



**Arbitration CAS 2015/A/3961 Samuel Inkoom v. Andrew Evans & Fédération Internationale de Football Association (FIFA), award of 10 December 2015**

Panel: Mr Manfred Nan (the Netherlands), Sole Arbitrator

*Football*

*Disciplinary proceedings for failing to comply with a previous FIFA decision*

*Applicable law*

*Burden of proof*

*Scope of FIFA disciplinary proceedings*

- 1. An explicit choice of law made by the parties in favour of national laws is not relevant if the matter at stake is not a dispute arising out of an agreement concluded between the parties, but a disciplinary issue involving also FIFA.**
- 2. According to the general rules and principles of law, facts pleaded have to be proved by the party who pleads them, i.e. the proof of facts, which prevents the exercise, or extinguishes, the right invoked, must be proved by the party against which the right in question is invoked. This principle is also stated in the Swiss Civil Code, specifically in Article 8. It is further well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party.**
- 3. Provided a decision by the FIFA Players’ Status Committee (PSC) has been properly notified and has become final and binding, the sole task of the FIFA Disciplinary Committee in subsequent disciplinary proceedings under the FIFA Disciplinary Code is to analyse whether the parties bound by the decision of the PSC have complied with the decision of the PSC. Put differently, arguments against the underlying decision by the PSC can generally not be heard. This practice is to be applied regardless of the fact that the decision by the PSC that is to be enforced may be wrong. The fact that the decision that is to be enforced might be wrong, does not automatically mean that the enforcement is incompatible with public policy; the defence of incompatibility with public policy is to be applied very narrowly.**

## I. PARTIES

1. Mr Samuel Inkoom (the “Appellant” or the “Player”) is a professional football player of Ghanaian nationality.
2. Mr Andrew Evans (the “First Respondent” or the “Agent”) is a players’ agent licensed by the English Football Association (the “FA”).
3. The Fédération Internationale de Football Association (“FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football and worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

## II. FACTUAL BACKGROUND

### A. Background facts

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On 1 December 2010, the Player and the Agent concluded a “*REPRESENTATION CONTRACT between AGENT and PLAYER*” (the “Agreement”) for a period of two years, valid as from the date of signing. The Agreement contains, *inter alia*, the following terms:
  - “1. *The Player hereby appoints the Authorised Agent to provide services to the Player in relation to all matters (including without limitation general negotiations/renegotiations, employment negotiations/renegotiations, sponsorship, television, Internet/Interactive and all future rights) concerning the Player’s career as a professional Player, whether on or off-field. The Player is contracted to the Authorised Agent on an exclusive basis in accordance with clause 3 below (the ‘Services’).*”
  3. *For the term of this Representation Contract the Player shall engage no other Authorised Agent [...] in relation to, or to provide, the Services without the written consent of the Authorised Agent.*
  4. *The Player shall not be obliged to use the services of the Authorised Agent during the term of this Representation Contract and may represent himself in any Transaction or Contract Negotiation (...) should he so desire, however should the Player choose to do so all rights under clause 5 below remain and the Player will be obliged to remunerate the Authorised Agent as per this agreement.*
  5. *In consideration for the provision of Services, the Player shall pay to the Authorised Agent a fee in accordance with the requirements of the Agent’s Regulations and the terms of this Representation Contract as follows:*

*A fee equal to 10% (Plus VAT) of the Player's basic gross income, defined as annual salary plus any guaranteed signing on fees but excluding any benefits which are not guaranteed [...] which is payable in a one off lump sum within 30 days of receipt of invoice.*

7. *The Authorised Agent undertakes and warrants to the Player that he will at all times during the term of this Representation Contract perform the Services conscientiously and in the best interests of the Player and, in particular:*
  - f. *he shall not, either directly or indirectly, make payments of any kind to, or receive payments of any kind from, a Club (as defined in the Agent's Regulations), which results from the provision of the Services, save where permitted in accordance with the Agent's Regulations".*
6. On 23 January 2011, the Player was transferred from FC Basel 1893, a football club with its registered office in Basel, Switzerland, to FC Dnipro Dnipropetrovsk, a football club with its registered office in Dnipropetrovsk, Ukraine.

## **B. Proceedings before the Players' Status Committee of FIFA**

7. On an unspecified date, the Agent lodged a claim against the Player with the Players' Status Committee of FIFA (the "FIFA PSC"). The Agent claimed that the Player had breached the Agreement when he was transferred from FC Basel 1893 to FC Dnipro Dnipropetrovsk.
8. On 14 June 2012, BAC Solicitors informed FIFA to be instructed by the Player to act for him, enclosing a signed power of attorney dated 31 May 2012, with the following content:

*"I, Samuel Inkoom [...], hereby nominate, constitute and appoint Messrs BAC Solicitors to act as my true and lawful attorney with full power and authority in my name and on my behalf to deal with any and all FIFA representations as well as any other necessary governing body in relation to the claim made against me by Mr Andy Evans".*

9. On 18 March 2013, BAC Solicitors informed FIFA as follows:

*"As you are aware we had previously been instructed by Mr Inkoom to make representations before the Players' Status Committee in mid-2012.*

*We had believed that we were simply waiting for the Players' Status Committee to reach a decision in relation to the dispute with Mr Evans.*

*We are grateful that the Players' Status Committee has allowed us further time to make representations to them and has allowed us until 19 March 2013 to do so. However we have had some difficulties in taking our client's instructions and would humbly request a further fourteen days so that we can confirm that we are still instructed.*

*We would be grateful if you would kindly respond by return fax to advise us as to whether this is acceptable".*

10. On 25 March 2013, BAC Solicitors allegedly sent another letter to FIFA. FIFA however denies having received such correspondence. This letter states the following:

*“We write further to our letter of 18 March 2013. We have not been able to contact Mr Inkoom and therefore can no longer be properly represent his interests or make representations on his behalf.*

*In the absence of any instruction we have no alternative but to request that we are removed from the record as acting and that all future correspondence be directed to Mr Inkoom directly”.*

11. On 19 March 2014, the Bureau of the FIFA PSC rendered its decision (the “PSC Decision”), with the following operative part:

- “1. The claim of the [Agent] is partially accepted.
2. The [Player] has to pay the [Agent] within 30 days as from the date of notification of this decision, the amount of EUR 352,500.
3. If the aforementioned amount is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.
4. Any further claims lodged by the [Agent] are rejected.
5. [...].
6. [...].

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*Note relating to the findings of the decision (art. 15 and 18 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber):*

*A request for the grounds of the decision must be received, in writing, by the FIFA general secretariat within 10 days of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*

*No costs (cf. point 5. Above) shall be charged if a party decides not to ask for the grounds of the decision and the advance of costs shall be reimbursed to the party concerned”.*

12. On 2 April 2014, the PSC Decision was notified to the Agent by fax and to the Player via BAC Solicitors, also by fax.
13. Neither party requested the FIFA PSC for the grounds of the PSC Decision.
14. On 6 and 7 May 2014, the Agent informed the FIFA Players’ Status Department that he had not received the funds due.

15. On 16 May 2014, FIFA informed the Player, via BAC Solicitors, *inter alia*, as follows:

*“[...] [S]ince you do not appear to have yet fulfilled your obligations as established in point 2 of the findings of the relevant decision, we kindly ask you to immediately pay the relevant amount to [the Agent]. In this respect, we kindly ask you to provide us with a copy of the payment receipt of the relevant amount no later than 27 May 2014.*

*Finally, please be informed that should you fail to provide us with the requested payment receipt within the above-mentioned time frame, we will proceed to forward the entire file to FIFA’s Disciplinary Committee for consideration and a formal decision”.*

16. On 20 May 2014, BAC Solicitors informed FIFA as follows:

*“Unfortunately we are not instructed by Samuel Inkoom in this matter any longer and have not been so, since our initial correspondence. As you are aware we did not submit any submissions on behalf of Mr Inkoom. We are unaware as to his current address or contact details and have therefore forwarded your previous correspondence to him at Athlitikos Onilos Platania”.*

17. On 30 May 2014, FIFA informed the Agent and the Player, via BAC Solicitors, that in view of the fact that the Player had not provided any evidence of payment, the matter was forwarded to the Disciplinary Committee of FIFA (the “FIFA DC”).

### **C. Proceedings before the Disciplinary Committee of FIFA**

18. On 22 October 2014, FIFA instigated disciplinary proceedings against the Player. FIFA sent this letter to the Ghana Football Association (the “GFA”) stating, *inter alia*, the following:

*“We refer to the above-mentioned matter as we have learnt that [the Player] has not acted in accordance with the [PSC Decision]. This would appear to be a violation of article 64 of the FIFA Disciplinary Code (FDC), and as such, it will be subject of an investigation by the FIFA Disciplinary Committee.*

*[...] [W]e hereby urge [the Player] to pay immediately to [the Agent] the outstanding amount, namely EUR 352,500 plus 5% interest p.a. [...] and to send us a copy of proof of payment.*

*[...] Should [the Player] pay the outstanding amounts due and send us a copy of proof of payment, these disciplinary proceedings will be closed.*

*Finally, for the sake of good order, we herewith take due note that Mr Sumer Chandbry (from BAC Solicitors), legal representative before the Players’ Status Committee, is no longer representing [the Player]. In this regard, we would like to ask [the Player] whether a lawyer will represent him in the present proceedings. If so, please provide us with a copy of the relevant power of attorney.*

*Likewise, please be informed that all communications will be sent to [the Player] via the Ghana Football Association until we receive the afore-mentioned power of attorney.*

*Thus, we kindly ask the Ghana Football Association to forward this letter to Mr Samuel Inkoom immediately”.*

19. On 14 November 2014, the Agent informed FIFA that still no payment had been received from the Player.
20. On 17 November 2014, FIFA urged the Player – again via the GFA – one last time to pay by 1 December 2014 at the latest and informed him that the case would otherwise be submitted to the FIFA DC for evaluation on 15 December 2014.
21. In its meeting held on 15 December 2014, the FIFA DC took the following decision (the “Appealed Decision”):
  - “1. *The Player Samuel Inkoom is pronounced guilty of failing to comply with the decision passed by the Bureau of the Players’ Status Committee on 19 March 2014 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
  2. *The Player Samuel Inkoom is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 180 days of notification of the present decision. [...].*
  3. *The Player Samuel Inkoom is granted a final period of grace of 180 days as from notification of the present decision in which to settle its debt to the creditor, Mr Andrew Evans.*
  4. *If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that a ban on any football-related activity be imposed on the Player Samuel Inkoom for a period of one year. Once the creditor has filed its request, the ban on taking part in any kind of football-related activity will be imposed automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The associations concerned will be informed of the one-year ban on taking part in any kind of football-related activity.*
  5. *The ban on taking part in any kind of football-related activity will be issued on Mr Samuel Inkoom by the secretariat to the FIFA Disciplinary Committee and will last for one year or until the total outstanding amount has been paid to the creditor, if this occurs before the one-year ban has elapsed.*
  6. *If payment is not made by the end of the one-year ban, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that the matter be resubmitted to the FIFA Disciplinary Committee, which may decide on further disciplinary measures such as extending the ban on taking part in any kind of football-related activity.*
  7. *As a member of FIFA, the Ghana Football Association or any other concerned association is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the ban has been implemented. If the Ghana Football Association or any other concerned association does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*
  8. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the player Samuel Inkoom and shall be paid according to the modalities stipulated under point 2. above”.*

22. On 12 January 2015, FIFA communicated the terms of the Appealed Decision to the Player – via the GFA – and to the Agent, both by fax. The Player maintains that he only found out about the existence of the PSC Decision on this date.
23. On 21 January 2015, upon request of the Player, FIFA provided the Player with the PSC Decision together with the complete file pertaining to the disciplinary proceedings.
24. On 9 February 2015, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:
  - *“According to art. 62 of the FIFA Statutes, the Disciplinary Committee (hereinafter referred to as the Committee) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter referred to as the FDC) on Members, clubs, Officials, Players and match and players’ agents.*
  - *Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (art. 64 par. 1 of the FDC):*
    - a) *will be fined for failing to comply with a decision;*
    - b) *will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;*
  - A ban on any football-related activity may also be imposed against natural persons (art. 64 par. 4 of the FDC).*
  - *The Committee emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and thus has become enforceable.*
  - *In the case at stake, the Committee notes that the grounds of the decision passed by the Bureau of the Players’ Status Committee on 19 March 2014 had been duly communicated to the parties on 2 April 2014 and that no appeal had been lodged with the Court of Arbitration for Sport against said decision. Therefore, the decision became final and binding.*
  - *In view of what has been explained [...] above, the Committee is not allowed to analyse the case decided by the Bureau of the Players’ Status Committee as to the substance, in other words, to check the correctness of the amounts ordered to be paid, but has a sole task to analyse if the debtor complied with the final and binding decision rendered by the Bureau of the Players’ Status Committee.*
  - *As the debtor ignored the decision passed by the Bureau of the Players’ Status Committee on 19 March 2014 in regard to the amount to be paid to the creditor and is consequently withholding money from the creditor, it is considered guilty under the terms of art. 64 of the FDC.*
  - *According to art. 64 par. 1 a) of the FDC a fine shall be imposed on the debtor. The combined application of art. 64 par. 1 a) and art. 15 par. 2 of the FDC entails that the fine shall range*

*between CHF 300 and CHF 1,000,000. The debtor withheld the amount unlawfully from the creditor. Even FIFA's attempts to urge the debtor to fulfil its financial obligations failed to induce it to pay. In view of the circumstances, the Committee regards a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee's established practice.*

- *In application of art. 64 par. 1 b) of the FDC, the Committee considers a final deadline of 180 days as appropriate for the amount to be paid to the creditor.*
- *In accordance with art. 64 par. 4 of the FDC, the debtor will be notified that, in the case of default within the period stipulated, a ban on any football-related activity will be imposed for a period of one year or until the total outstanding amount has been paid to the creditor, if this occurs before the one-year ban has elapsed. The ban will occur if the creditor informs the secretariat to the FIFA Disciplinary Committee of the non-payment within the stipulated deadline and demands in writing that the ban on taking part in any kind of football-related activity be imposed. Once the creditor has filed this request, the ban will be imposed automatically without a further formal decision having to be taken by the Committee. The order to implement the ban on taking part in any kind of football-related activity will be issued on the debtor by the secretariat to the FIFA Disciplinary Committee.*
- *If the debtor still fails to pay the amount due even after expiry of the one year ban, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that the matter be resubmitted to the FIFA Disciplinary Committee, which may decide on further disciplinary measures such as extending the ban on taking part in any kind of football-related activity”.*

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

25. On 27 February 2015, the Player lodged a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the CAS Code of Sports-related Arbitration (edition 2013) (the “CAS Code”), challenging the Appealed Decision and requesting to temporarily suspend the proceedings “*until the decision of FIFA's Players' Status Committee concerning a request of reconsideration of the [PSC Decision] had been notified*”. Furthermore, the Player requested the case to be submitted to a Sole Arbitrator.
26. On 9 March 2015, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments and included the following requests for relief:
  - “1. *To admit the Appeal filed by the player Samuel Inkoom against the decision issued on 15 December 2014 by the FIFA Disciplinary Committee.*
  2. *To set aside the decision issued on 15 December 2014 by the FIFA Disciplinary Committee.*
  3. *In event to reject the claim of the players' agent Andrew Evans in front of FIFA's Players' Status Committee respectively to set aside the decision issued on 19 March 2014 by the Bureau of the Players' Status Committee.*



4. *Establish that the costs of the present arbitration shall be entirely borne by the players' agent Andrew Evans.*
  5. *Establish that the players' agent Andrew Evans is liable to bear all the legal expenses incurred by the Appellant before the present instance”.*
27. On 11 March 2015, the Agent objected to the Player's request to suspend the proceedings.
28. On 12 March 2015, FIFA informed the CAS Court Office of its disagreement to the appointment of a sole arbitrator and nominated Dr Herbert Hubel, Attorney-at-Law in Salzburg, Austria, as arbitrator and, alternatively, requested CAS to choose an arbitrator from the football list in case a sole arbitrator is appointed. Further, FIFA submitted that it did not oppose to the requested suspension.
29. On 20 March 2015, FIFA issued a letter to the Player in respect of his request for reconsideration, determining, *inter alia*, the following:
- “[W]e understand that you request a reconsideration, respectively a revision, of the decision passed by the Bureau of the Players' Status Committee on 19 March 2014 in the present matter. Alternatively, you request that the decision be notified correctly (sic) to your current legal representative and that the time limit for you to request the grounds of the decision be reset accordingly.*
- In this regard, we regret having to inform you that the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber do not provide for the possibility of a reconsideration or a revision of a decision passed by FIFA's decision-making bodies.*
- Furthermore, we would like to underline that, in accordance with the documentary evidence currently in our possession, you were duly informed of all the procedural steps leading up to the relevant decision via your known legal representative at the time. Equally, the findings of the relevant decision were duly and correctly notified to you via the said legal representative. In this context, we would like to emphasise that we do not appear to have received any communication informing our services that your legal representative was no longer acting on your behalf prior to the notification of the pertinent findings.*
- Consequently, it appears that your right to be heard was duly respected in the matter at hand and that you were properly informed of the legal remedies against the relevant decision in full accordance and respect of the applicable procedural rules”.*
30. On 23 March 2015, the CAS Court Office informed the parties that the Player's request to suspend the present proceedings became moot in light of FIFA's correspondence dated 20 March 2015.
31. On 24 March 2015, the Player informed the CAS Court Office to insist on the requested suspension of the proceedings before CAS until the FIFA PSC had issued a formal decision on his request for revision/reconsideration and not the Players' Status Department or the Administration of FIFA.

32. On 27 March 2015, the Player provided CAS with a letter that he addressed to FIFA. Enclosed to such letter were fax reports of several letters sent by Mr Chaudhry to FIFA throughout the proceedings before the FIFA PSC.
33. On 30 March 2015, FIFA informed the CAS Court Office of its disagreement with a further suspension of the proceedings and the Agent requested the arbitration to be submitted to a panel of three arbitrators.
34. On 31 March 2015, the CAS Court Office informed the parties the Division President was called to decide on the number of arbitrators that will constitute the arbitral tribunal and on the Player's request to suspend the present proceedings.
35. On 22 June 2015, the CAS Court Office informed the parties *"that the Division President, taking into account all relevant circumstances of the present case, has decided to i) lift the suspension of the present matter with immediate effect and ii) submit this matter to a Sole Arbitrator, pursuant to Art. R50 of the Code"*.
36. On 10 July 2015, the Agent filed his Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:
  - "a. That the Appeal be summarily dismissed without the need for a hearing.*
  - b. That the Appellant do pay the costs of the Arbitration and the costs incurred by the First Respondent"*.
37. On 10 July 2015, FIFA filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:
  - "a. To reject the Appellant's appeal in its entirety.*
  - b. To confirm the decision hereby appealed against.*
  - c. To order the Appellant to bear all costs incurred with the present procedure and to cover all the Respondent's legal expenses relating to the present procedure"*.
38. On 17 July 2015, the Player informed the CAS Court Office that he insisted on a hearing to be held.
39. On 21 July 2015, FIFA informed the CAS Court Office of its preference that the arbitral award be rendered on the basis of the parties' respective written submissions. The Agent did not file anything further to his answer in this respect.
40. On 22 July 2015, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the matter was constituted by:

➤ Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator

41. On 11 August 2015, the Player informed the CAS Court Office that Mr Chaudhry rejected to attend the hearing as witness.
42. On 18, 19 and 25 August 2015 respectively, the Player, FIFA and the Agent returned duly signed copies of the Order of Procedure to the CAS Court Office.
43. On 28 August 2015, pursuant to Article R57 and R44 of the CAS Code and on behalf of the Sole Arbitrator, the CAS Court Office invited the Player to provide the CAS Court Office with the fax report of the letter dated 25 March 2013 that Mr Chaudhry of BAC Solicitors allegedly sent to FIFA on that date or any other evidence that such letter was sent to FIFA.
44. On 31 August 2015, the Player informed the CAS Court Office as follows:

*“[W]e kindly inform you that we are not in the position to provide you with the fax report of the letter dated 25 March 2013 that Mr Chaudhry of BAC Solicitors sent to FIFA on that date. By e-mail dated 11 August 2015, we tried to invite Mr Chaudhry for the hearing in front of CAS, what he refused. Therefore, we sent him another e-mail asking him to provide us with the fax report of the letter dated 25 March 2013.*

*First of all, Mr Chaudhry confirmed that regardless of whether the fax transmissions exists, as they are unable to find it, it is clear from the correspondence prior and after the letter that he did not represent the client anymore. Furthermore, the former representative of the player emphasises that there were telephone conversations with Mr Tanner from FIFA and that since this moment, they never received any communications, so they had no reason to ever believe that FIFA did not receive the communication referred to”.*

45. On 18 September 2015, the Player requested the Sole Arbitrator to postpone the hearing since the Player failed to obtain a visa or a *laissez-passer*, alleging no fault of his own.
46. Also on 18 September 2015, on behalf of the Sole Arbitrator, the CAS Court Office informed the parties that the Player’s request for adjournment of the hearing was dismissed, but that the Player would be entitled to attend the hearing by video-link.
47. On 23 September 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing all parties confirmed that they had no objection to the constitution and composition of the Panel.
48. In addition to the Sole Arbitrator and Mr Christopher Singer, Counsel to the CAS, the following persons attended the hearing:
  - a) For the Player:
    - Mr Samuel Inkoom, the Player (by video-link)
    - Mr Christoph Henzen, Counsel

b) For the Agent:

- Mr Andy Evans, the Agent;
- Mr Rupert Bowers QC, Counsel

c) For FIFA:

- Mr Jaime Cambreleng, Counsel;
- Ms Valerie Horyna, Counsel

49. The Sole Arbitrator heard evidence from the Player, the Agent, Mr Georg Heitz, witness called by the Player and Sporting Director of FC Basel, and Mr James Lippett, witness called by the Agent and employee of World in Motion Ltd., the company of the Agent.
50. The witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. The parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses. The parties then were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
51. Before the hearing was concluded, all parties expressly stated that they did not raise any objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
52. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

53. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Sole Arbitrator has carefully considered all the written and oral submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.
54. The Player's submissions, in essence, may be summarised as follows:
- The Player submits that the PSC Decision was never notified to him, nor to the GFA, and that the PSC Decision can therefore not be executed. The Player asserts that he only took note of the PSC Decision on 12 January 2015, when FIFA notified the terms of the Appealed Decision, and argued that, as a consequence, the PSC Decision "*cannot be executed in front of FIFA's Disciplinary Committee*". The Player claims that his former legal representative, Mr Chaudhry from BAC Solicitors, informed FIFA by letter dated 25 March 2013 that he did not represent the Player anymore.

- The Player also argues that the PSC Decision “*is based on wrong facts*”, because the Agent received EUR 50,000 from FC Basel 1893 as lump sum payment for the negotiations in relation with the transfer of the Player to FC Dnipro Dnipropetrovsk. Therefore, the Agent not only violated the Agreement, giving the Player the right to unilaterally terminate the Agreement, but also violated the FIFA Players’ Agent Regulations (hereinafter: the “FIFA PAR”), resulting in the fact that the Agent is not entitled to claim any remuneration from the Player.

55. The Agent’s submissions, in essence, may be summarised as follows:

- The Agent submits that CAS has no jurisdiction to enter into discussion regarding the Agreement, arguing that the PSC Decision is final and binding upon the Player and was not subjected to any appeal by him. The Agent claims that “*[i]n so far as [the Player] attempts to revisit the issues considered by Players’ Status Committee on 19 March 2014, it amounts to an impermissible collateral challenge which the Tribunal has no jurisdiction to entertain*”.
- The Agent submits that the Player’s attempts to invite FIFA to revise the PSC Decision have been rejected and that the Player presents no arguments as to why the Appealed Decision is incorrect.
- Subsidiarily, the Agent asserts that the invoices submitted by the Player, the invoices from Mr Lippett and the payments made thereunder by FC Basel 1893, were not payments to indemnify the Player’s liability to pay the Agent under the Agreement. The Agent argues that the payments were made *ex gratia* by FC Basel 1893 to Mr Lippett for dealing with matters extraneous to the liability of the Player created by the Agreement, but related to the transfer of the Player, of which Mr Georg Heitz is well aware and of which he can give evidence.

56. FIFA’s submissions, in essence, may be summarised as follows:

- FIFA asserts that the Player’s right to be heard has been respected in the proceedings before the FIFA PSC. The Player presented a power of attorney regarding BAC Solicitors dated 31 May 2012 and Mr Chaudhry of BAC Solicitors acted on behalf of the Player by sending five correspondences during the proceedings (*i.e.* 14 June 2012, 31 August 2012, 11 March 2013, 18 March 2013 and 20 May 2014).
- FIFA submits that the PSC Decision was notified to the Player’s then duly authorised legal representative, Mr Chaudhry, on 2 April 2014, who resigned only by letter dated 20 May 2014. As no request for grounds was made by any of the parties, the PSC Decision was final and binding at the time the disciplinary proceedings were opened.
- FIFA argues that there was a clear breach of article 64 of the FIFA Disciplinary Code by the Player for failure to comply with the final and binding PSC Decision, which decision had not to be reviewed, so a potential sanction had to be imposed.

- In this context, FIFA argues that the FIFA DC cannot review or modify the substance of a previous decision, which is final and binding and thus has become enforceable. Consequently, the FIFA DC is not allowed to analyse a case decided by the relevant body as to the substance but has a sole task to analyse if the debtor complied with the final and binding decision of the relevant body. Moreover, CAS should only address the question whether the Player respected and fulfilled that decision, but no longer its content.
- Finally, FIFA submits that the sanction imposed for non-compliance is lawful and appropriate, as the Player – who could avoid the ban by paying the debt owed – *“has not demonstrated any good will to settle the debt [...], and has still not done so”*.

## V. JURISDICTION

57. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2014 edition) as it determines that “[a]ppeals 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” and Article R47 of the CAS Code.
58. Article 64(5) of the FIFA Disciplinary Code states that:
- “Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.*
59. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by all parties.
60. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

61. The appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
62. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

63. Article R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or*

*according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

64. The Sole Arbitrator notes that Article 66(2) of the FIFA Statutes stipulates the following:
- “The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
65. The Player and the Agent did not put forward any position on the law to be applied.
66. FIFA submits that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
67. The Sole Arbitrator observes that the parties made an explicit choice of law in favour of the laws of England and Wales in the Agreement (cf. Article 27 of the Agreement). This choice of law is *in casu* however not relevant because the matter at stake is not a dispute arising out of the Agreement, but is a disciplinary issue between the Player and FIFA.
68. Consequently, and as the parties have not objected to the application of the various FIFA regulations or Swiss law during the CAS proceedings, the Sole Arbitrator will apply the regulations of FIFA, in particular the FIFA Disciplinary Code (edition 2012) and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA.

## VIII. MERITS

### A. The Main Issues

69. As a result of the above, the main issues to be resolved by the Sole Arbitrator are:
- i. Was the PSC Decision correctly notified to the Player and is the PSC Decision final and binding?
  - ii. Did the Player fail to comply with the PSC Decision?
  - iii. If so, what are the consequences thereof?
- i. Is the PSC Decision final and binding?*
70. The Player argues that he had no knowledge whatsoever of the content of the Agent’s claim and that he never had the opportunity to explain himself during the proceedings in front of the FIFA PSC and the FIFA DC. Therefore, the Player argues that the PSC Decision is null and void and cannot be used by the FIFA DC to impose sanctions on him.
71. The Agent maintains that CAS is not competent in respect of the contractual dispute between the Player and the Agent on the basis of the Agreement as this issue was decided by the FIFA PSC whose decision became final and binding.

72. FIFA submits that the PSC Decision was notified to the Player's then duly authorised legal representative, Mr Chaudhry, on 2 April 2014, who resigned only by letter dated 20 May 2014. As no request for grounds was made by any of the parties, the PSC Decision was final and binding at the time the disciplinary proceedings were opened.
73. The Sole Arbitrator notes that the Player signed a power of attorney with BAC Solicitors on 31 May 2012, in which the Player explicitly appoints BAC Solicitors to "*act as my true and lawful attorney with full power and authority in my name and on my behalf to deal with any and all FIFA representations as well as any other necessary governing body in relation to the claim made against me by Mr Andy Evans*". The Sole Arbitrator observes that this power of attorney was sent by Mr Chaudhry of BAC Solicitors to FIFA on 14 June 2012, together with a signed letter referring explicitly to the case number of the FIFA PSC proceedings between the Player and the Agent.
74. However, at the occasion of the hearing, the Player alleged to have never signed such power of attorney and that it was not his signature that appeared on the power of attorney.
75. The Sole Arbitrator finds that the Player, relying on an alleged falsification, must meet the onus of substantiating his allegations and must prove affirmatively the facts on which he relies with respect to this issue. The Sole Arbitrator, however, observes that no evidence at all was offered by the Player to substantiate his claim; no witness statements were filed in this respect and no documents were relied upon. Above all, the Sole Arbitrator finds it unfortunate that the Player did not previously raise this issue during the proceedings before the FIFA DC or before CAS. As a consequence, the Sole Arbitrator finds the Player's allegation to be unconvincing and not credible.
76. The Sole Arbitrator is therefore satisfied that the FIFA PSC correctly assumed that Mr Chaudhry of BAC Solicitors acted as duly appointed representative of the Player.
77. Regardless of the above, the Player maintains that Mr Chaudhry informed FIFA already by letter dated 25 March 2013, which is one year before issuance of the PSC Decision, that he no longer represented the interests of the Player, whereas FIFA maintains that it never received such correspondence.
78. The Sole Arbitrator observes that the following has been determined in CAS jurisprudence regarding the burden of proof:

*"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based.*

*This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code 'Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right'.*



*(free translation from the French original version – “Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit”).*

*It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party” (CAS 2007/A/1380, with further references to CAS 2005/A/968 and CAS 2004/A/730).*

79. It is against this background that the Sole Arbitrator will examine whether the Player has satisfied his “burden of persuasion” and “burden of production of proof” in respect of whether Mr Chaudhry indeed sent such letter to FIFA on 25 March 2013.
80. The Sole Arbitrator notes that the Player, by letter dated 27 March 2015, provided CAS with a copy of the “entire correspondence together with the respective fax transmission reports” between Mr Chaudhry and FIFA, containing the following letters:
1. Signed letter dated 31 August 2012, with fax report;
  2. Signed letter dated 11 March 2013, with fax report;
  3. Signed letter dated 18 March 2013, with fax report;
  4. Unsigned letter dated 25 March 2013, without fax report;
  5. Signed letter dated 20 May 2014, with fax report.
81. In addition to this correspondence, the Sole Arbitrator observes that the file also contains a signed letter dated 14 June 2013 from Mr Chaudhry to FIFA, together with the power of attorney, with fax report.
82. Further to the Sole Arbitrator’s request to the Player to provide the CAS Court Office with a fax report of the letter dated 25 March 2013 that Mr Chaudhry of BAC Solicitors allegedly sent to FIFA on that date or any other evidence that such letter was sent to FIFA, the Player answered the following:

*“[W]e kindly inform you that we are not in the position to provide you with the fax report of the letter dated 25 March 2013 that Mr Chaudhry of BAC Solicitors sent to FIFA on that date. By e-mail dated 11 August 2015, we tried to invite Mr Chaudhry for the hearing in front of CAS, what he refused. Therefore, we sent him another e-mail asking him to provide us with the fax report of the letter dated 25 March 2013.*

*First of all, Mr Chaudhry confirmed that regardless of whether the fax transmissions exists, as they are unable to find it, it is clear from the correspondence prior and after the letter that he did not represent the client anymore. Furthermore, the former representative of the player emphasises that there were telephone*

*conversations with Mr Tanner from FIFA and that since this moment, they never received any communications, so they had no reason to ever believe that FIFA did not receive the communication referred to”.*

83. In view of the evidence at his disposal, the Sole Arbitrator is not convinced that Mr Chaudhry, or any other person registered with BAC Solicitors, sent the letter dated 25 March 2013 to FIFA, in the absence of any evidence in this respect.
84. The Sole Arbitrator feels comforted by the fact that out of all the letters sent by BAC Solicitors to FIFA, only the letter dated 25 March 2013 is not signed and only this letter does not contain a fax report.
85. The Sole Arbitrator finds the Player’s allegation that, regardless of whether the fax report exists, it is clear from the correspondence prior and after the letter dated 25 March 2015 that he did not represent the Player anymore, is not convincing.
86. Although Mr Chaudhry’s letter to FIFA dated 18 March 2013 refers to difficulties in taking the Player’s instructions and requesting a further fourteen days to confirm that BAC Solicitors is still instructed, the Sole Arbitrator does not consider this letter to be a clear withdrawal. In any event, the Sole Arbitrator finds that potential difficulties in communication between the Player and his representative solely concern their internal relationship and that this does not alter the fact that the PSC Decision was correctly notified to the Player on 2 April 2014
87. Moreover, the Sole Arbitrator considers it to be important that the PSC Decision was forwarded to Mr Chaudhry on 2 April 2014, but that Mr Chaudhry did not inform FIFA that he no longer represented the interests of the Player.
88. The Sole Arbitrator observes that only by letter dated 20 May 2014, Mr Chaudhry informed FIFA that BAC Solicitors was not instructed by the Player any longer. However, at that time the PSC Decision had already become final and binding.
89. In this respect, the Sole Arbitrator observes that upon receipt of the letter dated 20 May 2014, FIFA no longer forwarded any correspondence to Mr Chaudhry, except for a letter dated 30 May 2014, but addressed its correspondence to the GFA, in accordance with article 102(2) of the FIFA Disciplinary Code. The Sole Arbitrator, however, finds that the Player’s right to be heard was not violated due to the fact that FIFA’s letter dated 30 May 2014 was mistakenly sent to Mr Chaudhry, as the FIFA DC granted the Player subsequent opportunities to comply with the PSC Decision before finally imposing disciplinary sanctions on him by means of the Appealed Decision.
90. The Sole Arbitrator observes that it remained undisputed that no request for the grounds of the PSC Decision was received by FIFA within 10 days of receipt of the notification of the findings of the PSC Decision, which means that, pursuant to Article 15 and 18 of the Rules Governing the Procedures of the PSC and the Dispute Resolution Chamber (hereinafter: the “FIFA Procedural Rules”) and the note relating to the findings of the PSC providing that *“failure to [ask for the grounds of the PSC Decision] within the stated deadline will result in the decision*

*becoming final and binding and the parties being deemed to have waived their rights to file an appeal”, the PSC Decision became final and binding on the parties.*

91. Consequently, the Sole Arbitrator finds that the PSC Decision was correctly notified to the Player and that as such the PSC Decision became final and binding.

**ii. *Did the Player fail to comply with the PSC Decision?***

92. The Sole Arbitrator notes that the Appealed Decision is based on Article 64 of the FIFA Disciplinary Code, which provides as follows:

*“1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):*

- a) will be fined for failing to comply with a decision;*
- b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non financial) decision;*
- c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;*
- d) (only for associations) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced.*

[...]

*4. A ban on any football-related activity may also be imposed against natural persons”.*

93. The Sole Arbitrator concurs with the Agent and FIFA that, since the PSC Decision was properly notified and became final and binding, the sole task of the FIFA DC was to analyse whether the Player complied with the final and binding PSC Decision.

94. The Sole Arbitrator observes that this practice has been confirmed in CAS jurisprudence dealing with this issue:

*“[T]he Panel finds that the FIFA Disciplinary Committee was limited to determine if the outstanding amount, as defined by the FIFA DRC decision, had been paid to the creditor, i.e. the Player, or if for whatever reason the above mentioned amount was still due” (CAS 2013/A/3323, para. 72).*

*“[T]he Panel underlines that the object of this appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the DC. As a result, only submissions relating to the fine imposed by*

*the DC, such as its legal basis and quantum, can be heard. The Panel cannot consider requests concerning the debt owed by the Appellant to the Brazilian Club, the issues relating thereto having been decided by the PSC Decision [...]” (CAS 2006/A/1008, para. 14).*

95. This practice is to be applied regardless of the fact that the decision that is to be enforced may be wrong:

*“The fact that the decision that is to be enforced might be wrong, however, does not automatically mean that the enforcement was incompatible with public policy. The Swiss Federal Tribunal applied such defence very narrowly and for example ruled that even “the manifestly wrong application of a rule of law or the obviously incorrect finding of a point of fact is still not sufficient to justify revocation for breach of public policy of an award made in international arbitration proceedings” (see: Prof. Matthew J. Mitten, *The Court of Arbitration for Sport and its Global Jurisprudence: International Legal Pluralism in a World Without National Boundaries*, *Bulletin TAS CAS Bulletin* 2014/2, page 59). Consequently, and in accordance with standing CAS jurisprudence (CAS 2006/A/1008, para. 14; CAS 2008/A/1610, para. 5.12; CAS 2013/A/3323, para. 72), arguments against the underlying decision, which has become final and binding, can generally not be heard. Such conclusion derives also from the aim of Article 64 (1) of the FIFA Disciplinary Code, i.e. the intention to confirm that it is a disciplinary duty to comply with such decisions (see: CAS 2008/A/1610, para. 5.15)” (CAS 2014/A/3803).*

96. The Sole Arbitrator finds that the Player did not specify any reasons that would render the enforcement of the PSC Decision and/or the Appealed Decision incompatible with public policy. Besides the fact that no such allegations were advanced by the Player, the Sole Arbitrator does not see any violation of public policy.
97. The Sole Arbitrator observes that it remained undisputed between the parties that the Player failed to pay the amounts awarded to the Agent in the PSC Decision. As such, the Sole Arbitrator finds that the FIFA DC correctly held that the Player failed to comply with the PSC Decision and that the criteria of Article 64(1) of the FIFA Disciplinary Code for imposing disciplinary sanctions on the Player were met.
98. Consequently, the Sole Arbitrator finds that the Player failed to comply with the PSC Decision.

**iii. *If so, what are the consequences?***

99. The Player has failed to comply with the PSC Decision, despite having been reminded and urged to do so by FIFA on several occasions. As a consequence, the FIFA DC finally imposed a fine on the Player by means of the Appealed Decision, while granting him a final period of grace of 180 days to pay the amounts due, failing which, upon request of the Agent, a one-year period ban on any football-related activity will be automatically imposed on the Player by the secretariat to the FIFA DC.
100. The Sole Arbitrator observes that the Player did not submit any arguments as to the proportionality of the imposed sanctions.

101. The Sole Arbitrator finds that the Appealed Decision does not violate public policy and/or infringes the Player's personality rights.
102. Consequently, the Sole Arbitrator finds that the disciplinary sanctions imposed on the Player by means of the Appealed Decision are justified.

**B. Conclusion**

103. Based on the foregoing and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
  - i. the PSC Decision was correctly notified to the Player and the PSC Decision is final and binding.
  - ii. the Player failed to comply with the PSC Decision.
  - iii. the disciplinary sanctions imposed on the Player by means of the Appealed Decision are justified.
104. Any further claims or requests for relief are dismissed.

**ON THESE GROUNDS**

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

1. The appeal filed on 27 February 2015 by Mr Samuel Inkoom against the Decision issued on 15 December 2014 by the Disciplinary Committee of the Fédération Internationale de Football Association is dismissed.
2. The Decision of the Disciplinary Committee of the Fédération Internationale de Football Association issued on 15 December 2014 is confirmed.
- (...).
5. All other motions or prayers for relief are dismissed.