



Arbitration CAS 2008/A/1602 A. v. Caykur Rizespor Kulübü Derneği, order of 28 August 2008

Football

Request for a stay of the decision

Termination of the employment contract between a coach and his club

Nomination of the wrong respondent in the arbitration

A party has no legal interest to contest the principle or the measure of the imposed sanction, except if it complains directly to the authority which has imposed the sanction. Therefore, any order that CAS may pronounce against the Turkish Football Federation becomes effective, only in the event that TFF is a party to the arbitration. The CAS does not have the power to include a third party in an arbitration procedure. It is the responsibility of the Appellant to identify the proper respondents at the outset of the procedure.

In view of the statement of appeal and the request for stay filed on 11 July 2008 on behalf of A. against the decision of the Turkish Football Federation Arbitration Board dated 13 March 2008;

In view of the letter sent by Counsel for Respondent on 28 July 2008 in reply to the request for stay;

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

The Deputy President of the CAS 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 19 June 2007, A. (the “Appellant”) and the football club Caykur Rizespor Kulübü Derneği (the “Respondent”) concluded an oral contract, whereby the Appellant occupied the function of technical director of the Respondent.

On 2 July 2007, the Appellant underwent the medical health inspections.

From 13 to 20 July 2007, the Appellant participated to the new season preparation camp and football tournament with the Respondent's players.

On 9 August 2008, the parties concluded a written one-year contract.

On 21 August 2007, the Appellant terminated the above mentioned contract, due to limitation or removal of the Appellant's competence and authority. Within his appeal brief, the Appellant alleged that he had worked for the Respondent from 19 June 2007 until 20 August 2007.

On 16 December 2007, the Appellant filed an application with the Turkish Football Federation Arbitration Board.

By Resolution n° 2008/90 dated 13 March 2008, the Turkish Football Federation Arbitration Board issued the following decision (the "Decision"):

"According to the reasons, referred above;

It is UNANIMOUSLY resolved;

- a) *To accept partially the application of Technical Director, A., and to amend the and certify the 16.12.2007 dated and 54 numbered resolution of T.F.F. Board of Executives as follows;*
 - *To determine that termination of contract by A. is not right;*
 - *As Club had paid to technical director 400.000 USD in advance, excessively paid 306.666,67 USD shall be collected from technical director together with its legal interests as of 16.12.2007 and to pay this amount to the club;*
 - *To reduce appraisal compensation of 50.000 YTL, determined by T.F.F Board of Executives to 10.000 YTL; to collect this amount from technical Director and to pay to the Club;*
 - *To refuse the other claims of A.;*
- b) *Not to perform new visa and to register processes of A. until realization of payment related with return and compensation;*
- c) *As motion for stay is also requested, to return 2.176,60 YTL of deposited an overall of 15.465.- YTL partial charge over accepted 117.660, 77.- YTL to A. in case of his request; and to record balance 13.288,40.- YTL as income to Federation;*
- d) *Not to perform new visa and register processes of A. until realization of return and compensation;*
- e) *To grant 9.959,64.- YTL attorney fee in favor of attorney of A. according to Attorney Minimum Fee Tariff over accepted 117.660,77 YTL;*
- f) *To grant 46.903,81.- YTL attorney fee in favor of attorney of Caykur Rizespor Club according to Attorney Minimum Fee Tariff over refused 1.590.381.- YTL;*
- g) *To notify the resolution to applicant, attorney of A., respondent, attorney of Caykur Rizespor Club and to TFF General Secretariat for required processes".*

Within his statement of appeal of 11 July 2008, the Appellant filed the request for stay of the execution of the challenged Decision. However, he did not develop any arguments with respect to his request.

In his appeal brief dated 21 July 2008, the Counsel for Appellant stated that the execution of the Decision would “*cause damages, impossible and difficult to remedy*”.

By letter of 28 July 2008, the Respondent stated that “*(t)he effects of an appeal to CAS against the decisions that are on monetary issues underlined with the well established jurisdiction of CAS. Thus, we don't deem necessary to make comments on the request for a stay*”.

LAW

Jurisdiction

1. According to the Appellant, the jurisdiction of CAS derives from article 2/g number 5719 of the “*Law on Amending the Law on Establishment and Duties of Turkish Football Federation*”, which mentions the following: “*ADOPTION OF AUTHORITY OF ARBITRATION BOARDS AND INTERNATIONAL SPORTS ARBITRATION COURT (CAS) REFERRED ON FIFA AND UEFA STATUSES (sic)*”. The Appellant further refers to article 11 number 5719 of the same law as above mentioned, which has been amended with the mention of an “*International Sports Arbitration Court*”.
2. The Appellant is of the opinion that “*(i)t is very clearly arranged with above mentioned law amendment that one can apply to the Sports Arbitration Court (CAS) against Resolutions, made by Arbitration Board as of December 4th, 2007 in connection with disputes from contracts of technical directors and trainers. Therefore, it is obvious after performed law amendment that appeal of the resolution, made by the Turkish Football Federation Arbitration Board in connection with the dispute related with technical manager contract, concluded by and between Caykur Rizespor Club our client, who had worked as a technical director for a while in this club, with 09.08.2007 dated and 6011 numbered registry of Rize 1st Notary Public, can be made below CAS*”.
3. Within its answer dated 12 August 2008, the Respondent contests the jurisdiction of CAS.
4. Considering that the issue of jurisdiction is disputed by the parties, but that the Appellant's allegations with respect to the CAS's jurisdiction are *a priori* not manifestly unfounded, the Deputy President leaves this question open without prejudice of a varying decision which the Panel may issue upon its constitution.

Admissibility

5. The statement of appeal filed by the Appellant was lodged within the deadline provided by R49 of the Code, namely 21 days. The Appellant did not provide any other provision with respect of the time limit to file an appeal before CAS.

6. The Deputy President considers therefore that the appeal is *a priori* admissible, without prejudice of a varying decision which the Panel may issue upon its constitution.

Application for a stay

7. The Appellant has applied to stay the execution of the challenged Decision. Within the framework of an appeal arbitration procedure, such application for stay is treated as a request for provisional and conservatory measures pursuant to articles R37 and R52 of the Code.
8. 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 make 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/A/274, published in the Digest of CAS awards II, p. 757; see also CAS 98/200, *ibidem*, pp. 38-41)).
9. Considering that within its statement of appeal and its appeal brief, the Appellant expressly specified the Respondent as to be Caykur Rizespor Kulübü Derneği.
10. Considering that by letter of 16 July 2008, the CAS Court Office informed the Turkish Football Federation about the present procedure and its possibility to participate in accordance with R54 and R41.3 of the Code. To this effect, the Turkish Football Federation shall have filed an application, together with the reasons therefore, within the time limit set for the Respondent to file its answer to the appeal brief. By letter of 23 July 2008, the CAS Court Office notified the appeal brief to the Respondent and mentioned R55 of the Code, according to which the Respondent has a 20-day deadline upon receipt of the letter to lodge its answer. At the time of the present order, the CAS Court Office did not receive any document from the Turkish Football Federation.
11. Considering that the Appellant has not designated the Turkish Football Federation as a respondent in this procedure.
12. In view of the above, the Deputy President of the CAS Appeals Arbitration Division refers to a previous Order he rendered in the procedure CAS 2005/A/850, whereby he stated that any order that CAS may pronounce against FIFA becomes effective, only in the event that FIFA is a party to the arbitration. A party has no legal interest to contest the principle or the measure of the imposed sanction, except if it complains directly to the authority which has imposed the sanction (see CAS 2006/A/1082 & 1104). Therefore, the Deputy President of the CAS Appeals Arbitration Division concludes that any order that CAS would pronounce

against the Turkish Football Federation would not have any effect if it is not party to the present arbitration. The CAS does not have the power to include a third party in an arbitration procedure. In any event, the Deputy President of the CAS Appeals Arbitration Division is of the opinion that it is the responsibility of the Appellant, who is represented by a professional lawyer, to identify the proper respondents at the outset of the procedure.

13. The request for stay the execution of the challenged decision filed by the Appellant is dismissed and the costs deriving from the procedure relating to the application for a stay shall be determined in the final award.

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

1. Dismisses the application by A. to stay the execution of the decision issued on 13 March 2008 by the Turkish Football Federation Arbitration Board.
2. (...).