



Arbitration CAS 2012/A/2729 Walter Mazzarri v. Union des Associations Européennes de Football (UEFA), award of 11 July 2012

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Disciplinary sanction against a coach

Definition of “assault”

Recidivism

Difference between players and coaches with regard to the sanction of assaulting someone

- 1. A deliberate push by one participant against another is to be treated as an assault within the UEFA Disciplinary Regulations.**
- 2. Under the UEFA Disciplinary Regulations, recidivism counts as an aggravating circumstance. For recidivism to be present, the previous and the actual disciplinary offence have to be of a “similar nature”. Screaming at someone and pushing someone are both acts of an aggressive nature against someone and are broadly similar in nature.**
- 3. Under Article 10 of the UEFA Disciplinary Regulations, the position with players assaulting other participants is different from that of coaches and triggers a different sanction.**

Walter Mazzarri (the “Appellant” or the “Coach”) is a UEFA PRO professional football coach born in San Vincenzo, Italy. The Coach is registered with S.S.C Napoli S.p.a (“Napoli”) with its registered office in Naples, Italy. Napoli is a member of the Italian Football Federation and plays in Italy’s top division, Serie A. Napoli qualified for the UEFA Champions League and competed in the same in the 2011/12 season.

The Union des Associations Européennes de Football (UEFA; the “Respondent”) is the parent body of European football, having its headquarters in Nyon, Switzerland.

On 7 December 2011 Napoli played Villareal at Madigram Stadium in a UEFA Champions League game. Approximately 54 minutes into the game the Appellant was dismissed by the referee. The referee’s report stated that the Appellant *“was grabbing a Villareal player and pushing him away. It was a throw-in and the incident occurred inside the technical area of Napoli. The coach accepted the referee sending him off without any protests”*.

On 26 January 2012 the UEFA Control and Disciplinary Body suspended the Appellant for two UEFA competition matches (the “First Decision”).

On 30 January 2012 the First Decision was notified to the Appellant. On receipt of the same the Appellant appealed to the UEFA Appeals Body.

On 9 February 2012 the UEFA disciplinary inspector issued his reply and cross-appeal.

On 15 February 2012 the UEFA Appeals Body rejected the Appellant’s appeal and partially accepted the cross-appeal as lodged by the UEFA disciplinary inspector (the “Appealed Decision”). The Appealed Decision states:

- “1. *The appeal is rejected.*
2. *The cross-appeal is partially admitted. Therefore, the coach Walter Mazzarri is suspended for three competition matches but enforcement of the third is suspended for a probationary period of two years.*
3. *The rest of the operative part of the challenged decision remains applicable.*
4. *The costs of the procedure, amounting to €4,000, are charged as follows:
€3,000 to the coach, minus the €1,000 appeal fee (with SSC Napoli jointly and severally liable) and the rest to UEFA.*
5. *The decision is final (in accordance with Article 66 DR) (...).”*

On 21 February 2012, the Appellant served the first of his three competition match suspensions.

On 24 February 2012 the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the Appealed Decision. He submitted the following requests for relief:

“In the first instance to uphold the appeal and, as consequence, considering all the circumstances, to revoke the decision taken by the UEFA Appeals Body, removing the 2 (two) matches of suspension of Mr Mazzarri;

In the second instance, to partially uphold the appeal and, as consequence, to revoke the decision taken by the UEFA Appeals Body, to remove the third match and suspending the sanction for the second UEFA match (Chelsea FC – SSC Napoli of 14.03.2012) on the basis of article 15bis UEFA Disciplinary Regulations for a probationary period of 1 (one) year;

In the third instance to partially uphold the appeal and, as consequence, to revoke the decision taken by the UEFA Appeals Body, suspending the sanction of the 2 (two) matches of suspension of Mr Mazzarri on the basis of article 15bis UEFA Disciplinary Regulations for a probationary period of 1 (one) year;

In any case to condemn the Respondent to pay any preceding cost”.

In addition, the Appellant requested a stay of the Appealed Decision.

On 6 March 2012 the Appellant filed his Appeal Brief with the CAS and repeated his prayers for relief. On the same day the Respondent filed its response to the Respondent’s application for a stay.

On 13 March 2012, the Deputy President of the Appeals Arbitration Division granted the Appellants application for a stay of the Appealed Decision.

On 28 March 2012 UEFA submitted its Answer, together with various exhibits, seeking the following requests for relief:

- “1. *The appeal lodged by Walter Mazzarri against the Judgment issued by the UEFA Appeals Body on 15 February 2012 is rejected, with the result that Walter Mazzarri is suspended for three UEFA competition matches, the third of which is deferred for a probationary period of two years.*
2. *The cost of the appeal procedure charged to the appellant Walter Mazzarri.*
3. *The appellant Walter Mazzarri is required to pay expenses to the respondent, UEFA, with the sum to be determined by the CAS”.*

By letter dated 14 March 2012, the CAS informed the parties that the panel to consider the appeal had been constituted as follows: Mr Mark Hovell, Sole Arbitrator.

A hearing was held on 14 May 2012 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the appointment of the Sole Arbitrator.

The attorneys for the parties attended the hearing. In addition, Mr. Pierre Cornu, Chief Counsel, Integrity and Regulatory Matters of UEFA, was also in attendance.

There were no witnesses or experts providing evidence or opinions at the hearing, but the Coach, Walter Mazzarri, spoke and was examined by the Sole Arbitrator and the Respondent, via the telephone. Unfortunately the Appellant’s attorneys did not procure the services of a translator and the Coach’s evidence was unclear. However, the Coach confirmed it was not his intention to run into the player, just to retrieve the ball to restart the game quickly and that he did scream at the official in the Utrecht game.

Mr Cornu assisted the Sole Arbitrator by explaining UEFA’s position on the UEFA Disciplinary Regulations (“the Disciplinary Regulations”). A video clip of the incident between the Coach and the Villareal player was also viewed during the hearing.

The parties were given the opportunity to present their cases, submit their arguments and to answer the questions posed by the Sole Arbitrator. After the parties’ final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to his written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Sole Arbitrator heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

LAW

Jurisdiction of the CAS

1. Art. R47 of the CAS Code provides as follows:

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

2. The Sole Arbitrator noted that jurisdiction of the CAS was not disputed. Article 62 paragraph 4 of the UEFA Statutes (2010 Edition) provides:-

“an appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted”.

3. Further Article 63 of the UEFA Statutes provides a number of situations where the CAS is not competent to deal with the matter. The applicable article reads as follows:-

- a. matters relating to the application for purely sporting rule, such as the laws of the game or the technical modalities of the competition;*
- b. decisions through which a natural person is suspended for a period of up to two matches or up to one month;*
- c. award issued by an independent and impartial Court of Arbitration in a dispute of national dimension arising from the application of the statutes or regulations of an association”.*

4. The Sole Arbitrator noted that the disputed disciplinary measures exceeded the minimum provided for in article 63(1)(b) of the UEFA Statutes and that UEFA’s internal procedures have been exhausted.

5. Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. Therefore, the Sole Arbitrator is satisfied that the requirements set forth in Art. R47 of the Code are met, and that the Sole Arbitrator has jurisdiction to decide the present dispute.

Applicable Law

6. Art. R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

7. Article 63(3) of the UEFA Statutes provides the following:-
“moreover, proceedings before the CAS shall take place in accordance with the code of sports related arbitration of the CAS”.
8. Therefore, as the UEFA Statutes provides, the proceedings shall take place in accordance with the Code. The Sole Arbitrator noted that it was agreed between the parties that the UEFA Disciplinary Regulations (edition 2011) are applicable in this matter. Therefore the Sole Arbitrator ruled that the Disciplinary Regulations should apply principally, with Swiss law applicable in the alternative. The application of the Disciplinary Regulations and Swiss law in the alternative, is also provided for by the UEFA Statutes at Article 64(1). Furthermore, the application of Swiss Law in the alternative is justified by the fact that UEFA’s headquarters are in Switzerland.

Merits of the Appeal

9. In these present proceedings, the Sole Arbitrator had to determine the following:-
 - (a) had the Appellant committed an act of assault?
 - (b) if so, what aggravating circumstances apply?
 - (c) should recidivism apply in accordance with Article 18 of the Disciplinary Regulations as an aggravating factor?
 - (d) and what mitigating circumstances apply?
 - (e) finally, what sanction should be applied to the Appellant taking into account both the aggravating and mitigating circumstances?
10. The Sole Arbitrator noted the stated intention of the Coach was to retrieve the ball and to keep the game moving. However, having heard the evidence and submissions and having watched the video of the incident a number of times, he is satisfied that once the player had knocked the ball past the Coach, his actions and intention changed. He managed to raise his hands and push the player. This was no accidental collision, there was a clear push by the Coach on the player that resulted in the player falling against the dugout. The Coach was reckless in chasing after the ball in the first place, although the Sole Arbitrator suspects this could be an instinctive reaction by any coach in that position, but with a player running after the same ball a collision was always possible. However, it is the part of the motion or action after the player knocks the ball away that constitutes the offence – the deliberate push.
11. The question then is whether a deliberate push can constitute “assault”. The Sole Arbitrator notes this is a football matter and that the applicable law is the Disciplinary Regulations. The case law at UEFA is consistent in treating a deliberate push by one participant against another as assault and the Sole Arbitrator saw no reason why to depart from this in the matter at hand.
12. The Sole Arbitrator noted the Article 9 of the Disciplinary Regulations resulted in an automatic one competitive match ban, which the Coach served against Chelsea on 21 February 2012.

However, as the offence was assault, under Article 5(2)(j) of the Disciplinary Regulations, that required a disciplinary body to consider a further sanction against the Coach, utilising Article 17 of the Disciplinary Regulations.

13. The Sole Arbitrator noted that under Article 18 of the Disciplinary Regulations, recidivism counts as an aggravating circumstance. For recidivism to be present here, the Coach's previous disciplinary offence, screaming at the fourth official in the Utrecht match in the previous season (which was an Article 5(2)(b) offence), would have to be of a "similar nature" to a deliberate push or assault (which was an Article 5(2)(j) offence). The Sole Arbitrator determined that screaming at someone and pushing someone are both acts of an aggressive nature against someone and are broadly similar in nature. As such the UEFA Appeals Body were correct in considering recidivism as an aggravating circumstance.
14. As possible mitigation, the Coach submitted that the player provoked him by "dribbling" him and pointed to the fact that he accepted his sending off without complaint.
15. The Sole Arbitrator notes that the task then, following Article 17 of the Disciplinary Regulations, is to weigh the offence and the aggravating factors against the mitigating factors. The Sole Arbitrator noted the position with players assaulting other participants was different from that of coaches – Article 10 of the Disciplinary Regulations set the sanction at three competitive matches. With recidivism, the sanction would doubtless increase. However, here we have a coach, and the UEFA Appeals Body determined, taking into account the recidivism, a sanction of three competitive matches for the Coach. The last of these three competitive matches to be suspended. The Sole Arbitrator believes that this is an appropriate sanction that follows the precedents of previous cases; takes account of the difference between a coach and a player under Article 10; takes account of recidivism; and notes some mitigating factors, in suspending the last match ban. As such, the Sole Arbitrator concurs with the UEFA Appeals Body's finding in the Appealed Decision.

Conclusion

16. The Sole Arbitrator determines to reject the Appellant's Appeal and to uphold the Appealed Decision.
17. Provided that the Appellant had served part of its suspension at the game SSC Napoli v. Chelsea FC of 21 February 2012 before being granted the stay of the Appealed Decision by the Deputy President of the CAS Appeals Arbitration Division on 13 March 2012, the Sole Arbitrator concludes that the Appellant shall be suspended for two more UEFA competition matches, the enforcement of the second remaining match being suspended for a probationary period of two years.
18. The Sole Arbitrator determines that all other claims or prayers for relief are hereby dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Walter Mazzarri on 24 February 2012 against the decision of the UEFA Appeals Body dated 22 February 2012 is rejected.
2. The decision of the UEFA Appeals Body dated 22 February 2012 is upheld and hereby confirmed.
3. Walter Mazzari, having already served a suspension of one game, shall be suspended for two UEFA competition matches, the enforcement of the second remaining match being suspended for a probationary period of two years.

(...)

7. All other or further claims are dismissed.