



Arbitration CAS 2008/A/1602 A. v. Caykur Rizespor Kulübü Dernegi & Turkish Football Federation (TFF), award on jurisdiction of 20 February 2009

Panel: Mr Henk Kesler (the Netherlands), President; Mr Michele Bernasconi (Switzerland); Mr Efraim Barak (Israel)

Football

Termination of the employment contract between a coach and his club

CAS jurisdiction

1. **For CAS to have jurisdiction, it is necessary that either the parties explicitly agree to submit their dispute to CAS arbitration, or that the statutes or regulations of the body issuing the appealed decision foresee a possibility of appeal before CAS.**
2. **No jurisdiction of CAS is created when a decision states that no disciplinary sanction is to be imposed on the appellant because of his filing of an appeal with CAS. Such decision of the national association disciplinary bodies is not an acceptance of jurisdiction of CAS, but merely a decision about the disciplinary consequences of the legal action of the appellant on addressing the CAS.**
3. **There is no international dimension in a conflict between a Turkish coach and a Turkish club. Therefore the rule of the TFF regulations stating that *“Applications against decisions by the Arbitration Board on any conflicts of Sportsmen, Technical Directors and Trainers arising out of the contracts and that involve international dimension can be made to the Court of Arbitration for Sports”* is not applicable.**

A. (the “Appellant”) is a Turkish technical football director.

Çaykur Rizespor Club (the “Respondent” or the “Club”) is a Turkish football club affiliated to the Turkish Football Federation (TFF; the “Intervener”).

On 19 June 2007, A. and the football club Caykur Rizespor Kulübü Dernegi concluded an oral contract, whereby the Appellant occupied the function of technical director of the Respondent.

On 2 July 2007, the Appellant underwent a medical health inspection.

From 13 to 20 July 2007, the Appellant participated in the new season’s preparation camp and a football tournament with the Respondent’s players.

On 9 August 2007, the parties concluded a written one-year contract.

On 21 August 2007, the Appellant terminated the above mentioned contract, due to circumstances which the Appellant considered to be limitation or removal of the Appellant's competence and authority by the Respondent.

On 16 December 2007, the Appellant filed an application with the TFF's Arbitration Board against the resolution of the TFF Board of Executives issued on 16 December 2007.

The TFF Board of Executives decided that the termination of the contract by the Appellant was unlawful and practically a breach of contract, and therefore he had to pay back to the Respondent an amount USD 30,666.67. Above that it was decided that the Appellant should pay a compensation of YTL 50,000 to the Respondent.

By Resolution n° 2008/90 dated 13 March 2008 the TFF Arbitration Board issued a decision, whereby it declared that the termination of the contract by A. was unlawful. This latter was therefore ordered to pay a compensation to the Club, which compensation, however, was reduced from YTL 50,000 to YTL 10,000.

The Appellant asked in both instances before the Turkish FA that he should be paid the remaining USD 650,000 of his contract and above that a compensation of USD 400,000 is due because of unjust termination by the Respondent.

On 11 July 2008, the Appellant filed an appeal with the Court of Arbitration for Sport (CAS) against the decision taken by the TFF Arbitration Board on 13 March 2008 with respect to the dispute between the Appellant and the Respondent.

By letter of 16 July 2008, the CAS Court office informed the TFF of the appeal filed by the Appellant and invited the TFF to declare whether it wanted to participate in the present procedure or not.

On 21 July 2008, the Appellant filed with the CAS Court Office his appeal brief.

By letter of 28 July 2008, the Respondent expressed its position with respect to the request for stay submitted by the Appellant and already alleged the lack of jurisdiction of CAS. On 12 August 2008, the Respondent filed its answer with the CAS Court Office.

On 31 July 2008, the TFF submitted an answer to the CAS Court Office on the basis of article R55 of the Code of Sports-related Arbitration (the "CAS Code"), whereby it requested to intervene in the present procedure and alleged the lack of jurisdiction of CAS in the present arbitration procedure.

On 9 September 2008, the CAS Court Office, on behalf of the Deputy President, invited the parties to express their position with regard to the TFF's application to intervene in the present procedure.

By letter of 17 September 2008, the Appellant submitted a further consideration with respect to the admissibility of his appeal in view of the CAS jurisdiction.

On 11 November 2008, the CAS Court Office informed the parties that it had granted the request for intervention filed by the TFF and that the Panel would discuss the issue of jurisdiction at the beginning of the hearing.

A hearing was held on 25 November 2008 at the CAS headquarters in Lausanne.

LAW

Preliminary remarks

1. As the CAS is an international tribunal having its seat in Switzerland and since none of the parties has its domicile or habitual residency in Switzerland at the time the arbitration agreement was concluded, pursuant to article 176 of the International Private Law (PIL), chapter 12 (articles 176 to 194 of the PIL) is applicable (see CAS 2005/A/983 & 984, marg. No. 61 & CAS 2006/A/1180, marg. No. 7.1.).
2. As article 186 PIL states that “*le tribunal arbitral statue sur sa propre competence*”, CAS is competent to rule on its own jurisdiction.

Findings of the Panel on CAS jurisdiction

3. Article R47 of the CAS Code reads as follows:
“An appeal against the decision of the federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded this pacific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.
An appeal may also be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance”.
4. It is therefore clear that for the CAS to have jurisdiction, it is necessary that either the parties explicitly agree to submit their dispute to CAS arbitration, or that the statutes or regulations of the body issuing the appealed decision foresee a possibility of appeal before CAS.
5. CAS jurisprudence has repeatedly confirmed this position, especially with regard to the necessary recognition of CAS jurisdiction in the regulations of the deciding body, in for instance, the award on jurisdiction rendered in the case CAS 2005/A/952: “*in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose those*

decision the appeal is being made, must expressly recognized the CAS as an arbitral Body of appeal. (...) In the present case, the statutes or regulations of the relevant body – the FAPL – do not contain any reference to a right of appeal to the CAS. In fact, FAPL rule R63 states that the decision of an appeal board shall be final. The CAS therefore has no jurisdiction to hear an appeal from a decision of the FAPLAC, on the basis of the statutes or regulations of the FAPL”.

6. In ruling on CAS jurisdiction the Panel has first of all to conclude that it is established that in the present matter there is not an agreement between the parties to submit the case to the jurisdiction of CAS, as the Respondent and the Intervener have expressly challenged such jurisdiction.
7. The Panel notes that there is only one existing document that could provide such a clause and that is, of course, the technical manager’s contract between the Appellant and the Respondent from 9 August 2007.
8. The Panel notes that there is a provision in this contract which reads as follows:
“We, collectively understanding parties of the contract, state and accept that we completely read the issues referred on the above page, and we know the other provisions of Technical Manager and Trainer Instructions, we shall completely fulfill the duties, imposed on us by the Regulations, we shall comply with the Laws, Regulations and Directives of Turkish Football Federation and all kinds of amendments, to be made on Football Technical Manager and Trainer Instructions as well as Regulations, to be put into force after conclusion of this contract, shall be applicable for us. In case of a dispute, resolutions of the Federation shall be settled by the Arbitration Board”.
9. The Panel therefore concludes that there is no arbitration clause in favour of CAS in the said employment agreement. Therefore, the Panel concludes that there is no agreement between the parties about CAS arbitration.
10. The Panel then continues to examine if the statutes or regulations of the Turkish Football Federation (i.e. the Intervener) provide that in the present matter an appeal before CAS can be filed.
11. However, before going into the details of such possible implementation, the Panel will first address the late submission made by the Appellant at the occasion of the Hearing. The Appellant produced an exhibit – accepted by the Respondent and the Intervener – whereby the Turkish Football Federation disciplinary bodies (in particular the Professional Football Disciplinary Commission) decided on 21 August 2008 (decision nr 2008-2009/12) that there was no sufficient ground for designation of punishment by assessing the Appeal of A. to the Sports Arbitration Court under Art. 14 of Law numbered 3813. In other words, the Panel understands from the text of the decision produced and the declarations made by the parties at the Hearing, that according to such decision, no disciplinary sanction was taken by the TFF disciplinary bodies on the Appellant because of his filing of an appeal with CAS. The Panel finds however that the decision of the Professional Football Disciplinary Commission is not an acceptance of jurisdiction of CAS, but it is only a decision about the legal action of the Appellant on addressing the Court of Arbitration for Sport and the disciplinary consequences

of such action. By considering that this action was not enough for a punishment according to the disciplinary rules of the Turkish Football Federation, no jurisdiction of CAS whatsoever was created. This line of argument of the Appellant must therefore be rejected.

12. As already stated in para 5 above, the Panel wants to underline that – where no agreement on arbitration is given – it is only with a legal basis in the applicable rules of an association that the CAS can be held to have jurisdiction.
13. Furthermore the Panel has to underline that for the purposes of ruling on its own jurisdiction, according to article R47 of the CAS Code, the Panel has only taken into account the TFF regulations produced to the file, as the appeal is only directed against a decision of the TFF and not directed against a decision of FIFA or against FIFA itself.
14. If the FIFA had been a party and a FIFA decision declining to decide on the matter had been challenged, the Panel would have taken into consideration FIFA Statutes and regulations to rule on a jurisdiction.
15. However, this is not the case of the present matter, and the Panel was not provided with any convincing argument that the right to appeal to CAS foresee in the FIFA Statutes (cf. article 60 and 61 of the FIFA's Statutes) shall be applied in this matter.
16. In continuation the Panel notes that the submissions made by the Appellant are based on implementation of Turkish law, namely law number 5719, amending the law under establishment and justice of Turkish Football Federation, dated 4 December 2007 and law number 3813: *“Establishment and duties of Turkish Football Federation, amending the above mentioned law”*.
17. The Panel now finally comes to the findings of the implementation of the national laws 5719 and 3813 of Turkey and consequences thereof in the case at stake.
18. Both the parties as well as the intervener refer to the articles 2g/11 of the national law called *“Law on amending the law on establishment and duties of Turkish Football Federation (the LAW)”*.
19. The findings of the Panel on the particular implementation of the Turkish Laws as well as there amendments are the following:

By Law 5719, accepted on 29 November 2007, article 11 of the Code number 3813 has been amended as follows:

“Article 11 – Article 14 of the Code No. 3813 has been amended as follows:

ARTICLE 14 – The Arbitration Board rewards the final decision on the following resolutions upon review of the objections by the respective parties;

- a) *decisions of the Executive Committee resolving any disputes arising between one Federation and the clubs or referees, players, technical directors, coaches, player's representatives and further officials,*

- b) *decisions by the amateur and professional disciplinary boards, and*
- c) *Dispute Resolution Committee decisions.*

The sportsmen reserve the right to refer to the Court of Arbitration for Sports for Arbitration Board Decisions on any disputes resulting from transfer, license and agreements as well as those arising out of the technical director and trainer contacts.

Identification of the functional practice and principles of the Arbitration Board is subject to the respective instructions”.

20. The Panel concludes that *part* of this Law was implemented in the Arbitration Board Regulations of the Turkish Football Federation in April 2008. The particular Article the Panel refers to is -also- an Article numbered 14. The text:

“FINALITY of DECISIONS: Article 14 - Board decisions are final whereas they are neither bound by the consent of administrative and legal authorities, nor subject to opposition by applications to such administrative and legal entities.

The provisions of the Code of Civil Procedure on disclosure of the decisions, correction of material faults and renewal of judgment are reserved.

Applications against decisions by the Arbitration Board on any conflicts of Sportsmen, Technical Directors and Trainers arising out of the contracts and that involve international dimension can be made to the Court of Arbitration for Sports in accordance with the instructions and regulations of FIFA and UEFA”.

21. The text of this Article 14 is rather clear and can lead to no misunderstandings. The findings of the Panel are that there is no international dimension in a conflict between a Turkish coach and a Turkish club.
22. The Appellant has stated during the Hearing that he was explicitly seeking the authority of a CAS decision basically because he was frustrated about the treatment of his claim by the TFF bodies. The Panel acknowledges the genuine wish of the Appellant and his perception of the mentioned Article 14 as a limitation of his right to appeal against a TFF decision. However, it is generally not to a CAS Panel to decide how internal rules and regulations of an association or a federation must be. Therefore, also this Panel does not see any legal ground to deviate from the application of the TFF rules as they have been submitted by the Parties.
23. As the appeal was lodged on the 11 July 2008, the amended Article 14 of the TFF regulations was already in force, so the appeal cannot be upheld because CAS, according to the applicable regulations of the TFF, has no jurisdiction in this particular case.
24. It follows that the conditions of Article R47 of the CAS Code are not satisfied and therefore the CAS has no jurisdiction to decide the present case. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The CAS has no jurisdiction to rule on the appeal filed by A. on 11 July 2008 against the decision issued on 3 March 2008 by the Arbitration Board of the Turkish Football Federation.
2. (...).
3. (...).
4. Any further or other requests for relief are dismissed.