



Arbitration CAS 2016/A/4473 Liberia Football Association (LFA) v. Fédération Internationale de Football Association (FIFA), award of 1 May 2017

Panel: Prof. Petros Mavroidis (Greece), President; Mr Augustin Senghor (Senegal); Mr Efraim Barak (Israel)

Football

Disciplinary sanctions for failure to comply with a previous FIFA decision

Lack of competence of the FIFA DC to assess whether a settlement agreement was complied with

Referral of the case back to the previous instance

1. The scope of review by the FIFA Disciplinary Committee under the competence assigned to it by art. 64 of the FIFA Disciplinary Code should be fact-dependant. In cases where it is clear and evident that the terms of the FIFA decision or the terms of a “post decision agreement” have not been complied with and a debt is certain, then the FIFA Disciplinary Committee can simply declare the debt, and proceed accordingly. The scope of powers of the FIFA Disciplinary Committee is not unlimited, though. In a dispute where the debtor objects to the competence of the FIFA Disciplinary Committee to examine whether the terms of the settlement reached between the parties were complied with, or in a case where the debtor claims that he respected and complied with the agreement (and the dispute between the parties on this question cannot be decided without a thorough and full legal examination of the positions of both parties), the FIFA Disciplinary Committee lacks jurisdiction *ratione materiae* to decide itself on the existence of the debt. More so, it has no power to declare the settlement null and void, and use the original contract as the basis for its decision.
2. CAS cannot decide a matter until it has a decision of the *ratione materiae* competent body in front of it. The fact that the appealed decision is rendered by a FIFA body lacking jurisdiction *ratione materiae*, is not a procedural flaw that should be repaired by CAS without first allowing the competent body within the FIFA to decide on this matter. Therefore the case should be referred back to the FIFA, even if neither of the parties requested it.

I. PARTIES

1. The Liberia Football Association (the “Appellant” or the “LFA”) is the governing body of football at domestic level in Liberia. The LFA has its registered office in Monrovia, Liberia, and is affiliated to the *Fédération Internationale de Football Association*.

2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of football and exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

II. PRELIMINARY REMARK TO THE TERMINOLOGY OF ENFORCEMENT

3. In its decision BGer 4P.240/2006, consideration 4.2, the Swiss Federal Tribunal (the “SFT”) qualified the FIFA “enforcement” system as a disciplinary sanctioning system of a Swiss association. This due to the fact that an enforcement / “Zwangsvollstreckung” in the Swiss legal terminology is reserved exclusively and only to the State and not to a private association.
4. However, in FIFA and also CAS terminology the notion of enforcement is often used if reference is made to the disciplinary sanctioning system of FIFA. Therefore, in the subsequent considerations, when referred to the enforcement system of FIFA, it is always the FIFA disciplinary sanctioning system that is meant.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence provided in the course of the present appeal arbitration proceedings and the hearing. 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.

A. Background Facts

6. On 15 January 2014, the Single Judge of FIFA Players’ Status Committee (the “Single Judge”) rendered his decision (the “FIFA PSC Decision”) in a contractual dispute between R. (the “Coach”), a football coach of Italian nationality who previously had served as head coach of the national representative team of Liberia, and the LFA, ordering the LFA to pay the Coach the following amounts:
- USD 70,000 as outstanding salary plus interest at a rate of 5% per year from 2 August 2012 until the effective date of payment;
 - USD 3,150 as “*dinner indemnity*” plus interest at a rate of 5% per year from 2 August 2012 until the effective date of payment;
 - USD 50,000 as compensation for termination of contract plus 5% interest at a rate of 5% per year from 15 January 2014 until the effective date of payment.

7. Neither of the parties asked for the grounds of the FIFA PSC Decision nor lodged an appeal against it. The FIFA PSC Decision therefore became final and binding at the moment of expiry of the period of ten days following its notification.
8. On 21 March and 13 April 2014 respectively, the then representative of the Coach, Mr Ricardo Teixeira, who – up to a certain moment – represented the Coach during the proceedings before FIFA, informed the FIFA PSC that the LFA failed to pay the amounts due and requested the intervention of the FIFA Disciplinary Committee.
9. On 29 April 2014, the FIFA PSC informed the LFA that if it did not provide proof of payment of the amounts due by 9 May 2014 at the latest, the case would be transferred to the secretariat to the FIFA Disciplinary Committee.
10. On 12 May 2014, Mr Teixeira informed the FIFA PSC that the LFA had not paid the outstanding amounts.
11. On 19 May 2014, the FIFA PSC informed the parties that the case was transferred to the FIFA Disciplinary Committee for its consideration.
12. On 27 May 2014, the Coach and the LFA reached a settlement agreement (the “Settlement”), determining, *inter alia*, the following:
 - “1. That [the LFA] has agreed to pay the amount of thirty thousand United States (US\$30,000.00) dollars in three (3) installments (sic) as full settlement to [the Coach] to have him withdraw his claimed [sic] with FIFA against [the LFA];
 2. That [the Coach] has agreed to withdraw his Claimed [sic] with FIFA against [the LFA] upon the receipt of thirty thousand United States (US\$30,000.00) dollars in three (3) installments (sic) as full settlement to close the dispute,
 3. That [the LFA] shall make the three (3) installment (sic) payments as follows: [...]
 4. That [the LFA] has also agreed to offer [the Coach] a two (2) years Service Contract with terms and conditions to be negotiated;
 5. That if the LFA and the [Coach] cannot agree on the terms and conditions of the two (2) years Service Contract offered by the LFA, the Parties have agreed for the LFA to pay a gross settlement amount of sixty thousand United States (US\$60,000.00) dollars to close the [Coach’s] claim of LFA obligations with FIFA;

[...]

 7. That if [the LFA] fails to make payments as stipulated herein, this settlement agreement shall be considered NULL and VOID; and

[...]”.

13. On 6 August 2014, the LFA offered the Coach a new employment contract.
14. On 21 August 2014, the Coach personally informed the FIFA Disciplinary Committee that the outstanding amounts remained unpaid.
15. On 5 September 2014, Mr Teixeira informed the FIFA PSC as follows on behalf of the Coach:

“By means of a SETTLEMENT AGREEMENT [...] signed 27 May 2014, [the Coach] and the [LFA] have reached an agreement based on the following:

1 – a payment of USD 30’000,00 in three (3) installments (sic) as per item 3 of the [Settlement];

2 – a complementary payment of USD 30’000,00 in case the LFA did not offer [the Coach] a contract as per item 5 of the [Settlement].

My client has received the payment in three installments (sic): [...]

In the meantime, [the Coach] has signed an employment contract in Egypt and cannot take into consideration the offer of the LFA, presented to him 6 August 2014 [...].

Consequently, we are pleased to inform that the [LFA] has complied with what was agreed and FIFA should consider the claim cancelled as from this date”.
16. In spite of the clear and non-ambiguous content of the letter sent by Mr Teixeira to FIFA, throughout September and October 2014, the Coach personally contacted the secretariat to the FIFA Disciplinary Committee several times over the phone to inform the FIFA Disciplinary Committee that he did not consider the matter as settled and requested the opening of disciplinary proceedings against the LFA.

B. Proceedings before the FIFA Disciplinary Committee

17. On 8 October 2014, the Coach personally informed the secretariat to the FIFA Disciplinary Committee about the Settlement; however, he declared that it had not been fully respected by the LFA. The Coach therefore requested the intervention of the FIFA Disciplinary Committee.
18. On 29 October 2014, Mr Teixeira provided the secretariat to the FIFA Disciplinary Committee with a letter from the LFA, the content of which was exactly the same as the letter Mr Teixeira had sent to the FIFA PSC on 5 September 2014 on behalf of the Coach.
19. On 26 January 2015, the secretariat to the FIFA Disciplinary Committee informed the parties that according to article 64 of the FIFA Disciplinary Code (the “FDC”), in what concerns the payment of a sum of money, the disciplinary proceedings cannot go beyond the execution of a final and binding decision rendered by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision.

20. On 28 January 2015, the new representative of the Coach, Mr Luis Cassiano Neves, informed the secretariat to the FIFA Disciplinary Committee, *inter alia*, as follows:

“2. The [Coach] never communicated to FIFA any withdrawal, waiver or forfeiture of his legal standing regarding the procedure.

3. The [LFA] has failed to fully comply with the decision of 15 January 2014.

[...]

6. [...] [T]he execution of this [Settlement] cannot restrict the legal and regulatory right of the [Coach] to seek redress and to obtain full enforcement of the [FIFA PSC Decision], as per article 64 of the Disciplinary Code.

7. In reality, the [Settlement] (a copy of which was already made available to the Disciplinary Committee) is very simple but poorly worded, and therefore contains a few legal inaccuracies.

8. First and foremost, the Parties agree to certain financial and employment conditions to be offered by the [LFA] to the [Coach], who in return would “withdraw his claim with FIFA” against the [LFA].

9. [...] [T]here was not pending procedure from which to withdraw from.

[...]

11. The [Settlement] is, in this sense, quite clear. The [Coach] accepted to suspend his right to seek the enforcement and execution of the [FIFA PSC Decision], provided the [LFA] complied with the following contractual obligations:

(i) payment of USD 30.000,00 (thirty thousand Dollars of the United States of America), payable in three instalments (please refer to clause 3 of the [Settlement]); **AND**

(ii) the execution of a two-year service contract (in fact a sporting employment contract), **OR** payment of an additional USD 60.000,00 (sixty thousand Dollars of the United States of America).

12. The underlying rationale is simple: the [Coach], a football coach by trade, was willing to significantly reduce the amount of the compensation decided by the Single Judge, because a professional solution was being offered to him, under which he would gain valuable experience and remuneration comparable to the amounts decided upon in the [FIFA PSC Decision].

[...]

14. It should be noted that the [Settlement], namely clauses 4 and 5, refer simply to the execution of the services contract or to the possibility of the parties not agreeing to terms and conditions. It is not referred whether any of the parties has the obligation to accept or to offer certain specific terms, but the clauses are straightforward in establishing a result-oriented cause the verification of the signature of the services contract, or not.

15. *No such services contract was ever signed by the Parties.*
16. *And the agreed compensation of USD 60.000,00 (sixty thousand Dollars of the United States), which became due, was never paid and such fact seems to be accepted by the [LFA] itself, in its communication of 29 October 2014.*
17. *As stipulated by clause 7 of the [Settlement], if the [LFA] were to “fail to make payments as stipulated” therein, “this [Settlement] shall be considered NULL and VOID”.*

[...]

19. *The [LFA] made a partial and very minor payment of the amounts agreed in the settlement agreement and has failed to abide by its payment obligations, which can only be understood to render the [Settlement] **null and void**.*
20. *In which case, the [Coach] is fully entitled to request the opening of disciplinary proceedings against the [LFA], based on the latter’s failure to comply with the [FIFA PSC Decision], as per article 64 of the FIFA Disciplinary Code, which provides that an association that fails to pay another person a sum of money in full or part, even though instructed to do so by an instance of FIFA, shall be notified and warned that further disciplinary sanctions may apply”.*
21. On 3 February 2015, Mr Teixeira informed the secretariat to the FIFA Disciplinary Committee that he now acted as representative of the LFA.
22. On 24 February 2015, the LFA reiterated the contents of its correspondence dated 30 October 2014, requesting the matter to be considered settled.
23. On 17 April 2015¹, since the parties disagreed to the execution of the Settlement reached, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings.
24. On 27 and 29 April 2015 respectively, the Coach and the LFA basically reiterated their previous submissions.
25. On 2 July 2015, the secretariat to the FIFA Disciplinary Committee informed the parties that the Chairman of the FIFA Disciplinary Committee considered that the LFA had not fully complied with the FIFA PSC Decision. Therefore, the FIFA Disciplinary Committee asked the LFA to pay the outstanding amount to the Coach.
26. On 22 July 2015, Mr Teixeira, now already acting on behalf of the LFA, informed the secretariat to the FIFA Disciplinary Committee as follows:
 - “i) *As former representative of [the Coach], thus with his full agreement and compliance, I informed FIFA by means of my correspondence dated 5 September 2014, that the matter vs the [LFA] was put*

¹ The Panel considers the reference to 17 July 2015 in the Appealed Decision to be an obvious typographic mistake.

to rest. There has never been any objection from [the Coach] on this matter nor, to my knowledge, any cancellation of the issued mandate prior to or until that date”;

ii) Consequently, I do not see any reason for the Disciplinary Committee to step into the matter and try to apply article 64 of the [FDC].”

27. On 24 July 2015, the secretariat to the FIFA Disciplinary Committee urged the LFA for the final time to pay by 21 August 2015 at the latest the outstanding amount and informed the LFA that the case would be submitted to the FIFA Disciplinary Committee on 4 September 2015.

28. On 27 July 2015, the LFA again sent its correspondence dated 22 July 2015 to the secretariat to the FIFA Disciplinary Committee.

29. On 4 September 2015, the FIFA Disciplinary Committee rendered its decision (the “Appealed Decision”), with the following operative part:

“1. The [LFA] is pronounced guilty of failing to comply with the [FIFA Single Judge Decision] and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.

2. The [LFA] is ordered to pay a fine to the amount of CHF 10,000. [...]

3. The [LFA] is granted a final period of grace of 30 days as from notification of the present decision in which to settle its debts to the [Coach].

4. The [LFA] is warned and notified that, in the case of non-payment of the outstanding amounts, the case will again be submitted to the FIFA Disciplinary Committee in order to impose harsher sanctions against the [LFA]. These sanctions may lead, amongst others, to an expulsion from a FIFA competition. This will occur if the [Coach] informs the secretariat to the FIFA Disciplinary Committee of the non-payment within the stipulated deadline and demands in writing that the case be submitted again to the FIFA Disciplinary Committee. Once the [Coach] has filed this request, the submission of the present matter to the FIFA Disciplinary Committee will follow automatically.

5. The costs of these proceedings amounting to CHF 2,000 are to be borne by the [LFA] and shall be paid according to the modalities stipulated under point 2. above.

6. The [Coach] is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received”.

30. On 18 October 2016, the LFA requested the grounds of the Appealed Decision.

31. On 1 February 2016, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- “[...] [T]he Committee noted that the [Coach] and the [LFA] reached [a Settlement] regarding the execution of the [FIFA PSC Decision]. As a consequence of said [Settlement], the Committee noted that a partial payment of USD 30,000 was received by the [Coach].

- *Furthermore, the Committee noted that the [Coach] requested the enforcement of the [FIFA PSC Decision] as the [LFA] did not fully respect the previously mentioned [Settlement].*
- *In this regard, the Committee concluded that the [Settlement] reached between the parties had not been fully respected and underlined that it has no competence to enforce agreements reached between the parties but solely to enforce decisions passed by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision.*
- *Thus, as the [LFA] did not fully comply with the [FIFA PSC Decision] and is consequently withholding money from the [Coach], it is considered guilty under the terms of art. 64 of the FDC.*
- *The fine to be imposed under the above-referenced art. 64 par. 1 a) of the FDC in combination with art. 15 par. 2 of the FDC shall range between CHF 300 and CHF 1,000,000. The [LFA] withheld the amount unlawfully from the [Coach]. Even if FIFA's attempts to urge the [LFA] to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Committee regards a fine amounting to CHF 10,000 as appropriate. This amount complies with the Committee's established practice".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 22 February 2016, the LFA filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2016 – the "CAS Code"). In this document, the LFA nominated Mr Antoine Essomba Eyenga, Attorney-at-Law in Yaoundé, Cameroon, as arbitrator.
33. On 10 March 2016, FIFA nominated Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as arbitrator.
34. Also on 10 March 2016, the LFA filed its Appeal Brief, pursuant to Article R51 of the CAS Code. The LFA submitted the following request for relief:

"In view of the above and the attached exhibits, the CAS is respectfully requested to consider the case void and cancel the challenged decision".
35. On 14 April 2016, 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 present matter was constituted by:
 - Prof. Petros C. Mavroidis, Professor in Neuchatel, Switzerland, as President;
 - Mr Antoine Essomba Eyenga Attorney-at-Law in Yaoundé, Cameroon; and
 - Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as arbitrators
36. On 15 April 2016, FIFA filed its Answer, pursuant to Article R55 of the CAS Code, requesting CAS to decide as follows:

- “1. To reject the Appellant’s appeal in its entirety.
 2. To confirm the decision hereby appealed against.
 3. To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure”.
37. On 25 April 2016, FIFA informed the CAS Court Office that it did not want a hearing to be held, whereas the LFA informed the CAS Court Office that it would rather have a hearing.
 38. On 12 June 2016, the LFA informed the CAS Court Office that Mr Essomba Eyenga had passed away and nominated Mr Augustin E. Senghor, Attorney-at-Law in Dakar, Senegal, as arbitrator. The LFA further indicated that it would be represented by new counsel.
 39. On 18 August 2016, the LFA reiterated its request for a hearing to be held and alluded to the intention of calling two witnesses, and, alternatively, requested for a second round of written submissions to be permitted.
 40. On 19 August 2016, FIFA objected to the LFA’s request for a hearing to be held as no witnesses were mentioned in the LFA’s Appeal Brief, nor were brief summaries of their expected testimonies provided, as is required under the CAS Code. FIFA also objected to the LFA’s request for a second round of written submissions.
 41. On 12 September 2016, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.
 42. On 26 and 27 January 2017 respectively, the LFA and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office.
 43. On 16 February 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing all parties confirmed not to have any objection as to the constitution and composition of the Panel.
 44. In addition to the Panel, Mr Daniele Boccucci, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - a) For LFA:
 - 1) Mr Shannon M.H., First Vice-President of the LFA;
 - 2) Mr Sètondji Roland Adjovi, Counsel;
 - 3) Mr Stephen J. Waters, Counsel
 - b) For FIFA:
 - 1) Mr Jaime Cambreleng Contreras, FIFA Head of Disciplinary;
 - 2) Mr Paul-Antoine Dumond, Legal Counsel in the FIFA Disciplinary department

45. No witnesses or expert witnesses were heard.
46. Both parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
47. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
48. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations 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.

V. SUBMISSIONS OF THE PARTIES

49. The submissions of the LFA, in essence, may be summarised as follows:
 - The Coach agreed to withdraw his claim against the LFA upon receipt of the amount of USD 30,000 in three instalments as full settlement to close the dispute, in accordance with article 1 and 2 of the Settlement.
 - Mr Teixeira informed FIFA on the Coach's behalf that the LFA "*complied with what was agreed and FIFA should consider the claim cancelled*". The secretariat to the FIFA Disciplinary Committee never confirmed or disputed the cancellation. The FIFA Disciplinary Committee completely ignored the fact that the claim had been cancelled.
 - Neither the FIFA Disciplinary Committee, nor the Coach informed Mr Teixeira that his mandate had been retrieved or cancelled.
 - Although the Coach asked FIFA "*to execute the Settlement reached between the parties*", the FIFA Disciplinary Committee ignored such request and changed it into "*failure to comply with the decision passed*".
50. The submissions of FIFA, in essence, may be summarised as follows:
 - The FIFA Disciplinary Committee has as its sole task to analyse if the debtor complied with the final and binding decision of the relevant body. The main question to be answered is therefore whether or not the financial amounts as defined in the final and binding decision have been paid to the party claiming it, or – as the case may be – for a certain reason the outstanding amount is not due anymore. If the FIFA Disciplinary Committee is not provided with proof that either the payment has been executed or that the parties agreed upon a payment plan, it will render a decision imposing a fine on the debtor.
 - It is evident that the correspondence sent by Mr Teixeira on behalf of the Coach on 5 September 2014 had been duly taken into account by the FIFA Disciplinary Committee before passing the Appealed Decision. FIFA is astonished about the behaviour of Mr Teixeira, who, in the context of the same proceedings, passed to represent one and the

other party, in potential violation of the FIFA Players' Agents Regulations in force at that time or the FIFA Regulations on working with Intermediaries.

- The FIFA Disciplinary Committee considered the matter at stake cautiously and thoroughly, in particular given the contradictory information provided – on the one hand, the Coach directly stating that he was not fully paid and, on the other hand, his previous representative now representing the LFA stating that the LFA had complied with its obligation.
- The Settlement states that if the LFA fails to make the stipulated payments, it shall be considered null and void. In order for the Settlement to be considered as fully executed i) the LFA had to pay to the Coach the amount of USD 30,000; and ii) the parties had to sign a new 2-year services contract ; or, alternatively iii) if no agreement was reached in this respect, the LFA had to pay to the Coach the amount of USD 60,000.
- Mr Teixeira did not provide evidence of the fact that the Coach concluded an employment contract as coach in Egypt. Mr Teixeira however failed to explain why the Coach's impossibility to take into consideration the offer of the LFA leads to the conclusion that the Settlement was fully respected, nor why he made reference to an amount of USD 30,000, whereas the Settlement refers to an amount of USD 60,000.
- It is not written in the Settlement that if the Coach does not accept the contract offered by the LFA, the Coach is entitled to a complementary payment of USD 30,000, nor is it stipulated therein that if the Coach does not accept the contract offered by the LFA, the Settlement has to be considered as duly executed. On the contrary, it is clearly written that if no agreement was reached for the signing of the new contract, the LFA would pay the gross amount of USD 60,000 to the Coach. In this context, FIFA underlines that the Coach actually agreed to receive a reduced payment – even considering the payment of USD 60,000 – in comparison with the FIFA PSC Decision.
- The Settlement signed between the parties was not fully respected and is to be considered null and void as per clause 7 of the Settlement. The FIFA Disciplinary Committee therefore correctly applied article 64 of the FDC and rightfully imposed disciplinary measures on the LFA.

VI. JURISDICTION

51. The jurisdiction of the CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes (2015 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” in conjunction with article 64(5) of the FDC determining that “[a]ny appeal against a decision passed in accordance with this article shall be lodged with CAS directly” and Article R47 of the CAS Code.
52. The jurisdiction of the CAS is further confirmed by the parties by means of their signatures on the Order of Procedure.

53. Since the Appealed Decision is rendered by the FIFA Disciplinary Committee in accordance with article 64 of the FDC, the LFA could lodge an appeal with CAS directly, without first having to challenge the Appealed Decision before the FIFA Appeal Committee. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

VII. ADMISSIBILITY

54. The appeal was filed within the deadline of 21 days set by article 67(1) of the FIFA Statutes. The appeal complies with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
55. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

56. The LFA did not make any submissions in respect of the applicable law, but confirmed during the hearing that the regulations of FIFA shall govern this arbitration and that Swiss law shall apply in case of any *lacuna* in the regulations of FIFA. The LFA further argued that since the Settlement was concluded in Liberia, Liberian law would apply thereto. The LFA however submitted that it would only rely on legal principles that apply in any country.
57. FIFA maintains that, pursuant to article 66(2) of the FIFA Statutes, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
58. Article R58 of the CAS Code provides the following:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
59. Article 66(2) of the FIFA Statutes determines 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, subsidiarily, Swiss law”.*
60. The Panel finds that the various regulations of FIFA, in particular the FDC, shall be applied primarily, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. The Panel does not deem it necessary to apply Liberian law in the present dispute.

IX. MERITS

A. The Main Issues

61. The main issues to be resolved by the Panel are:

- a. Was the FIFA Disciplinary Committee competent to assess whether the Settlement was complied with in the context of article 64 FDC?
- b. If not, what should be the consequence thereof?

a) *Was the FIFA Disciplinary Committee competent to assess whether the Settlement was complied with in the context of article 64 FDC?*

62. Article 64(1) FDC determines the following:

“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”.*

63. The Panel adheres to the position of FIFA insofar as it maintains that the FIFA Disciplinary Committee has as its sole task to analyse whether the debtor has complied with the final and binding decision of the relevant body. The main question to be answered by the FIFA Disciplinary Committee was therefore whether or not the financial amounts as defined in the FIFA PSC Decision had been paid to the Coach by the LFA.

64. The Panel however has doubts in respect of the FIFA Disciplinary Committee’s scope of review in assessing whether or not the outstanding amount is still due. The Panel finds that this depends on the arguments brought forward by the debtor as to why it considers that it does not have to comply with the final and binding decision of one of FIFA’s bodies, committees or instances. The LFA, for example, in the instant case, objected to the FIFA Disciplinary Committee’s competence to execute the Settlement (para. 4 “INTERPRETATION” in conjunction with para. 9 “THE FACTS” of the Appeal Brief), which the Panel understands as an objection to the competence of the FIFA Disciplinary Committee to determine whether or not the terms of the Settlement have been complied with.

65. The Panel thus, finds that there can be situations when the FIFA Disciplinary Committee is required to make a more thorough analysis than simply verifying whether the amounts awarded in the final and binding decision have been paid.
66. As illustration, there have been various proceedings before CAS where football clubs argued that the FIFA Disciplinary Committee could not enforce a final and binding decision of FIFA because the club had in the meantime been placed under administration or had been declared bankrupt (*e.g.* CAS 2012/A/2750, CAS 2013/A/3380, abstracts of which are published on the CAS website). This indeed appears to be a situation where the FIFA Disciplinary Committee is required to examine whether it has the power to continue the enforcement proceedings, or whether it should suspend or terminate the proceedings.
67. Another example would be when the creditor and the debtor have agreed on a payment schedule different from the one set out in the FIFA decision. If this is the case, the FIFA Disciplinary Committee should take into account the due dates set out in such payment schedule, rather than applying the deadlines set out in the final and binding decision.
68. The present case does not fall under any of these categories, because in the present matter it is disputed whether the terms of the Settlement have been complied with, rather than whether the amounts awarded in the FIFA PSC Decision have been paid. Whereas the Coach argues that the terms of the Settlement were not respected, the LFA maintains that it had fully complied with the terms of the Settlement.
69. The Panel finds that the Settlement leaves a lot to be desired in terms of clarity of expression. Indeed, if one looks at the wording of article 1 and 2 of the Settlement (*i.e.* “*THE LFA has agreed to pay the amount of [USD 30,000] in three (3) instalments as full settlement to the CLAIMANT to have him withdraw his claimed with FIFA against THE LFA*” and “*CLAIMANT has agreed to withdraw his Claimed with FIFA against THE LFA upon the receipt of [USD 30,000] in three (3) instalments as full settlement to close the dispute*”) and notes that it remained undisputed that the LFA paid the Coach the amount of USD 30,000, one could come to the conclusion that the Settlement was fully respected by the LFA and that the Coach waived his right to request the FIFA Disciplinary Committee to enforce the FIFA PSC Decision.
70. Article 5 of the Settlement (*i.e.* “[*t*]hat if the LFA and the CLAIMANT cannot agree on the terms and conditions of the two (2) years Service Contract offered by the LFA, the Parties have agreed for the LFA to pay a gross settlement amount of [USD 60,000] to close the CLAIMANT claim of LFA obligations with FIFA”) could, as argued by the LFA, potentially be regarded as a separate or a new contractual arrangement entered into by the Coach and the LFA that is detached from the previous contractual dispute that resulted in the FIFA PSC Decision. This is so because the withdrawal of the complaint by the Coach was conditional, according to the very terms of the Settlement, only upon the payment of USD 30,000 (Article 2).
71. During the hearing, the LFA also raised the argument that the Coach failed to negotiate a new employment contract with the LFA in good faith and simply rejected the offer. Without assessing this issue in detail, the Panel notes that such potential *culpa in contrahendo* may possibly

influence the outcome of the decision in respect of the contractual dispute regarding the Settlement.

72. The Panel finds that analysing these questions goes beyond the mere execution of the FIFA PSC Decision, and indeed requires an in-depth analysis of whether or not the terms of the Settlement are complied with. The Panel finds that it is not for the FIFA Disciplinary Committee to make this assessment. To avoid any misunderstandings, the Panel wants to make it clear that the scope of review by the FIFA Disciplinary Committee should be fact-dependant. In cases where it is clear and evident that the terms of the FIFA decision (if no settlement or any other agreement related to the debt was agreed by the parties after the notification of the award) or the terms of a “post decision agreement” have not been complied with and a debt is certain (for instance in a case where the debtor does not deny the fact that he did not comply with the “post decision agreement”), then, it goes without saying, that the FIFA Disciplinary Committee can simply declare the debt, and proceed accordingly. Alas, this is not the case here.
73. The scope of powers of the FIFA Disciplinary Committee is not unlimited, though. Indeed its powers are circumscribed in the relevant FIFA Statutes. This position of the Panel appears to be in accordance with FIFA’s letter to the Coach and the LFA dated 26 January 2015, whereby they were informed that “*the disciplinary proceedings cannot go beyond the execution of a final and binding decision [...]*” and “*as a general rule, the Disciplinary Committee is not in a position to enforce an agreement concluded between two parties*”. Although the FIFA Disciplinary Committee did not enforce the Settlement as such, it declared the Settlement null and void. In the view of the Panel, this was a step too far. If its powers cannot go beyond executing a final and binding decision, as the FIFA itself admits in the aforementioned letter, then clearly it has no mandate to declare the Settlement brought before it null and void. For the FIFA Disciplinary Committee to behave in accordance with its statutory mandate (Article 64 FDC), it has, in case of doubt as to the merits of a claim, to refer the issue before it to the competent FIFA body to decide first whether a debt, the execution of which has been requested, indeed exists.
74. In a dispute like the present, where the debtor objects to the competence of the FIFA Disciplinary Committee to examine whether the terms of the Settlement reached between the parties were complied with, or in a case where the debtor claims that he respected and complied with the agreement and the dispute between the parties on this question cannot be decided without a thorough and full legal examination of the positions of both parties, the Panel finds that the FIFA Disciplinary Committee lacks jurisdiction *ratione materiae* to decide itself on the existence of the debt.
75. Consequently, the Panel finds that the FIFA Disciplinary Committee was not competent to assess whether the Settlement had been complied with under the competence assigned to it by article 64 FDC. More so, it had no power to declare the Settlement null and void, and use the original contract as the basis for its decision.

b) *If not, what should be the consequence thereof?*

76. In view of the conclusion that the FIFA Disciplinary Committee lacked jurisdiction *ratione materiae* to decide whether or not the Settlement had been complied with, the Panel finds that, since the present arbitration is the result of an appeal lodged against a disciplinary decision, this Panel is neither competent to examine the contractual dispute, as it cannot extend the scope of the present proceedings to encompass the contractual dispute regarding the Settlement, as the FIFA Disciplinary Committee mistakenly did. In other words, CAS cannot decide until it has a decision of the *ratione materiae* competent body in front of it.

77. Article R57 of the CAS Code determines as follows:

“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. [...]”

78. Acknowledging the discretion granted to it under Article R57 of the CAS Code to decide *de novo*, the Panel finds that it would be inappropriate for it to decide the dispute in this way for the reasons spelled out in what now follows.

79. The Panel feels very uncomfortable to decide the present case on the merits in view of the limited evidence before it, and because the Coach is not a party to the present arbitration. And yet, any decision by the Panel would directly, or at the very least indirectly, have an impact on his legal situation. This the Panel cannot do.

80. Rather than deciding itself, the Panel finds that the appropriate course of action for the FIFA Disciplinary Committee would have been to suspend the enforcement proceedings, and to refer the contractual dispute regarding the Settlement to the body competent to adjudicate such matter within the FIFA administration for a decision, before resuming the enforcement proceedings, if needed. Such referral can be made by the FIFA Disciplinary Committee itself or by granting the parties a period of time to initiate such proceedings by themselves, while indicating that if neither of the parties would undertake any action within the designated period of time, the enforcement proceedings would be resumed based on the FIFA PSC Decision. Under such circumstances, the FIFA Disciplinary Committee may legitimately understand that neither of the parties are interested in examining the conduct of the parties in respect of the “post-decision agreement” and whether indeed the agreement was complied with or not, and thus the FIFA Disciplinary Committee may legitimately conclude that the parties had withdrawn their positions based on the agreement.

81. The Panel feels comforted in this decision by the reasoning of the Sole Arbitrator in CAS 2015/A/4319:

“[A]lthough acknowledging his competence to render a new decision and replacing the decision challenged, the Sole Arbitrator finds that the fact that the Appealed Decision is rendered by the wrong body within the IWF in violation of the IWF Constitution, is not a procedural flaw that should be repaired by CAS without first allowing the competent body within the IWF to decide on this matter first [...]” (CAS 2015/A/4319, para. 51 of the abstract published on the CAS website).

82. The Panel finds that it is authorised to refer the case back to the FIFA Disciplinary Committee in accordance with Article R57 of the CAS Code, despite the fact that neither of the parties requested it to do so.
83. The option of referring the case back to the FIFA Disciplinary Committee for it to stay the proceedings pending the resolution of the matter by the competent FIFA body was raised by the Panel during the hearing and the parties were afforded the opportunity to comment. The Panel however does not consider FIFA's arguments against such outcome (that this is not the practice and that this would discourage debtors and creditors from reaching amicable agreements) to be convincing.
84. Consequently, the Panel finds that the Appealed Decision is set aside. The matter is referred back to the FIFA Disciplinary Committee. This body has the power to suspend the proceedings, and refer the contractual dispute concerning the question whether the Settlement has been complied with to the competent body within the FIFA administration for a decision, by either of the venues suggested in para. 80 *supra* before eventually resuming the enforcement proceedings and issue a decision itself.

B. Conclusion

85. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Panel holds that:
 - i. The FIFA Disciplinary Committee was not competent to assess whether the Settlement was complied with under the competence assigned to it by article 64 FDC.
 - ii. The Appealed Decision is set aside.
 - iii. The matter is referred back to the FIFA Disciplinary Committee, which has the power to suspend the proceedings and refer the contractual dispute concerning the question whether the Settlement has been complied with to the competent body within the FIFA administration for a decision, before eventually resuming the enforcement proceedings and issue a decision itself.
86. Any other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 February 2016 by the Liberia Football Association against the decision issued on 4 September 2015 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is partially upheld.
2. The decision issued on 4 September 2015 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is set aside and the case is remitted back to the Disciplinary Committee of the *Fédération Internationale de Football Association*, which has the power to suspend the proceedings and refer the contractual dispute concerning the question whether the settlement agreement dated 27 May 2014 has been complied with to the competent body within the administration of the *Fédération Internationale de Football Association* for a decision, before eventually resuming the enforcement proceedings and issue a decision itself.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.