



**Arbitration CAS 2014/A/3695 Alain Serge Ouombleon Guedou v. Al Nassr Saudi Club of Riyadh, award of 13 April 2015**

Panel: Mr Georg von Segesser (Switzerland), Sole Arbitrator

*Football*

*Termination of a contract of employment between a club and a coach*

*CAS jurisdiction and notion of decision*

*Notion of res judicata*

*CAS power of review as a first instance in appeal proceedings*

- 1. The jurisdiction of CAS over FIFA's decisions, derives from the FIFA Statutes (Article 67, edition 2012) and from Article R47 of the CAS Code. Any decision of inadmissibility rendered by the FIFA Single Judge is a decision in the meaning of the mentioned articles since they impede the issuance of a decision on the merits of the rights alleged by a claimant and therefore the recognition and enforcement of such rights.**
- 2. On the basis of the principle of *res judicata*, a deciding body is not in a position to deal with the substance of a case in the event that another deciding body has already dealt with the same matter by passing a final and binding decision. In this respect, a communication which is not passed according to the national football federation's prescribed proceedings cannot qualify as a decision. As it is not a decision, the communication cannot be declared *res judicata*.**
- 3. On appeal, CAS panels shall abstain from assessing the merits of a case as a first instance. It would be against the general principle of due process if the parties were deprived of having their case adjudicated by the competent "first instance". It is therefore more appropriate for a CAS panel to refrain from ruling on the merits where no decision on the merits has been taken at first instance, be it by a national football federation or by the FIFA. In such circumstances, it is more appropriate to remand the case back to FIFA which will decide whether it has jurisdiction to rule on the merits of the dispute and, in the affirmative, issue a decision on the merits of the case.**

**I. PARTIES**

1. Alain Serge Ouombleon Guedou (hereinafter the "Coach" or the "Appellant") is a French national, born on 19 May 1972 in Dimbokro (Ivory Coast), having his domicile in Paris, France.

2. Al Nassr Saudi Club of Riyadh (hereinafter the “Club” or the “Respondent”) is a Saudi Arabian football club, registered with the Saudi Arabian Football Federation (hereinafter the “SAFF”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter “FIFA”), having its registered office at Riyadh, Saudi Arabia.

## II. FACTUAL BACKGROUND

3. Below follows a summary of the relevant facts on the Parties’ written and oral submissions, pleadings, and evidence. References to additional facts found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, reference thereto in the award will only be made where and to the extent this is deemed to be necessary in the reasoning.

### A. *The employment contracts*

4. On 1 July 2010, the Coach and the Club entered into an employment contract (hereinafter the “1<sup>st</sup> Contract”) valid until 30 June 2011. Under the 1<sup>st</sup> Contract, the Parties agreed upon a monthly salary of USD 11’000, an advance payment of USD 22’000 to be deducted from the monthly salaries, bonus for won competitions, a good furnished accommodation, a car, free medical treatment and two economy class round trip tickets for the Coach and his family.
5. In May 2011, the Parties entered into a second employment contract (hereinafter the “2<sup>nd</sup> Contract”) valid from 1 July 2011 until 30 June 2012 whereby they agreed upon an identical salary and advance payment and similar other advantages as under the 1<sup>st</sup> Contract.
6. The 2<sup>nd</sup> Contract included the following dispute resolution clause (hereinafter the “Dispute Resolution Clause”):  
*“In case of dispute on this contract or misinterpretation of its provision, both parties are committed to submit the matter to the Saudi Arabian Football Federation and General Presidency of Youth Welfare. Decisions issued in this case shall be binding to both parties” (Clause V.7 of the 2<sup>nd</sup> Contract).*
- a) The termination of the employment relationship
7. During the employment relationship, a dispute arose between the Parties regarding several outstanding salaries and other amounts allegedly due to the Coach.
8. According to the Coach, the disagreement started when the Club allegedly failed to pay his salary of May 2011 and the flight tickets for the season 2010. The Parties nonetheless signed the 2<sup>nd</sup> Contract, but the disagreement apparently persisted with the alleged nonpayment of additional salaries, namely the salaries of July-December 2011 and the advance payment agreed for the season 2011.

9. On 12 November 2011, the Club paid an amount of USD 19'333 to the Coach (according to the Appellant, as a partial settlement).
10. On 22 December 2011, a meeting was held between the Coach and the General Manager of the Club, Prince Waled, to discuss these issues. They met again two days later. On 2 January 2012, the Coach tried again to settle the dispute with the administrator of the Club Mr Maged, but none of these meetings led to an amicable solution.
11. On 24 January 2012, the Coach terminated the 2<sup>nd</sup> Contract. In his letter of termination, he referred to Clause V.2(1) of the 2nd Contract and claimed the amount of USD 121'000 for breach of contract, USD 300,000 for damages and requested that his passport be returned to him as soon as possible and that an exit visa be issued to him.
- b) The communications of the Saudi Arabian Football Federation of 28 February 2012 / 3-5 March 2012
12. On 28 January 2012, the Coach filed an official complaint based on the Dispute Resolution Clause of the 2<sup>nd</sup> Contract to the Secretary General of the Saudi Arabian Football Federation (hereinafter the "SAFF"), Mr Abdullah M. Al Sehli, indicating that he had been "*forced [to] ask the termination of [his] professional relationship with Nasr Saudi Club*" due to the "*salaries, bonuses and air-tickets unpaid since 6 months (85 552 USD)*", and asking the SAFF to enforce his rights for compensation and to allow him to leave Saudi Arabia as soon as possible.
13. On 7 February 2012, the Coach renewed his request to the SAFF to have the dispute resolved by way of arbitration and to allow him to get his exit visa.
14. On 11 February 2012, the Secretary General of the SAFF informed the Coach that he had received a reply from the Club in this matter and enclosed a copy of such reply (undated) to the Coach's attention where the Club acknowledged owing him SAR 203,503 and indicated its willingness to "*remit immediately all the outstanding dues of Mr Ouombleon-Guedou Alain*".
15. On 20 February 2012, the Coach gave authority to the Cameroonian Footballer's National Union (hereinafter the "CFNA") to represent him in the dispute.
16. On 28 February 2012, the Head of the Legal Committee of the SAFF, Mr Majid Mohamed Karoub, sent an e-mail to the Secretary General of the SAFF ordering the Club to pay the amount of SAR 203'503 to the Coach and to provide him with an exit visa and his passport as soon as possible. The e-mail read as follows:

*"Reference is made to your letter No. 2489/2 dated 22/3/1433 H (14<sup>th</sup> February 2012 Gregorian) in connection with the claim deposited by the claimant (the Coach of the Club AL Nassr) and the club answer.*

*Following to the review of the case at hand and its legally study, we order the club of the following:*

*"1. The club shall immediately pay to the claimant an amount of SAR 203,503.*

2. *The club shall apply for the final exit visa, to hold over the passport as soon as possible and restraining to repeat this act again.*
3. *The panel invited the claimant to follow the necessary procedures if should he wishes to make independent claim in the future”.*
17. On 7 March 2012, the SAFF informed the Coach that they received a letter from the SAFF Legal Advisor confirming that the Club should compensate Mr Ouombleon of an amount of SR 203,503 immediately. Upon the Coach’s request, the SAFF transmitted this letter to the Coach. This letter by the SAFF Legal Advisor (dated both 3-5 March 2012) read as follows:  
*“Je vous prie de prendre contact avec lui [Mr Ouombleon] et de l’informer que le club Al-Nasr est tenu de lui verser immédiatement la rétribution engagée, soit la somme de 203503 Riads Saoudiens. [...] Par ailleurs, il est porté à sa connaissance que s’il a d’autres demandes, il doit suivre les procédures judiciaire nécessaires par le biais de son agent ou de ses Conseils”.*
18. For ease of reference, the above communications of 28 February and 3/5 March 2012 are hereinafter jointly referred to as the “SAFF Communication”.
19. Whether the SAFF Communication constitutes a proper decision by the SAFF according to its internal statutes is the principal issue in dispute between the Parties.
20. On 22 March 2012, the Coach objected to the content of the SAFF Communication before the Secretary General of the SAFF, requested a “reformation of the said decision” and reiterated his claims but for an amount of USD 121’000 and USD 100’000.
21. On 4 August 2012, the Secretary General of the SAFF invited the CFNA to provide a written declaration approving the payment by the Club of the amount of SAR 203’503 ordered in the SAFF Communication. On 9 August 2012, the Coach provided his bank account details.
22. On 10 November 2012, the Secretary General of the SAFF indicated to the Coach that it would pay this amount on behalf of the Club as soon it receives the TV broadcasting entitlements from the sponsoring body (expected on or before 13 March 2013).
23. On 14 October 2013, the SAFF, on behalf of the Club, paid the amount of SAR 203’503 to the Coach.
24. On 9 September 2014, the SAFF made a second payment of SAR 203’503 to the Coach. It is undisputed between the Parties that this payment was made by mistake.
- c) The decision of the FIFA Single Judge
25. In a letter to the General Secretary of FIFA dated 4 June 2012, the Coach requested an order that the Club pay him the amount of USD 221,000 for outstanding salaries and as a compensation for breach of contract.

26. On 12 June 2012, FIFA's legal department answered that in view of the fact that a decision had apparently been rendered by the SAFF in the matter and in view of the legal principle of *res iudicata*, FIFA was not in a position to review the decision by SAFF and invited the Coach to continue any appropriate procedure before the SAFF bodies.
27. On 14 March 2013, the Coach filed an official claim against the Club before the FIFA, claiming the total amount of USD 463,801.50 for outstanding salaries and flight tickets in the amount of USD 97,769, compensation for breach of contract of five monthly salaries in the amount of USD 45,832.50, damages in the amount of USD 300,000 and compensation for legal costs in the amount of USD 20,000.
28. On 11 June 2013, FIFA invited the Club to submit a response to the Coach's claim by 30 June 2013. The Club did not react to the FIFA's invitation.
29. On 15 January 2014, the Single Judge of the Players' Status Committee, Mr Geoff Thompson (hereinafter the "FIFA Single Judge"), rendered a decision whereby he declared the Appellant's claims inadmissible on the ground that the SAFF Communication was *res iudicata*. The decision included a note of legal remedy, stating that an appeal against his decision could be raised before the CAS within 21 days pursuant to Article 67(1) FIFA Statutes. This decision is the object of the present challenge before the CAS (hereinafter the "SJ Decision").

### III. PROCEEDING BEFORE THE CAS

30. On 30 July 2014, pursuant to Article R47 and R48 of the Code, the Coach filed a Statement of Appeal in French. On 8 August 2014, pursuant to Article R51 of the Code, he filed his Appeal Brief in French.
31. On 11 August 2014, the Club requested that the CAS procedure be conducted in English.
32. By Order on language of 27 August 2014, the President of CAS Appeals Arbitration Division decided that the present procedure would be conducted in English and invited the Appellant to submit an English translation of his written submissions.
33. On 5 September 2014, the Appellant provided an English translation of his Statement of Appeal and Appeal Brief (hereinafter the "Appeal Brief").
34. Both parties were in agreement with the appointment of a sole arbitrator in this case and, on 19 September 2014, they were informed that the appointed Sole Arbitrator was Dr. Georg Von Segesser, attorney-at-law in Zurich, Switzerland.
35. On 20 September 2014, the Club raised an objection to the CAS' jurisdiction apparently on the basis that the SAFF statutes did not contain an arbitration agreement providing for an appeal before the CAS.

36. On 29 September 2014, pursuant to Article R55 of the Code, the Club filed its Statement of Defense and Counterclaim (hereinafter the “SoD”).
37. On 10 October 2014, the Sole Arbitrator invited the Appellant to submit an answer strictly limited to the exception of lack of jurisdiction raised by the Respondent and declared inadmissible the Counterclaim submitted by the Respondent, since counterclaims are not allowed in the CAS appeals procedure, as from 1 January 2010.
38. On 30 October 2014, the Appellant answered *inter alia* that the CAS was competent to review the Decision of the FIFA Single Judge pursuant to Article 67 of the FIFA statutes. The Appellant further argued that the Single Judge was also competent to overturn the SAFF’s Communication pursuant to Article 22(2) Regulations on the Status and Transfer of Players (hereinafter the “RSTP”) given that no independent arbitration tribunal guaranteeing fair proceedings existed at the national level in Saudi Arabia.
39. On 7 November 2014 and after having duly consulted both parties, the Sole Arbitrator decided, pursuant to Article R57 of the Code, to hold a hearing on 5 December 2014 in Lausanne, Switzerland.
40. On 10 November 2014, the Respondent requested to take part in the hearing via video-conference.
41. On 12 November 2014 and further to a request from the Sole Arbitrator, FIFA submitted its complete case file in relation with the present matter. This file was forwarded to the Parties on 14 November 2014.
42. On 18 and 20 November 2014, both the Respondent and the Appellant respectively signed the Order of Procedure that had been issued on 14 November 2014.
43. On 25 November 2014, the Sole Arbitrator invited a representative of the SAFF to be available during the hearing in order to answer to some questions with respect to the legal remedies usually available before the SAFF bodies. The SAFF however declined this invitation for lack of availability of its representatives on the day of the hearing.
44. On the same day, the Sole Arbitrator submitted to the Parties a list of questions to be addressed at the hearing and requested them to produce several documents.
45. On 28 November 2014, the Appellant submitted his answers along with some Exhibits.
46. On 2 December 2014, the Appellant filed a certified translation of one of his Exhibits. On the same day, the Respondent submitted the documents as requested by the Sole Arbitrator including an English translation of the Articles 62 and 63 of the SAFF statutes (after having been granted an extension of the time limit). On 3 December 2014, the Appellant provided an

extract of a previous edition of the SAFF statutes, arguing that this was the one in force when his claim was first submitted to the SAFF.

47. On 5 December 2014, the hearing took place in Lausanne, Switzerland and was attended by the following persons (hereinafter the “Hearing”):
  - Dr Georg von Segesser as the Sole Arbitrator
  - Ms Pauline Pellaux as Counsel to the CAS
  - The Appellant and his counsel Mr Redouane Mahrach
  - Mr Boughrara Khaled via video-conference on behalf of the Respondent
48. On 9 December 2014, the Respondent filed some questions that it would like the SAFF to address as well as additional observations pertaining to the merits of the case. After having duly consulted the Appellant, who objected to the filing of these additional observations, they were excluded from the CAS file by decision of 7 January 2015.
49. On the same day, following the SAFF’s impossibility to attend the Hearing by telephone, the Sole Arbitrator invited the SAFF to provide some information and documents on the competent authority within SAFF to decide on a request for arbitration and claims submitted before the SAFF under the SAFF Statutes and Regulations in force, as this remained unclear in the Parties’ submissions.
50. On 23 December 2014, the Sole Arbitrator invited the Parties to submit any additional questions for the SAFF. On 12 January 2015, the Appellant confirmed having no additional questions. It further submitted a number of arguments as to why the Sole Arbitrator should render a new decision and not refer the case back to FIFA. The Respondent indicated that its questions for the SAFF were already set out in its additional comments of 9 December 2014 and requested that the case be referred back to the previous instance.
51. On 10 February 2015, after several reminders from the CAS, the SAFF submitted its written observations (hereinafter the “SAFF’s Written Observations”) and requested that the appeal be dismissed and the Coach ordered to reimburse the amount of 203’503 SR paid by mistake.
52. On 13 February 2015, the Sole Arbitrator thanked the SAFF for its answers and drew its attention to the fact that as it was not a party to the CAS procedure its “prayers for relief” were inadmissible.
53. On 13 February 2015, the CAS invited both parties to submit their observations strictly limited to the SAFF’s answers and invited the Appellant to clarify, in view of some discrepancy in the CAS file, his Prayers for Relief and the final amount claimed with respect to his first and second prayer for relief.
54. On 19 February 2015, the Appellant commented on the SAFF’s Written Observations and confirmed that the CAS’ understanding of his final prayers for relief was correct and specified that *“the amount claimed for the first prayer for relief is 32,617 USD and 45,832 USD for the second one”*

and that the “*total final amount [claimed was] 24,182.50 USD (32,617 + 45,83.50 - 54,267)*”. The Respondent abstained from commenting on the SAFF’s Written Observations within the time limit set by the CAS.

55. On 9 March 2014, following the CAS’ letter of 4 March 2015 regarding the Respondent’s failure to comment on the SAFF Written Observations within the prescribed time-limit, the Respondent submitted additional observations. The latter however did not pertain to the content of the SAFF Written Observations but to the merits of the case and more specifically to arguments which had already been submitted in the course of the proceedings. The Respondent also raised what appeared to be procedural objections against the Appellant’s amended prayers for relief.
56. On 13 March 2015, the Sole Arbitrator noted that unless the Appellant would agree otherwise within three days from receipt of his letter, the Respondent’s observations of 9 March 2015 would be excluded from the CAS file in application of Article R56 of the Code. Within the same letter, the Respondent was also reminded that, by letter of 13 February 2015, the Appellant was requested to clarify his prayers for relief but that such request for clarification was without prejudice on the admissibility of the Appellant’s requests for relief as formulated after the filing of the appeal brief.
57. By letter of 16 March 2015, the Appellant confirmed that the Respondent’s observations of 9 March 2015 shall be excluded from the CAS file.

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

##### *A. The Appellant’s submissions and prayers for relief*

58. The submissions of the Appellant can be summarized as follows:
  - a) The SAFF Communication is not a formal and binding decision
59. The Appellant contends that the SAFF Communication does not constitute a decision. In his view, it can at most be construed as a legal recommendation nothing more. Even if it were considered a decision, it would be null and void as it was not rendered by an independent and impartial body as required under Article 22 of the RSTP.
60. Given that no formal decision was rendered by the SAFF, the principle of *res iudicata* cannot apply. In the alternative, the FIFA Single Judge would still be competent to rule on the issues that were not addressed by the SAFF Communication.

b) The CAS has jurisdiction to review the SAFF Communication

61. In the Appellant's view, even if the SAFF Communication qualified as a valid decision, the CAS would still be competent to review – and ultimately overturn it – pursuant to Article R27 of the Code of Sports-related Arbitration (hereinafter the "Code") and Article 64 of the SAFF Statutes.

62. Article R49 of the Code provides for a deadline to file an appeal of twenty-one days following the notification of the decision. Given that the Appellant never had proper notice of the SAFF Communication, he can still lodge an appeal.

c) The Appellant's claims

63. The Appellant submits that he was entitled to terminate the 2<sup>nd</sup> Contract for good cause given that Respondent failed to pay his salary for several months. Pursuant to Article 17 RSTP and the FIFA's case law, the non-payment of wages constitutes a good cause to terminate an employment contract.

64. On this basis, the Appellant is claiming:

The payment of the outstanding salaries as well as the compensation for the plane tickets, as well as a compensation for the prejudice suffered due to the early termination of the 2<sup>nd</sup> Contract equivalent to the wages that would have been paid to him until the end of the term of the 2<sup>nd</sup> Contract (Article 337c of the Swiss Code of Obligations) for a total amount of 24'185.50 USD and not of 89'334.50 USD as initially requested in the appeal brief.

65. Damages for moral harm and harm to his career in the total amount of USD 300'000 and not of USD 100'000 as initially requested in the appeal brief.

66. Further to some contradictions between the Appellant's requests as formulated in his Statement of Appeal, in his Appeal Brief, in his observations dated 28 November 2014 and at the hearing, the Appellant confirmed, on 19 February 2015, that his final prayers for relief were the following:

*"STATE AND JUDGE that Mr. Ouombleon's claim is well-founded and admissible*

*Primarily to review the FIFA decision.*

*Alternatively, to:*

*REVIEW the "decision" delivered by the Saudi Arabian Football Federation.*

*DELIVER A NEW DECISION; as follows:*

*DECIDE that there was a breach of contract with just cause, with solely the Respondent to blame;*

*Thus as a result, to:*

ORDER *Al Nassr Saudi Club to pay 24'185.50 USD. This corresponds to the unpaid wages and fringe benefits at a 5% yearly interest rate which was due by 24 January 2012, during his employment and to the wages that would have been paid until the normal term of this contract;*

ORDER *Al Nassr Saudi Club to pay 100'000 USD as reparation for moral harm caused to Mr. Ouombleon's career;*

ORDER *Al Nassr Saudi Club to pay 200'000 USD as reparation for harm cause to Mr. Ouombelon's career;*

ORDER *Al Nassr Saudi Club to pay 30'000 EURO for costs suffered for the defense procedure;*

ORDER *Al Nassr Saudi Club to pay and/or reimburse the costs of the procedure and the court fee before FIFA and the CAS;*

*STATE that if all the ordered payments are not paid in the 30 days following the notification of the impending decision, there will be a yearly interest rate of 5%;*

*UNDER ALL RESERVE”.*

B. *The Respondent's submissions and prayers for relief*

67. In essence, the Respondent argues *inter alia* that:

68. A formal decision was rendered by the SAFF which is binding and final. The Respondent submits that this is for instance confirmed by the fact that the Appellant himself referred to it as “*a decision*” on numerous occasions.

69. The CAS does not have jurisdiction based on the following grounds:

- The Dispute Resolution Clause does not provide for arbitration and therefore the CAS and the FIFA Single Judge<sup>1</sup> are not competent to review the SAFF's decision.
- The present appeal constitutes an indirect appeal against the SAFF's final and binding decision, for which the legal remedies within SAFF have not been exhausted due to the negligence of the Appellant.
- According to Articles 62 and art. 63 of the SAFF statutes, the jurisdiction of CAS would have required the written confirmation by the parties.
- The CAS would also lack jurisdiction to review the SJ Decision since FIFA letter of 15 January 2014 would not be a decision (as it would not create any right or obligations).

70. The Respondent also contends that the termination of the 2<sup>nd</sup> Contract by the Appellant was wrongful. In its view, the requirements to terminate a contract for good cause according to the CAS case law were not met: first, the amount of outstanding salaries were trivial and secondly

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<sup>1</sup> The Respondent's position is however not always consistent in this regard as it sometimes submits that the SJ Decision should be confirmed (see for instance the Respondent's prayer for relief No. 5).

the Club was not warned in writing by any advance notice of termination. Finally, the Respondent submits that the Appellant's termination was motivated by his interest in opening a sports company.

71. Pursuant to Clause V.2 of the 2<sup>nd</sup> Contract, the Club is entitled to a compensation of two monthly salaries based on the wrongful termination by the Player.
72. In addition, the Respondent requests the reimbursement of the payments made by the SAFF to the Appellant on the 14 October 2013 and 9 September 2014 in the total amount of SAR 407'006 (the Respondent submits that the second payment of SAR 203,503 made by the SAFF to the Appellant on 9 September 2014 occurred by mistake)<sup>2</sup>. From this total amount Respondent deducted the amount of SAR 118'250 due to Appellant's wrongful termination, thus claiming a final amount of SAR 288'756.
73. It should be noted here that as they are formulated, the Respondent's requests for relief is a mixture of prayers and arguments:

*"Request for relief*

- 1) *The appeal filed by the Appellant "the French coach Alain Serge Ouombleon Guedou", on 30 August 2014 against the decision issued by the FIFA Single Judge of the Players' Status Committee on 15 January 2014 shall be rejected.*
- 2) *In accordance with the standard contract, which is at the basis of the present matter, all disputes between the parties are settled exclusively by the Appeals Committee for the Resolution of Financial Disputes (SAFF) at first instance and the Court of Arbitration for Sport (CAS) at second instances, as foreseen in the SAFF Statutes. Thereafter, the Claim lodged by the Appellant before FIFA shall be not considered in the basis proceeding to be appealed.*
- 3) *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 jurisdiction of CAS, as the Respondent has expressly challenged such jurisdiction. 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 have to be rejected.*
- 4) *Summoning up the Panel holds that neither the First Respondent (i.e. hereafter "the Club") nor the Second Respondent (i.e. Hereafter "FIFA") have standing to be sued in respect of the primary request filed by the Appellant and that, therefore, the appeal must be dismissed insofar. The same is true for the secondary relief sought by the Appellant. Also the motion to amend or to supplement an (administrative) decision by an organ of a federation must – like the request to set aside such decision – be directed against the "proper" party, i.e. SAFF. Since the Appellant failed to comply with this, also the motion for secondary relief must be dismissed.*
- 5) *We request that the CAS rejects the present appeal and confirm the decision passed by the FIFA Single Judge of the Players' Status Committee on 15 January 2014 (case nr. 12-01408 / rta) in its entirety.*

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<sup>2</sup> This is confirmed by the SAFF in its letter to the CAS dated 10 February 2015, p. 2.

- 6) *Equally, we ask that the CAS orders the Appellants to bear all the costs incurred with the present procedure, and to cover all legal expenses of FIFA related to the proceedings at hand.*
- 7) *We request the CAS & FIFA to order the Appellant to refund or/and correct the error immediately by crediting the account of the SAFF for the payment of "203,503 SAR" which has been paid twice, payment made as primary on 2 October 2012 and subsequently in error on 9 September 2014 by the SAFF financial department.*
- 8) *[sic wrong numbering] Hence, we request CAS that it communicates the operative part of its award to the parties prior to the reasons, within a maximum of 30 days after the conclusion of the exchange of the written submissions, or, in case a hearing should be held in the present procedure, within a maximum of five days after the date of such hearing.*
- 9) *To take seriously consideration of the counter-claim to compensate the Respondent for the compensation merited according the defence statement cited within the backgrounds above.*
- 10) *Finally we request to establish that the costs of the arbitration procedure shall be borne by the Appellants".*

## V. CONSIDERATIONS AND FINDINGS

### A. Preliminary observations

74. For the sake of clarity, it shall be recalled that subsequent to the FIFA's explicit waiver on 9 September 2014 to take part in the present proceedings, it is not a party to this arbitration. The same applies to the SAFF, as clarified by the CAS in a letter of 25 November 2014.
75. Besides, as also pointed out by the CAS in its letter of 10 October 2014, the Respondent's counterclaims are inadmissible pursuant to the CAS' appeals procedures (Article R55 of the Code).
76. Finally, the Sole Arbitrator bases its findings in this Award on all pleadings and evidence submitted by the Parties in this arbitration, to the extent that they are relevant and material to the issues to be decided.

### B. Admissibility

77. The Appeal is admissible as it had been submitted within the deadline provided by Article R49 of the Code as well as by the FIFA Statutes (Article 67 of the FIFA Statutes (2012)). The Appeal further complies with all other requirements set forth by Article R48 of the Code.

### C. Jurisdiction

78. The Order of the Procedure duly signed by the Parties comprised the following statement:  
*"The Appellant relies on Article 67 of the FIFA Statutes as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order".*

79. As this was not expressly formulated by the Respondent later on in the proceedings, it is unclear whether this amounts to a waiver of the Respondent's jurisdictional objections submitted in its Statement of Defense.
80. In any event, the Sole Arbitrator considers that he is competent to review the decision rendered by the FIFA Single Judge on 15 January 2014.
81. The jurisdiction of CAS over FIFA's decisions, derives from the FIFA Statutes (see Article 67, edition 2012) and Article R47 of the Code which respectively read as follows:

*"Article 67 FIFA Statutes (2012)*

*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

*Article R47 of the Code*

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

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

82. Furthermore, contrary to the Respondent's allegations, the Decision of the FIFA Single Judge was correctly designated as a "decision". Decision of inadmissibility are indeed decisions since they impede the issuance of a decision on the merits of the rights alleged by a claimant and therefore the recognition and enforcement of such rights.
83. It follows that the CAS has jurisdiction to review the decision of the FIFA Single Judge challenged by the Appellant.
84. Under Article R57 of the Code, the Panel has full power to review the facts and the law.

D. *Res indicata*

85. As rightly outlined by the FIFA Single Judge in the challenged decision, "on the basis of ... the principle of *res indicata*, a deciding body is not in a position to deal with the substance of a case in the event that another deciding body has already dealt with the same matter by passing a final and binding decision" (SJ Decision, § 5).
86. In reaching the conclusion that the Communication of the SAFF was *res indicata*, the Single Judge mainly relied on the assumption that:
- "The "Legal Committee" of SAFF had undoubtedly passed a decision following the filing by the Claimant of a claim in front of SAFF's deciding bodies" (SJ Decision, § 11).*

87. In his letter of 10 February 2015 to the CAS, the SAFF General Secretary clearly indicated that *“the letter sent by the legal advisor is not a decision passed by a court to be appealed”* (emphasis added).
88. Indeed, based on the SAFF Written Observations, it is beyond doubt that the SAFF Communication was not a decision properly passed by the committee members according to the SAFF’s internal statutes so that the prescribed proceedings were not respected.
89. In order to validly qualify as a *“final and binding decision passed by a deciding body”*, the disputed communication should have been rendered by a three-member panel chaired by the legal representative of SAFF, as described by the SAFF in its letter:  
*“The Saudi Arabian football federation is subject to form a committee chaired by a legal representative and composed of three people to review the claim presented by the claimant and the reply provide[d] by the Respondent and later a decision and final decision shall be taken by this committee and shall not be appealed”*.
90. However, it seems that due to the specific circumstances, there was no time to gather such committee and to wait for its decision so that in the meantime the Head of the Legal Committee of the SAFF had to take a “hasten” temporary decision:  
*“With regard to the legal advisor of the Saudi Arabian Football Federation letter No 2565 dated 28/2/2012 is considered as a hasten opinion, not a decision because the French coach, ALAIN OUOMBLEON GUEDO, wanted to travel immediately. [...] This letter did not include the participation of the rest of the committee members”*.
91. In light of the above, the Sole Arbitrator considers that the Single Judge, who was not aware of the SAFF’s position, was wrong in declaring that the SAFF Communication was *res judicata* so that his decision shall be annulled. The fact that the Appellant himself referred to the SAFF Communication as “a decision” does not change this analysis.

## VI. MERITS

92. At the Hearing, the Respondent strongly objected to the issuance of a decision on the merits of the case should the Sole Arbitrator find that the SAFF Communication was not *res indicata*.
93. Pursuant to Article R57 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 [...]”*.
94. The Sole Arbitrator fully appreciates the advantages, with respect time and costs, that a direct adjudication on the merits of the case would imply. However, under the specific circumstances and in view of the Respondent’s clear objection to the review of the merits of the case by the CAS, the Sole Arbitrator deems it more appropriate to refrain from ruling on the merits considering that up to this day, no decision on the merits has been taken at first instance, be it by the SAFF (as demonstrated above) or by the Single Judge who limited his review to *res*

*indicata*. It should be reminded that this case was submitted to the CAS as an appeal body which shall hence review a previous decision and abstain from assessing the merits of case as a first instance. In addition, it would be against the general principle of due process if the Parties were deprived of having their case adjudicated by the competent “first instance”.

95. The Sole Arbitrator thus finds it appropriate to set aside the SJ Decision and to remand the case back to the Single Judge who will then decide whether he has jurisdiction to rule on the merits of this dispute and, in the affirmative, issue a decision on the merits of the case.

## **ON THESE GROUNDS**

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

1. The appeal filed by Mr Alain Serge Ouombleon Guedou on 8 August 2014 against the decision issued by the FIFA Single Judge of the Players’ Status Committee on 15 January 2014 is upheld.
2. The decision issued by the FIFA Single Judge of the Players’ Status Committee on 15 January 2014 is set aside.
3. The case is referred back to the FIFA Single Judge of the Players’ Status Committee for decision in accordance with the reasons of the present award.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.