Arbitration CAS 2016/A/4814 Free State Stars Football Club v. Daniel Agyei, award of 12 April 2017

Panel: Mr Ivaylo Dermendjiev (Bulgaria), President; Mr Manfred Nan (The Netherlands); Prof. Massimo Coccia (Italy)

Football
Termination of an employment contract
Ex officio result of a failure to comply with a time limit
Determination of the starting point for the calculation of the compliance with the time limit (dies a quo)
Notifications via associations
Sources of receipt of the decision

1. **Failure to comply with a deadline results in the loss of the party's substantive claim. The inadmissibility, if the appeal is not lodged in time, is automatic and the party's reaction or non-reaction cannot change such consequence: the expiration of the deadline has a preclusive effect that should be controlled by the adjudicating body on the basis of the facts pleaded and proved by the parties and which the adjudicating body has no discretion to extend.**

2. **Unlike Article 58.1 of the FIFA Statutes, Article R49 of the CAS Code attaches importance to the *"receipt of the decision"* not to the *"notification"* of the decision by the decision-making body. The meanings of the two terms "notification" and "receipt" can be reconciled, in the sense that a "notification" of a decision is effected by FIFA – for the purposes of an appeal to the CAS – when the affected party is in "receipt" of the decision. This interpretation is confirmed by Art. 19.2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, which states that notification is deemed to be complete at the moment the decision is received by the party, at least by fax.**

3. **Football associations are not "automatic" representatives of their affiliated clubs if no power of representation was granted for such purpose. The event triggering the time limit for the appeal to CAS is the date on which the party intending to appeal a decision receives notice of it. The delay caused by the national federation in forwarding to the athlete or the club the decision issued by the international federation cannot be held against the athlete or the club, unless it is established that the federation is to be held as an agent for the athlete or the club.**

4. **Although in most cases the decision will be received from the association issuing the decision, the receipt of the decision – in the sense of Article R49 of the CAS Code – can be validly obtained from other sources, too. Under such provision the *dies a quo* of the time limit for filing of the appeal is when the appellant has received the motivated**

decision, regardless of who sent such decision and the means of delivery. *"Receipt of the decision"* for the purposes of Article R49 of the CAS Code means that the decision must have come into the sphere of control of the recipient (or his/her agent).

I. PARTIES

1. Free State Stars Football Club (the "Club" or the "Appellant") is a professional football club based in Bethlehem, South Africa. The Club is affiliated to the National Soccer League ("NSL"), the association regulating professional football in South Africa under the South African Football Association ("SAFA"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. Mr Daniel Agyei (the "Player" or the "Respondent") is a professional football player of Ghanaian nationality.

3. The Appellant and the Respondent will be jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions and evidence adduced. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 1 July 2013, the Club and the Player concluded an employment contract valid until 30 June 2016 containing an option for extension until 30 June 2017 (the "Employment Contract"). The parties to the Employment Contract agreed to a gross monthly remuneration payable on an incremental basis - South African Rand (ZAR) 38,000 per month for the first year of the duration of the contract; ZAR 43,000 per month for the second year of the duration of the contract; ZAR 48,000 per month for the third year of the duration of the contract; ZAR 55,000 per month for the option period. The Employment Contract also established an Image Rights Fee payable to the Appellant annually in three instalments (an aggregate of ZAR 300,000 for the 2013/2014 season; ZAR 340,000 for the 2014/2015 season; ZAR 400,000 for the 2015/2016 season; ZAR 450,000 for the option season). The Employment Contract further provided for 2 return air tickets per season from South Africa to Ghana.

6. On 23 July 2014, the Club submitted to the Player a notice of termination of the Employment Contract.

7. On 26 August 2014, the Player filed a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") contending that the Employment Contract was terminated by the Club without just cause and requesting that the Club be ordered to pay the following amounts: an outstanding Image Rights Fee in the amount of ZAR 100,000 plus interest; a compensation in the aggregate of ZAR 2,899,000 plus interest in relation to salaries from 1 August 2014 until the end of the option period (30 June 2017) and in relation to image rights for the 2014/2015 and 2015/2016 seasons, as well as for the optional 2016/2017 season. The Appellant also requested six return air tickets in the route South Africa - Ghana, corresponding to the 2014/2015, 2015/2016 and 2016/2017 seasons. The Player finally requested sporting sanctions to be imposed on the Club.

8. On 18 March 2016, the FIFA DRC issued its decision (the "Appealed Decision"). Having first established that it was not competent to deal with the Player's claims pertaining to image rights, the FIFA DRC next ordered the Club to pay the Player compensation for breach of contract in the amounts of ZAR 1,030,350 and USD 1,280, plus 5% interest *p.a.* as from 26 August 2014. Any further claims lodged by the Player were rejected.

III. NOTIFICATION OF THE APPEALED DECISION

9. The grounds of the Appealed Decision were notified to the Appellant by fax via SAFA on 27 July 2016. Noting that it was not in possession of the fax number of the Club, in the cover letter to the fax transmission FIFA requested SAFA to immediately forward the grounds of the Appealed Decision to the Club and to then provide FIFA with a copy of the relevant notification document. FIFA further advised that should it not receive any reaction from the SAFA within four days, it would be considered that the grounds of the decision had been properly communicated to the ultimate addressee, i.e. to the Club within the said timeframe.

10. On 5 September 2016, the Club wrote to SAFA that it had not received a copy of the grounds from FIFA but acknowledged that *"the Footballer* [the Player] *has served us with a Statement of Appeal with the requested document attached* [the Appealed Decision]*"* and requested SAFA to be provided with a copy of the decision emanating directly from FIFA DRC.

11. On 5 September 2016, SAFA requested FIFA once again to be provided with the reasoned Appealed Decision.

12. On 7 September 2016, FIFA sent a copy of the reasoned Appealed Decision to SAFA, emphasising that it was only sending a copy of the decision which had been validly notified on 27 July 2016 and which, therefore, did not replace the original notification.

13. By letter dated 10 October SAFA declared to the Club that it did not receive the first notification from FIFA on 27 July 2016 and that, consequently, it could not have notified it to the Club.

14. The grounds of the Appealed Decision were undisputedly notified to the Respondent on 27 July 2016.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

15. On 28 April 2016, the club filed a first statement of appeal against the Appealed Decision.

16. As admitted by the Appellant, when that first statement of appeal was filed, the grounds of the Appealed Decision had not yet been notified to the Parties.

17. On 3 May 2016, the Club was therefore informed by the CAS Court Office that its appeal was premature and that proceedings could not be initiated. Nevertheless, the Club was informed that it could re-file its statement of appeal once the grounds of the Appealed Decision were notified and was invited to provide bank details for the court office fee to be reimbursed. The Club did not object to CAS' position that proceedings could not be initiated and requested that the CAS would keep the court office fee as it would re-file its statement of appeal at a later date.

18. Having received the grounds of the Appealed Decision on 27 July 2017, the Player filed his cross-appeal with the CAS (by email on 16 August 2016 and by fax on 17 August 2016) and couriered it to FIFA on 16 August 2016. The proceedings concerning the Player's appeal were later on referenced in the CAS roll of cases as *CAS/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA*.

19. On 16 August 2016, the Player's statement of appeal was also emailed to the Club enclosing the reasoned Appealed Decision (marked as annexure "A" to the statement of appeal) and the FIFA fax cover letter dated 27 July 2016 (marked as annexure "B" to the statement of appeal).

20. On 18 August 2016, the Club's lawyer acknowledged in an email to the Player's representative *"that we have noted the content of the attached annexure "A" and "B""*.

21. By email of 8 September 2016, the Club's lawyers informed the Player's representative *"that we are in the process of finalizing our appeal documents"* and sought for the Player's agreement that a sole arbitrator resolve the issues in dispute.

22. On 15 September 2016, the Club filed its statement of appeal against the Player with respect to the Appealed Decision.

23. On 16 September 2016, the Respondent filed an unsolicited submission to the CAS alleging that the Club's appeal was inadmissible as it had been filed outside the applicable 21-day time limit.

24. On 29 September 2016, the CAS Court Office acknowledged receipt of the Club's statement of appeal and enclosed for the Appellant's attention the Respondent's submission dated 16 September 2016. The CAS Court Office further informed the Appellant that, based on review of documentation received, it would appear that the reasoned Appealed Decision was notified to the Club via SAFA on 27 July 2016 and that, consequently, the appeal would not have been filed within the 21-day term provided in the FIFA Statutes. Accordingly, the Appellant was advised that, pursuant to Article R49 of the Code of Sports-related Arbitration (the "Code"), it would appear that the CAS would not be in a position to initiate any procedure. The

Appellant was invited to provide proof of timely filing of the statement of appeal and/or any comments it might have in this regard within a prescribed term, failing which the CAS would not proceed with the appeal.

25. On 29 September 2016, the Appellant submitted its appeal brief.

26. On 30 September 2016, in light of its correspondence dated 16 September 2016, the Respondent sought confirmation by the CAS if the Club's appeal was considered valid.

27. On 10 October 2016, the Appellant filed its reply to the CAS letter dated 29 September 2016 enclosing a letter from SAFA dated 10 October 2016 which indicated that the reasoned Appealed Decision had not been received on 27 July 2016. Accordingly, the Appellant requested that the CAS reconsider its position with regards to initiating a procedure.

28. On 12 October 2016, the CAS Court Office initiated a procedure concerning the Club's appeal which was referenced in the CAS roll of cases as *CAS/A/4814 Free State Stars Football Club v. Daniel Agyei*. Accordingly, the Club's statement of appeal and appeal brief were enclosed to the Respondent's attention and the latter was invited to submit an answer within 20 days upon receipt of the Appellant's submissions.

29. On 12 and 13 October 2016, in the event that the CAS would find the appeal as having been timely filed, the Respondent requested that the time limit for filing of the answer be fixed upon receipt by the CAS of the Appellant's payment of his share of the advance on costs.

30. On 17 October 2016, the CAS Court Office confirmed that, pursuant to Article R55.3 of the Code, the deadline for the Respondent to file his answer would be fixed upon receipt by the CAS of the Appellant's payment of his share of the advance on costs.

31. On 25 October 2016, the Parties were invited to inform the CAS Court Office whether they agreed to consolidate the present procedure with the case *CAS/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA* (see par. 18 above). Meanwhile, on 20 October 2016, the parties to the case *CAS/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA* were advised by the CAS Court Office that the President of the CAS Appeals Arbitration Division had decided to submit that matter to a Panel composed of three arbitrators.

32. On 25 October 2016 and 28 October 2016, the Appellant and the Respondent, respectively, agreed to the consolidation of the present matter with the case *CAS/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA,* following which the proceedings were consolidated by the President of the CAS Appeals Arbitration Division pursuant to Article R52.4 of the Code.

33. On 26 October 2016, FIFA renounced its right to request intervention in the proceedings but drew attention to the fact that the grounds of the Appealed Decision were duly notified to the Club on 27 July 2016 via SAFA in accordance with Article 19.3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. FIFA confirmed that, pursuant to a request dated 5 September 2016 sent by SAFA, on 7 September 2016 it submitted another copy of the grounds of the Appealed Decision, however noting

that SAFA was expressly informed that FIFA considered that the challenged decision had been already properly notified on 27 July 2016 and that the second copy did not replace the formal notification correctly performed on 27 July 2016.

34. On 2 November 2016, the Club and the Player were each invited by the CAS Finance Director to pay an aggregate amount of CHF 22,000 (CHF 11,000 for each of the two proceedings) as advance on costs in relation to *CAS 2016/A/4814 Free State Stars Football Club v. Daniel Agyei* and *CAS 2016/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA*, no later than 25 November 2016.

35. On 2 November 2016, the Respondent nominated Mr. Manfred Nan, Attorney-at-Law in Arnhem, Netherlands, as arbitrator. The Respondent also inquired whether the President of the Appeals Division would make a decision in respect of the admissibility of the Club's appeal or it would be for the appointed panel to decide on that issue.

36. On 7 November 2016, in relation to the Respondent's inquiry regarding the admissibility of the Club's appeal, the CAS Court Office informed the Parties that it would be up to the Panel, once constituted, to consider the issue of admissibility of the appeal.

37. On 11 November 2016, the Club nominated Mr. Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy as arbitrator.

38. On 16 November 2016, FIFA (the second Respondent in *CAS 2016/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA*) agreed to the appointment of Mr. Massimo Coccia as a joint nomination of the Club and FIFA.

39. On 28 November 2016, the CAS Court Office acknowledged receipt by the CAS of the Appellant's payment of his share of the advance on costs and invited the Respondent to submit its answer to the appeal brief within 20 days.

40. On 29 November 2016, the CAS Court Office, on behalf of the Deputy President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, informed the Parties that the Panel to hear this appeal was constituted as follows:

President:	Mr. Ivaylo Dermendjiev, Attorney-at-Law in Sofia, Bulgaria
Arbitrators:	Mr. Manfred Nan, Attorney-at-Law in Arnhem, Netherlands
	Mr. Massimo Coccia, Attorney-at-Law in Rome, Italy

41. On 1 December 2016, the Respondent filed its answer to the Club's appeal.

42. On 22 December 2016, the Parties were invited to inform the CAS Court Office by 3 January whether they prefer a hearing to be held in this matter or for the Panel to issue an award based solely on the parties' written submissions.

43. On 3 January 2017, the Appellant expressed its preference for a hearing to be held in this matter.

44. On 3 January 2017, the FIFA notified the CAS that it would prefer the Panel to decide the matter solely on the basis of the parties' written submissions.

45. On 4 January 2017, the Player's representative (the South African Football Players Union, SAFPU) notified the CAS that, since its offices had been closed for the festive season from 20 December 2016 until 9 January 2017, it was only on 3 January 2017 that the CAS letter dated 22 December 2016 was received. Accordingly, the Appellant requested an extension until 10 January 2017 to inform the CAS of its preference regarding holding a hearing or not.

46. On 9 January 2017, after having been granted the requested extension, the Respondent objected to the Appellant's request that a hearing be held in this matter and expressed the view that the holding of a hearing was not necessary.

47. On 3 February 2017, the Parties were advised by the CAS Court Office on behalf of the Panel that, pursuant to Article R64.2 of the Code and as the Player failed to pay the remaining advance of costs within the prescribed time limit, the appeal in *CAS/A/4782 Daniel Agyei v. Free State Stars Football Club & FIFA* should be deemed withdrawn and an Award on costs would follow in due course. With respect to *CAS 2016/A/4814 Free State Stars Football Club v. Daniel Agyei*, the Parties were informed that pursuant to Article R57 of the Code, after having analysed the Parties' respective submissions, the Panel considered to be sufficiently well informed and had decided not to hold a hearing in these proceedings.

48. On 24 February 2017, the Parties signed the Order of Procedure. By signing of the Order of Procedure, the Parties confirmed their agreement that the Panel may decide this matter based on the Parties' written submissions and that their right to be heard has been respected.

V. JURISDICTION

49. Article R47 of the Code provides as follows:

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

50. The Appellant relies on article 24 of the FIFA Regulations on the Status and Transfer of Players as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the Order of Procedure.

51. In accordance with Article 57.1 of the FIFA Statutes, the Panel confirms that it has jurisdiction to decide on the present case.

52. Therefore, the Panel considers that CAS is competent to adjudicate upon this case.

VI. APPLICABLE LAW

53. Pursuant to Article R58 of the Code: *"[t]he 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

54. In the present case the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, FIFA's regulations, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA's rules and regulations. More precisely, the Panel notes that the regulations concerned, apart from the FIFA Statutes, are particularly the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2014 (the "FIFA Rules"), considering that the matter was brought to FIFA on 26 August 2014.

55. According to Article 57.2 of the FIFA Statutes, *"[t]he 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"*.

56. The Panel further notes that according to Article 2 of the FIFA Rules, *"[i]n their application and adjudication of law, the Players' Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport"*.

57. The Panel recognises that, although Article 2 of the FIFA Rules is not to be considered as a choice-of-law clause, the provision is a reminder to the relevant decision-making body applying the FIFA Rules that in making its decision under the FIFA Rules, it must not apply these in a vacuum, but must account for applicable contractual arrangements, collective agreements and national law (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, p. 552).

58. Having reviewed the Employment Contract, the Panel finds that there are no sufficiently clear indications that an agreement has been concluded between the Parties concerning the application of a national law which can provide a basis for deviating from the above-mentioned practice of applying the FIFA Statutes and the Code.

59. Based on the foregoing, the Panel finds that the Parties have agreed to the application of the various regulations of FIFA, in particular the FIFA Rules, and, subsidiarily, to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the regulations of FIFA. However, to the extent necessary only, in respect of specific arguments put forward by the Appellant on the basis of South African law, the Panel would consider the direct applicability (or non-applicability) of such provisions to the present dispute.

VII. ADMISSIBILITY OF THE APPEAL

60. The admissibility of the appeal is challenged by the Respondent. The Respondent claims that, even if FIFA had not properly notified the Club on 27 July 2016, respectively on 1 August 2016 at the latest (if the four days mentioned in the FIFA's cover letter are calculated), which he denies, in any event on 16 August 2016 the Player filed his cross-appeal with the CAS and enclosed the reasoned Appealed Decision and that he copied the Club when filing the statement of appeal with CAS. Given that the Appellant's lawyer on 18 August 2016 acknowledged receipt of the statement of appeal with the attached reasoned Appealed Decision, the Player therefore argues that, even if the first notification from FIFA was not properly conducted, the Club was in possession of the reasoned Appealed Decision on 16 August 2016 and its appeal filed on 15 September 2016 was consequently late.

61. The Club is relying on the second copy of the reasoned Appealed Decision which was sent by FIFA to SAFA on 7 September 2016 in order to argue that its appeal was timely filed, claiming that it never received the first notification. The Club refers to the confirmation provided by SAFA, contained in a letter dated 10 October 2016, that the latter had not received the first notification from FIFA and that, consequently, it could not have notified it to its affiliated club.

62. Therefore, the main issue to be resolved by the Panel in deciding the question of admissibility is the following: Was the appeal filed in a timely manner?

63. Article 58.1 of the 2016 FIFA Statutes provides as follows:

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

64. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against…".

65. As a starting point of its analysis, the Panel notes that failure to comply with the deadline results in the loss of the Appellant's substantive claim. As recognized in CAS 2013/A/3135 (par. 27 of the award), the inadmissibility, if the appeal is not lodged in time, is automatic and the party's reaction or non-reaction cannot change such consequence: the expiration of the deadline has a preclusive effect that should be controlled by the Panel on the basis of the facts pleaded and proved by the parties and which the Panel has no discretion to extend.

66. Similarly, in CAS 2006/A/1168 (par. 80 of the award) the Panel there rightly held that the consequence for the statement of appeal not being filed timely is an automatic, self-executing one where the respondent's silence, inactivity or even acquiescence cannot change that

consequence. At any rate, in the present proceedings the Respondent has expressly raised the issue of the timeliness of the appeal.

67. Article 19 of the FIFA Rules (ed. 2014) provides as follows:

"1. Decisions shall be sent to the parties directly, with a copy also sent to the respective associations.

2. Notification is deemed to be complete at the moment the decision is received by the party, at least by fax. Notification of a representative shall be regarded as notification of the party.

3. Decisions communicated by fax shall be legally binding. Alternatively, decisions may be communicated by registered letter or courier, which shall also be legally binding".

68. Therefore, the applicable version of the FIFA Rules requires that the notification is made directly to the involved party or to its representative.

69. The next step for the Panel is to determine the starting point for the calculation of the compliance with the deadline (i.e. the *dies a quo*). Unlike Article 58.1 of the FIFA Statutes, Article R49 of the Code attaches importance to the *"receipt of the decision"* not to the *"notification"* of the decision by the decision-making body. The Panel is of the opinion that the meanings of the two terms "notification" and "receipt" can be reconciled, in the sense that a "notification" of a decision is effected by FIFA – for the purposes of an appeal to the CAS – when the affected party is in "receipt" of the decision. This interpretation is confirmed by Art. 19.2 of the FIFA Rules.

70. The Panel notes that SAFA has provided a statement confirming that it did not receive the grounds of the decision sent on 27 July 2016, while, on the contrary, FIFA has provided successful fax reports. Be it as it may, it is irrelevant for the discussion that follows if SAFA had indeed received the reasoned decision on 27 July 2016 or not.

71. The content of the FIFA's cover letter of 27 July 2016 obviously seems to have taken into account the subsequent version of Article 19.3 of the FIFA Rules as amended in 2015, which now reads as follows:

"3. In the absence of direct contact details, decisions intended for the parties to a dispute, in particular clubs, are addressed to the association concerned with the instruction to forward the decisions immediately to the pertinent party. These decisions are considered to have been communicated properly to the ultimate addressee four days after communication of the decisions to the association. Failure by the association to comply with the aforementioned instruction may result in disciplinary proceedings in accordance with the FIFA Disciplinary Code".

72. Even if, for the sake of argument, the 2015 FIFA Rules were to be applied, the condition to apply this exception is the *"absence of direct contact details"*. In the present case, FIFA did have the direct contact details of the Club; indeed, the Appealed Decision states that the DRC was provided both with the "Fixed Term Contract of Employment" and the "Schedule to the Professional Footballer's Fixed Term Employment Contract" between the Player and the Club (paras. 1 and 6 of the Appealed Decision). Upon review of the said contractual

documents, it is evident that the street address and fax number of the Club are clearly written therein. So, FIFA did have the direct contact details and the exception cannot be applied.

73. The issue of notifications via associations has been dealt with in the past by the CAS. In CAS 2013/A/3135 (issued prior to the amendment of the 2015 edition of the FIFA Rules), the Sole Arbitrator stated as follows:

"24. The Sole Arbitrator shall now examine, when such decision is properly notified to a party. It is quite clear that a decision may be sent either to the party directly, and/or to a representative of the party holding a power of attorney and/or to a third party. It is also quite clear that, if the decision is only sent to a third party, it is not properly notified to the party involved in the proceedings. However, a decision within the meaning of Article 67 par. 1 of the FIFA Statutes can be sent to a representative of the party, thus being properly notified to the party itself (CAS 2008/A/1456). In CAS 2008/A/1456, the appellant, a professional football player, gave power of attorney to his Football Federation to represent him in the proceedings, which is why the "day of notification" was the day the decision was served to the Football Federation. It was irrelevant that the decision was then only later communicated via the Football Federation to the player.

25. It appears that in the present case there was no such representation of the Appellant by the HFF. But even if the HFF was acting as intermediary within the meaning of a representative as in CAS 2008/A/1456, serving it to the HFF would have been sufficient for notification. However, this question does not need to be clarified in the present case, since other than in CAS 2008/A/1456, the decision was also served to the party directly the very same day, i.e. to both, the HFF and the Appellant on 7 March 2013".

74. It therefore appears that the Sole Arbitrator, with whom this Panel concurs, considered that football associations are not "automatic" representatives of their affiliated clubs if no power of representation was granted for such purpose.

75. The issue of notifications via associations was also discussed in CAS 2013/A/3155 (also issued prior to the amendment of the 2015 FIFA Rules), where the Panel stated as follows:

"Consequently, although FIFA may find it convenient to sometimes or often rely on national federations when summoning national clubs to proceedings in front of FIFA's jurisdictional bodies – by serving process in such fashion, FIFA runs the risk of sometimes not meeting the requirements of due process".

76. The question, therefore, appears to be whether the language used in the 2014 FIFA Rules is sufficient to deem the SAFA as a proper representative of the Club for notification purposes or whether such regulatory objective was (if at all) only attained with the 2015 revised language. In view of the above, the Panel holds that in the absence of proofs for actual representation, SAFA cannot be regarded as the Club's representative. As explained (see par. 72 above), even the current version of Article 19.3 of the FIFA Rules cannot justify notification of the Club through the national association in the present case.

77. The question of the event triggering the time limit for the appeal to CAS has been examined also in CAS 2012/A/2839, where the Panel (at para. 186 of the award) has found that this is the date on which the party intending to appeal a decision receives notice of it. The delay caused by the national federation in forwarding to the athlete the decision issued by the

international federation cannot be held against the athlete, unless it is established that the federation is to be held as an agent for the athlete.

78. In view of the foregoing, the Panel considers that the notification of 27 July 2016 to the Club via SAFA was not properly conducted and had not triggered the time limit for appeal.

79. The Panel, however, must examine the legal effect of the email sent by the Player on 16 August 2016 to the Club containing the Player's statement of appeal with the reasoned Appealed Decision attached.

80. It is undisputed that both the Club and its attorney received the email sent by the Player's representative on 16 August 2016. Indeed, the Club's attorney responded to that email on 18 August 2016. The Panel must ascertain whether the Player's email of 16 August 2016 actually enclosed the FIFA decision or not. The Club's response of 18 August 2016 indicates, *inter alia*, *that "we have noted the content of the attached annexure "A" and "B""* and *"We are in the process of discussing the matter with our Client and will respond to the Statement in due course"*. The Player argued that "Annexures A and B" are the reasoned Appealed Decision and the corresponding cover letter of 27 July 2016. When analysing the Player's statement of appeal filed with the CAS, Annexes A and B are indeed the reasoned Appealed Decision and the cover letter.

81. In addition, in its letter to FIFA dated 5 September 2016, by means of which it indicated that it had not received the decision from the SAFA and requested that a copy be provided, the Club stated as follows: *"[…] we requested the Dispute Resolution Chamber to provide us with the grounds for the decision of the DRC, to date we have not received a copy of the grounds. However, the Footballer has served us with a Statement of Appeal with the requested document attached"* (emphasis added).

82. Therefore, the Club confirmed that it received a copy of the reasoned Appealed Decision from the Player on 18 August 2016, but waited some 20 days before it contacted the SAFA (with FIFA copied) on 5 September 2016 instead of immediately taking action.

83. The Panel is of the view that, although in most cases the decision would be received from the association issuing the decision, the receipt of the decision – in the sense of Article R49 of the CAS Code – could be validly obtained from other sources, too.

84. In the words of the Panel in CAS 2007/A/1413,

> *"[m]ore precisely, the time limit starts to run when the appellant has become aware of the decision. It is not necessary that the decision be formally notified to him by the decision-making body; it is sufficient if the appellant knows of the decision (see, e.g., Heini/Scherrer, Basler Kommentar, Zivilgezetzbuch I, p. 498 s).*
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> *53. According to certain commentators, based on good faith principles, the time limit for the filing of the appeal should already start to run if the appellant had the possibility to know, and should have known, about the decision (Oswald, La relativité du temps en relation avec l'art 75 CC, to be published in Mélanges SSJ, Basel 2008; Heini/Scherrer, Basler Kommentar, Zivilgezetzbuch I, p. 498 s.; Donzallaz, La notification en droit interne Suisse, Staempli Editions SA, Berne 2002, , 574 and cases cited)".*

85. In view of the above, the Panel is of the opinion that under Article R49 of the Code the *dies a quo* of the time limit for filing of the appeal is when the appellant has received the motivated decision, regardless of who sent such decision and the means of delivery. In the case at stake the Appellant confirmed to have received the reasoned Appealed Decision on 18 August 2016.

86. The Panel finds that *"receipt of the decision"* for the purposes of R49 of the Code means that the decision must have come into the sphere of control of the recipient (or his/her agent).

87. The main question therefore appears to be whether the reasoned Appealed Decision at any point came into the sphere of control of the Club. As discussed above, the Panel is satisfied that the Club and its legal representative received the reasoned Appealed Decision at the latest on 16 August 2016, with the consequence that the Club's statement of appeal filed on 15 September 2016 is belated.

88. In light of the above, the Panel holds that the Club's appeal is inadmissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Free State Stars Football Club on 15 September 2016 against the decision of the FIFA DRC passed on 18 March 2016 is inadmissible.

(…)

4. All other motions or prayers for relief are dismissed.