



Arbitration CAS 2008/A/1568 M. & Football Club Wil 1900 v. FIFA & Club PFC Naftex AC Bourgas, order on request for stay of 18 June 2008

Football

Unilateral termination of the employment contract between a player and his club

Irreparable harm

1. For a player, to lose his chance to get an employment contract and thus to have important financial difficulties in taking care of his family, as a consequence of the execution of a disciplinary sanction, would result in an immediate harm which would be difficult to compensate.
2. For a club, not being able to list new players as a consequence of the execution of a disciplinary sanction would considerably damage its reputation to be a club promoting young talents. This would result in an immediate harm which would be difficult to compensate since it would create a disadvantage amongst the other clubs for the next season of competitions.

In view of the statement of appeal and of the request for a stay filed on 3 June 2008 by M. and the Club FC Wil 1900 (“the Appellants”) against the Fédération Internationale de Football Association (FIFA) and Club Naftex AC Bourgas (“the Respondents”) in relation to a decision rendered by the FIFA Dispute Resolution Chamber on 30 November 2007;

In view of the letter dated 9 June 2008 sent by counsel for the Appellants;

In view of the comments to the request for a stay filed on 16 June 2008 by the Respondents;

In view of the urgency of the case;

In view of articles R37, R47 and R52 of the Code of Sports-related Arbitration (“the Code”);

The Deputy President of the Appeals Arbitration Division, ruling in camera, hereby considers:

Whereas, pursuant to article R37 of the Code, it is for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide on the application for provisional measures, considering that the Panel has not been formed yet.

On 3 August 2004, M. (“the Player” or “the first Appellant”) signed an employment agreement with the Bulgarian club PFC Naftex AC Bourgas (“the Club PFC” or “the second Respondent”) which was valid until 30 June 2005.

On 2 December 2004, the Player and the Club PFC signed an annex by means of which the employment contract was extended until 30 June 2007.

On 12 December 2004, by means of another annex, the Player and the Club PFC agreed to extend the employment contract again until 30 June 2009.

On 1 February 2006, the Player signed an employment contract with the Swiss club FC Wil 1900 (“FC Wil” or the “the second Appellant”), a club playing in the Swiss Challenge League (the second highest division).

On 18 March 2006, the Swiss Football Association provisionally registered the Player with FC Wil.

On 25 April 2006, Club PFC lodged a claim with FIFA against the Player and FC Wil for compensation for unjustified breach of the employment contract between the Player and the Club PFC.

After several exchanges of submissions, the FIFA Dispute Resolution Chamber rendered the following decision (“the Decision”) on 30 November 2007:

- “1. The claim of the Bulgarian club PFC Naftex AC Bourgas is partially accepted.*
- 2. The Player M. has to pay the amount of BGN 160,000 to PFC Naftex AC Bourgas within 30 days of notification of the present decision.*
- 3. The Swiss Club FC Wil 1900 is jointly and severally liable for the payment of the aforementioned compensation.*
- 4. The Club PFC Naftex AC Bourgas is directed to inform the player M. and the club FC Wil 1900 directly and immediately of the account number to which the remittance is to be made and to notify the DRC of every payment received,*
- 5. If the amount is not paid within the aforementioned time limit, a 5% interest rate per annum as of the expiry of the said time limit will apply and the matter will be submitted to the FIFA Disciplinary Committee for its consideration and decision.*
- 6. A restriction of four months on his eligibility to play in official matches is imposed on the player M. This sanction shall take effect as of the start of the next season of the player’s new club following the notification of the present decision.*
- 7. The club FC Wil 1900 shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
- 8. Any further request filed by the club PFC Naftex AC Bourgas is rejected.*

9. *According to art. 61 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). (...)*”.

The Appellants request that the execution of the Decision be stayed for the duration of the present arbitration procedure. They consider that the Appellants would suffer irreparable harm in the event that the Decision is not immediately suspended.

Furthermore, counsel for the Appellants puts forward that it is very difficult, even impossible, for a football player banned from playing official matches during four months to sign an employment contract with a new club, or to renew an expiring contract. He adds that this is in particular the case of the Player in question, who is not a “star in professional football” and takes care of his wife and his little child with a small wage.

With respect to the second Appellant, counsel for Appellants states that a ban from registering new players, either nationally or internationally, for the two next and entire registration periods would “*make the second Appellant disappear in the anonymity of the ranking of the Challenge League*”.

Furthermore, counsel for Appellants adds that the second Appellant’s reputation “*is very much at risk*”. It is a club well known for its successful promotion of young talents. The ban would have a consequence on the loans agreements regarding young talents concluded by the second Appellant with other bigger clubs. In the same idea, young talents of the FC Wil “*do not have good perspectives anymore to be hired by bigger clubs*”.

Counsel for the second Appellant also considers that the chances of FC Wil to be promoted to the Swiss Super League are void, if it is banned from registering new players.

Finally, counsel for the Appellants alleges that the second Appellant will also suffer from irreparable harm, at be at a disadvantage for the next season’s competition, in the event that the suspension of the challenged decision is not ordered.

Within its letter dated 16 June 2008, FIFA submitted that it does not object to the Appellants’ application to stay the execution of the Decision for the following reasons:

“As far as the Appellants’ request to stay the execution of the challenged decision is concerned, we hereby refer to the constant and continuous jurisprudence of the CAS, according to which requests for stay of execution in case of sporting sanctions imposed on players and clubs in football related matters are accepted without exception, unless formal issues prevent the CAS from applying such jurisprudence. In view of this fact, but without prejudice to any similar or identical case or situation in the future, without prejudice to the decision regarding the sporting sanction in the present case as to the substance, on the correctness of which FIFA is still convinced as we will expose in our answer to the appeal at a later stage, and without prejudice to our answer to the appeal and to the final decision of CAS in the present appeal procedure, please be informed that we refrain from objecting the Appellants’ request to stay the execution of the challenged decision in question”.

By letter dated 16 June 2008, the second Respondent informed the CAS Court office that “*we will agree readily with the judgment of the President of the Division (the Panel respectively) of CAS, in compliance with the provisions of Article R37, to allow or not the termination of the FIFA Decision, for the duration of this procedure*

with reference to the imposed disciplinary sanctions – ban from playing official matches for a period of four months and ban for registering new players for two entire transfer seasons”.

LAW

Jurisdiction

1. The jurisdiction of the CAS results *in casu* from article 61 para. 1 of the FIFA Statutes. Furthermore, the jurisdiction of the CAS to decide this dispute has not been challenged by the parties.
2. It follows that CAS has jurisdiction to decide the present dispute, which has been submitted to the CAS Appeals Arbitration Division.

Admissibility

3. The challenged decision is dated 30 November 2007 and was sent to counsel for the Appellants on 13 May 2008. The statement of appeal and the request for a stay were filed on 3 June 2008, namely within the 21-day time limit for an appeal to the CAS provided by article 61 of the FIFA Statutes.
4. The appeal is therefore admissible.

Application for a stay

5. The Appellants have applied to stay the execution of the Decision, in particular paras. 6 and 7 (the ban on playing official matches and the ban on registering new players). Within the framework of an appeal arbitration procedure, such application for a stay is treated as a request for provisional and conservatory measures pursuant to article R37 and R52 of the Code.
6. In accordance with the CAS case law, as a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the appellant outweigh those of the opposite party. It is necessary to compare the risks incurred by the appellant in the event of immediate execution of the decision with the disadvantages for the respondent in being deprived of such execution (balance of interests). The appellant must take at least a plausible case that the facts relied on by him/it and the rights which he/it seeks to enforce exist and that the material

conditions for a legal action are fulfilled (CAS 2000/274, published in the Digest of CAS awards II, p. 757; see also CAS 98/200, *ibidem*, pp. 38-41).

7. In their request for a stay, the Appellants submitted that they would suffer concrete damages as a result of their application for a stay of paras. 6 and 7 of the Decision not being granted. They further mentioned the urgency of such request, as the transfer period has already begun.
8. In the statement of appeal, counsel for Appellants contends that the Player would lose his chance to get an employment contract and would thus have important financial difficulties in taking care of his family. With respect to the second Appellant, counsel for Appellants submitted that its reputation to be a club promoting young talents would be considerably damaged, since it would not be able to list new players. This would create a disadvantage amongst the other clubs for the next season of competitions.
9. In the view of the Deputy President of the Appeals Arbitration Division of the CAS and in line with the CAS jurisprudence, the execution of the particular disciplinary sanctions contained in the Decision at paras. 6 and 7 would result in an immediate harm to the Appellants, which would be difficult to compensate.
10. In light of the foregoing, and considering the aforementioned declarations of the Respondents, the Deputy President of the Appeals Arbitration Division of CAS considers that it is not necessary to examine the two other conditions and therefore admits the application for stay filed by the Appellants.

The Deputy President of the CAS Appeals Arbitration Division, ruling in camera:

1. Admits the request filed on 3 June 2008 by the Appellants to stay the execution of the decision issued on 30 November 2007 by the FIFA Dispute Resolution Chamber.
2. (...).