations or Swiss law).

#### **IX. MERITS**

59. The present matter pivots around the following issues:
- (i) What is the correct translation of the Statements?
  - (ii) Is the content of the Statements sanctionable under Article 11 and/or Article 15 DR?
  - (iii) If Article 15 DR is applicable, is the content of the Statements directed towards “match officials”?

- (iv) If the aforementioned question is answered in the affirmative, is the content of the Statements abusive within the meaning of Article 15(1) lit. b or insulting according to Article 15(1) lit. d DR?
- (v) Are there any mitigating/aggravating factors to be taken into account when imposing the correct sanction?

#### **A. What is the Correct Translation of the Statements?**

60. The Parties are more or less in agreement with respect of the translation of the Statements up to the very last sentence, which reads “*Ab vá pá pqp*”. While the Appellants submit that this quote translates as “*Oh for f\*\*k’s sake*”, Respondent submits that it translates as “*Go f\*\*k yourself / yourselves*”. After having heard the experts’ testimonies the Sole Arbitrator finds that the acronym “*pqp*” can convey various meanings depending on the individual circumstances. In the case at hand, however, the Sole Arbitrator finds the translation submitted by the Respondent to reflect the true contents of the Statements. The Sole Arbitrator bases his findings on the following facts:

- The acronym “*pqp*” was not used in isolation, but in connection with the words “*Ab vá*”, clearly pointing towards “*go ...*”.
- In addition, the context in which the Statements were made is clearly negative. The Player himself submits that he was disappointed, in rage, upset and/or frustrated. The quote is not elaborate, but was expressed in the heat of the moment with the clear aim of ventilating anger and disappointment. All of this corroborates the view held here.
- The positioning of the acronym “*Ab vá pá pqp*” at the end of the Statements (and not in the middle of the post) further backs the understanding held here. The term “*pqp*” is not used to intensify a finding previously expressed, but puts an uncompromising and abrupt end to any discussion on the topic.
- Finally, the Sole Arbitrator is confirmed in his view when looking at the response to the Statements in the mass media. It appears that the press unequivocally interpreted the expression “*Ab vá pá pqp*” in the sense of “*Go f\*\*k yourself / yourselves*”.

#### **B. The Scope of Application of Article 11 and Article 15 DR**

61. According to Article 2 DR, the DR apply to all UEFA competitions. Furthermore, Article 3 DR provides that all players are bound by the DR. It is undisputed between the Parties that the DR apply in the present matter and that all Parties are bound by the DR.
62. What is in dispute between the Parties is the material scope of application of Article 11 DR and Article 15 DR. Both provisions are contained in Chapter II of the DR under the heading “*Offences*”. Article 11 DR bears the caption “*General Principles of conduct*”. Article 15 DR, by contrast, is captioned “*Misconduct of players and officials*” and its introductory sentence

provides that “[t]he following suspensions apply for competition matches:”. According to Article 11(2) lit. b DR it constitutes a breach of the DR, “whose conduct is insulting or otherwise violates the basic rules of decent conduct”. No minimum sanction is provided for such breach. Article 15(1) lit. b DR provides a “suspension of two competition matches or a specified period for directing abusive language at a match official”. Article 15(1) lit. d DR foresees a “suspension for three competition matches or a specified period for insulting any match official”.

63. The Sole Arbitrator concurs with the Respondent’s view that Article 15 DR is *lex specialis* vis-à-vis Article 11. Article 15 DR provides on the one hand for harsher sanctioning, but applies on the other hand only in the context of “competition matches”. In the Sole Arbitrator’s opinion it makes sense to provide harsher sanctions in such contexts, because misbehaviour in the context of a match competition will – in principle – arouse much more attention from either spectators or the media. Consequently, misbehaviour displayed in connection with “match competitions” will bring about greater harm to the interests of the Respondent. Consequently, a player is under a higher duty of loyalty and correct behaviour while in the spotlight of competition matches.
64. When interpreting Article 15 DR in light of the above conclusion the Sole Arbitrator finds that the term “competition matches” shall not be construed too narrowly. The term covers all incidents in the stadium that are, timewise, closely connected to the match. Thus, the term is not restricted to the 90 (or 120) minutes of the game, but also covers certain periods before and after the match, including e.g. the post-match press conference. Furthermore, the Sole Arbitrator holds that the term “competition matches” is not restricted to occurrences on the pitch but covers all incidents in the stadium that are “visible in the public eye”, because any such incident will be picked up by spectators and the media and, as a result, be intensified and draw widespread attention.
65. When applying the above principles to the case at hand, Article 15 DR is clearly applicable to the Player’s Instagram post. The Player posted the Statements onto his Instagram story while he was still in the stadium, i.e. only minutes after the end of the Match. The media picked up the Statements at a very early stage, i.e. before the press conference began. At the press conference the Club’s Coach was asked to comment on the Player’s Statements. Consequently, the Sole Arbitrator finds that the criterion of a close nexus between the behaviour in question and the “competition match” is fulfilled. In this context it is irrelevant that the Player was not fielded to play in the Match due to an injury. He attended the Match in the stadium, was in the official stands of the Club and in that function was bound to observe the duties of loyalty of a player within the meaning of Article 15 DR, which are duties that go beyond the obligations imposed on a mere “fan” or the “general principles of conduct” expected of a player.

### **C. Is the content of the Statements directed towards “match officials”?**

66. Both Article 15(1) lit. b and d DR require that the respective statement be addressed to a “match official”. The Player submits that neither of the two provisions are applicable, because he was mistaken about the status of the members of the VAR, assuming that they consisted

of video assistants or technicians and not of “match officials”. The Sole Arbitrator notes that the Player is a very experienced professional player. Thus, the Sole Arbitrator finds it hard to believe that the Player was not aware of the status of the VAR members. However, ultimately, the Sole Arbitrator finds that he may leave this question undecided since, in order for Article 15(1) lit b or d DR to apply, it is not necessary that the Player was aware of the exact mandate or status of the VAR members. It suffices that the Player knew that those persons were exercising an important official function for UEFA in the context of the Match, and that their input could have a decisive effect on the Match or on the decisions taken by the umpire. It is beyond doubt that the Player possessed this knowledge. Whether or not he was aware of the exact status or title of the VAR members or of the precise mandate they fulfil within the UEFA hierarchy is of no avail. It suffices that the Player knew them to be “officials” in the broad sense of the word. Consequently, the Sole Arbitrator finds that the Statements were addressed to match officials within the meaning of Article 15(1) DR.

**D. Is the content of the Statements “abusive” or “insulting”?**

67. Article 15(1) DR differentiates between abusive language addressed at a match official (lit. b) and insulting language directed at a match official (lit. d). While the minimum sanction for a violation of Article 15(1) lit. b DR is a suspension of two matches, the minimum sanction for a breach of Article 15(1) lit. d is the suspension of three matches.
68. Whether the Statements are abusive or insulting is difficult to decide. Both terms overlap to a considerable extent. This is evidenced when looking at the French text of the DR where “*abusive language at a match official*” (lit. b) is translated with “*insulté un arbitre*”, and “*insulting any match official*” (lit. d) with “*injurié un arbitre*”. At the hearing, both Parties failed to provide the Sole Arbitrator with any guidance on how to differentiate between the two provisions. The Appellants submitted that because of this lack of legal certainty with respect to the scope of application of these two provisions, neither of them should apply or – at the very limit – the provision carrying the lower minimum sanction, i.e. Article 15(1) lit. b DR. The Respondent submitted that the issue of legal certainty does not arise here because it is clear from the outset that the Player’s behaviour is sanctionable. Even if one were to apply Article 15(1) lit. b DR – the Respondent submits – the provision would allow to impose a sanction exceeding the suspension of two matches, since the latter only defines the minimum sanction. The Sole Arbitrator finds that, absent any clear guideline about how to differentiate between the two provisions, he will apply Article 15(1) lit. b DR, taking into account that – depending on the individual circumstances – the suspension may exceed the minimum sanction provided for in said provision.
69. When assessing the gravity of the infraction, the Sole Arbitrator finds that he must follow an objective standard. Thus, it is not important how a specific social group might interpret the Statements. It may well be true that certain social groups or nationalities are more resilient or willing to put up with worse behaviour than others. However, this cannot be the decisive threshold. Instead, the Statements must be interpreted and assessed from the viewpoint of an objective third person, not least in order to ensure equal treatment of all stakeholders.

70. The application of an objective standard does not imply that the Sole Arbitrator is prevented from taking into account the individual circumstances of the case (cf. CAS 2004/A/553, no. 74 et seq.). In the case at hand and in view of the specific circumstances of the case, the Sole Arbitrator finds that the part of the Statements *“It’s a disgrace!! They’ve actually put four guys who do not know anything about football to just stand and watch the kick in slow motion ... Are they for real?!! How is the guy going to put his hand on his back?”* may be borderline, but does not amount to a breach within the meaning of Article 15(1) lit. b DR. The word *“disgrace”* refers to a penalty given to Manchester United in the first minute of added overtime in the second half-time of the Match. It does not say that the match officials are a disgrace (instead the quote reads *“it’s a disgrace”*). The Sole Arbitrator notes that the penalty awarded to Manchester United was a disputed decision which was taken after a lengthy review of video footage. It must be admissible for such decisions to be discussed controversially, even more so if they are match-deciding. If one wants football to stir emotions, people must also have the freedom – of course within certain limits – to discuss such match-deciding decisions, even with emotions riding high. In particular, it must be possible for a player to state that he thinks the decision in question to be wrong. In the view of the Sole Arbitrator this is the core message of the above quote. Its wording, taken on its own, therefore, does not exceed what appears to be still permissible under the given circumstances. The Sole Arbitrator sees his view confirmed when looking at the Appealed Decision where the final sentence of the Instagram post (*“Ab vá ...”*) is dealt with at great length, but not the initial part of the quote. Obviously, the UEFA AB did not take offence at this part of the Statements.
71. What clearly tips the scale, and turns the Statements into a breach of Article 15(1) lit. b DR is the final sentence (*“Ab vá ...”*). Such an outburst is absolutely unacceptable, independently of the circumstances of the individual case, i.e. the emotions involved, the significance and scope of the decision at stake and/or the questionableness of said decision.
72. The question, thus, is what sanction is appropriate for the behaviour displayed by the Player. The Sole Arbitrator notes that in the case CAS 2004/A/553 the player was sanctioned for a statement similar to the one of the Second Appellant. The offensive quote in question at the time was *“enculé, va!”*, which the player addressed to the fourth umpire upon exiting the pitch. The Sole Arbitrator notes that in said case the panel decided to impose a suspension of two matches on the player for his completely inappropriate behaviour. In view of all of the above, the Sole Arbitrator finds that also in this case the appropriate sanction for the content of the Statements appears to be – at least at first sight – a suspension of two matches.

#### **E. Mitigating / Aggravating Circumstances**

73. The Player submits that he did not intend to harm anyone with his post. The Sole Arbitrator holds that one must look first and foremost at the effect of the statement, i.e. how the post would be understood by a reasonable third person. The Player admitted in the proceedings that *“there was room for misinterpretation”* and that *“he understands that referees may feel upset and angry”*. It is quite telling that the Player stated at the hearing that he would never have said *“Ab vá ...”* to the umpire, if he had been fielded in the Match. Thus, the Player clearly knew or could have

known what effects his Statements could provoke. To conclude, the Sole Arbitrator finds that the Player did not err with respect to the content and effects of his post. It is equally true that the Player did not show genuine remorse. Neither in his letter to the EDI nor in these proceedings did he express true regret. In addition, he did not remove the post from Instagram when confronted with its impact. The only thing the Player did was to acknowledge that he misbehaved (“*I let my feelings take over*”, “*I regret the post, because I did not behave professionally, but only like a fan*”). However, he failed to formulate an apology vis-à-vis the umpires, the VAR officials or UEFA. The lack of remorse, however, is not an aggravating circumstance.

74. The Player submits that in other, similar cases UEFA applied a different standard and imposed milder sanctions. The Sole Arbitrator is not persuaded by this. It is difficult to compare cases, because – in most instances – disciplinary cases are fact-sensitive. In particular, the Appellants could not establish a “*Vereinsübung*”, i.e. a constant practice by the CEBD or the UEFA AB, to apply principles or concepts that deviate from the ones relied on by the Sole Arbitrator.
75. UEFA submits that it constitutes an aggravating circumstance that the post was made by a player who has over 120 million followers on Instagram. The Sole Arbitrator is not prepared to follow this. As previously said, the applicable standard is – in principle – an objective one that applies independently of whether the player is famous (and has a great number of followers) or not. To conclude, therefore, the Sole Arbitrator finds that there are no facts before him that warrant a harsher or more lenient sanction than a suspension of two matches.

## **X. CONCLUSIONS**

76. No. 1 of the operative part of the Appealed Decision is amended as follows:
- the Paris Saint-Germain player Neymar Da Silva Santos Junior is suspended for two (2) UEFA competition matches for which he would be otherwise eligible.
77. All other or further reaching prayers of relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed by Paris Saint Germain and Neymar da Silva Santos Junior against the Decision of the UEFA Appeals Body dated 18 June 2019 is partially upheld.
2. No. 1 of the operative part of the Decision of the UEFA Appeals Body dated 18 June 2019 is amended as follows: the Paris Saint-Germain player Neymar Da Silva Santos Junior is suspended for two (2) UEFA competition matches for which he would be otherwise eligible.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.