



Arbitration CAS 2018/A/5933 Al-Hilal Club v. Fédération Internationale de Football Association (FIFA), award of 30 April 2019

Panel: Mr Mark Hovell (United Kingdom), President; Mr Jacopo Tognon (Italy); Mr Hendrik Kesler (The Netherlands)

Football

Disciplinary sanction for failure to comply with a FIFA decision

Decision within the meaning of Art. R47 of the CAS Code

Legal qualification of a communication requesting a national federation to execute a sanction

Appeal against the enforcement of a sanction

Increase of sanctions in case of non-compliance

1. The characteristic features of a decision within the meaning of Article R47 of the CAS Code may be described as follows: (i) the term “decision” must be construed in a broad sense; (ii) the form of the communication in question is irrelevant for its qualification; (iii) a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effects; and (iv) an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an “*animus decidendi*”, i.e. an intention of a body of the association to decide on the matter.
2. A letter requesting a national federation to execute a point deduction pursuant to the findings of a previous FIFA decision is merely an administrative correspondence. There is no “*animus decidendi*” (i.e. an intention to decide on the matter) in such letter.
3. Debtors cannot simply appeal the execution of a points deduction (or transfer ban, relegation or any other applicable sanction) which is automatically applicable pursuant to a final and binding decision every time that sanction becomes enforceable. To consider as such would be contrary to the system of enforcement of decisions implemented by FIFA to ensure that decisions are being complied with by the debtors.
4. It is the case with any disciplinary regime that a failure to comply with the sanctions imposed has to contain a mechanism for increasing those sanctions to bring about compliance. This is built into the FIFA Disciplinary Code with greater sanctions only being engaged after failure to settle payment in the first instance.

I. PARTIES

1. Al-Hilal Club (the “Club” or the “Appellant”) is a football club with its registered office in Omdurman, Sudan. The Club is a member of the Sudan Football Association (the “SFA”), which in turn is affiliated to Fédération Internationale de Football Association.
2. Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the governing body of world football and has its registered office in Zurich, Switzerland.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Proceedings before the FIFA Players’ Status Committee

4. On 8 May 2017, the FIFA Players’ Status Committee (the “FIFA PSC”) issued a decision in a case involving the Club and the coach J. (the “Coach”) as follows (the “FIFA PSC Decision”) (emphasis in original):

- “1. *The claim of the [Coach] is partially accepted.*
2. *The [Club] has to pay to the [Coach], **within 30 days** as from the date of notification of this decision, the amount of USD 32,332 as outstanding remuneration, plus interest as follows:*
 - *5% p.a. over the amount of USD 16,666 as from 1 January 2016 until the date of effective payment;*
 - *5% p.a. over the amount of USD 15,666 as from 1 February 2016 until the date of effective payment;*
3. *The [Club] has to pay to the [Coach], **within 30 days** as from the date of notification of this decision, the amount of USD 1,044 as well as 5% interest p.a. on the said amount as from 20 February 2016 until the date of effective payment.*
4. *The [Club] has to pay to the [Coach], **within 30 days** as from the date of notification of this decision, the amount of USD 99,618 as compensation as well as 5% interest p.a. on the said amount as from 11 March 2016 until the date of effective payment.*
5. *If the aforementioned sums, plus interest, are not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*

6. *Any further claim lodged by the [Coach] are rejected.*
 7. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid within 30 days as from the date of notification of the present decision, as follows:*
 - 7.1. *The amount of CHF 5,000 has to be paid by the [Coach] to FIFA. Given that the [Coach] has already paid the amount of CHF 4,000 as advance of costs at the start of the present proceedings, the [Coach] shall pay an additional amount of CHF 1,000 as costs of proceedings.*
 - 7.2. *The amount of CHF 15,000 has to be paid by the [Club] to FIFA.*
 - ...
 8. *The [Coach] is directed to inform the [Club] immediately and directly of the account number to which the remittances under points 2,3 and 4 above are to be made and to notify the Single Judge of the [PSC] of every payment received”.*
5. On 18 May 2017, FIFA notified the grounds of the FIFA PSC Decision to the Club (via the SFA) and the Coach.

B. Proceedings before the FIFA Disciplinary Committee

6. On 4 October 2017, the Coach informed FIFA that the Club had not paid any amount thus far and asked for the matter to be forwarded to the FIFA Disciplinary Committee (“FIFA DC”) for its consideration and formal decision.
7. On 19 October 2017, the Club was informed by FIFA that the matter had been forwarded to the FIFA DC.
8. On 31 January 2018, a decision on this matter was issued by the FIFA DC (the “FIFA DC Decision”), as follows:
 - “1. *The [Club] is pronounced guilty of failing to comply with the [FIFA PSC Decision] and is, therefore in violation of art. 64 of the FIFA Disciplinary Code.*
 2. *The [Club] is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision. Payment can be made either in Swiss francs [...] or in US dollars [...].*
 3. *The [Club] is granted a final period of grace of 30 days as from the notification of the present decision in which to settle its debt to the [Coach].*
 4. *If payment is not made by this deadline, the [Coach] may demand in writing from the Secretariat that six (6) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal*

decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the Secretariat.

5. *If the [Club] still fails to pay the amount due to the [Coach] even after the deduction of points in accordance with point 4 above, the FIFA Disciplinary Committee will decide on a possible relegation of the [Club's] first team to the next lower division.*
6. *As a member of FIFA, the [SFA] is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the [SFA] does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*
7. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the [Club] and shall be paid according to the modalities stipulated under point 2 above.*
8. *The [Coach] is directed to notify the Secretariat of every payment received”.*
9. On 8 February 2018, FIFA notified the Club and the Coach of the findings of the FIFA DC Decision.
10. On 12 March 2018, as no payment had been received from the Club, the Coach requested that 6 points be deducted from the Club's first team.
11. On 3 June 2018, the SFA forwarded to the FIFA DC a correspondence from the Club as follows:

“... Our country Sudan is still suffering the sanctions imposed years before and despite the theoretical lifting of these economic sanctions we are still encountering difficulties in transferring money abroad, the bank's networking is still lacking.

We have some dues because of our participation in the Confederation Cup Competition and this money will be transferred directly from the CAF to [the Coach's] account upon an agreement to be signed by [the Club] and [the Coach].

The amount destined to the FIFA will be transferred separately.

You are kindly requested to grant us a reasonable delay to enable us to make the necessary transfer from abroad since it is impossible to be done from within because of the aforementioned reason and the new economic policy implemented by the Central Bank of Sudan and the Sudan Ministry of Finance and National Economy regarding the hard currency and mainly the Dollar”.
12. On 7 June 2018, the SFA forwarded a correspondence from the Club to the FIFA DC which enclosed an payment agreement plan, which the Club claimed it had agreed with the Coach through the Coach's representative, Mr Abusufian Ali Mohamed Abdelmagid (“Payment Plan”). The Club also attached a letter addressed to the Confederation of African Football (“CAF”) in which it requested the CAF to transfer USD 100,000 to the Coach on its behalf.

13. On 17 August 2018, the FIFA DC requested the Coach to confirm whether or not the Payment Plan had been concluded with the Club on 6 June 2018.
14. On the same day, the Coach informed the FIFA DC that he did not enter into the Payment Plan, and that no Power of Attorney had ever been given to Mr Abusufian Ali Mohamed Abdelmagid.
15. On 19 August 2018, the Club informed the FIFA DC that it had attempted to pay the Coach the amount of USD 150,000, but his representative had stated that he was not authorised to receive any amounts in cash.
16. On 4 September 2018, the FIFA DC informed the Club that, *inter alia*, the disciplinary proceedings were ongoing as the FIFA DC had not been provided with proof confirming that the CAF was going to settle the Club's debt on its behalf.
17. On 18 September 2018, the Finance Director of the CAF informed the Club and the SFA that the CAF could not pay the Coach on behalf of the Club, as the Club still had debts to be paid to the CAF.
18. On 20 September 2018, the Club informed the FIFA DC that it was not able to open any overseas bank accounts and that it had delivered USD 150,000 to the SFA, which was ready to pay the Coach or his representative at any time.
19. On 21 September 2018, the FIFA DC wrote to the SFA as follows (the "FIFA DC Letter"):

"... the [Coach] requests that six (6) points be deducted from the [Club's] first team in the domestic league championship. Consequently, we ask your association to immediately implement point 4 of the [FIFA DC Decision] and to deduct six (6) points from the [Club's] first team in the domestic league championship.

As a member of FIFA, your association is responsible for implementing the decision, as stated in point 6 of [the FIFA DC Decision]. We therefore kindly ask you to send us immediately the proof of the points deduction, in particular the standings of the relevant division, on which it can be seen that six (6) points have been deducted from the first team in the domestic league championship of the [Club]. Please let us remind you that in case your association should fail to do so, the [FIFA DC] will pronounce an appropriate sanction against the [SFA]. This can lead to expulsion from all FIFA competitions".
20. On 26 September 2018, the SFA provided FIFA with the proof that the 6 points were deducted from the Club's first team.
21. On 28 September 2018, the Club informed the FIFA DC that payment of USD 150,000 had been made to the Coach through the bank account of a "Mr Ashraf Seedahmed Hussein Ali" in Dubai.
22. On the same day, the Coach confirmed to the FIFA DC that he had received the amount of USD 150,000 from the Club, and although that amount was inferior to the total amount due, the Coach requested the closure of the disciplinary proceedings.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 28 September 2018, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Club filed a Statement of Appeal at the CAS against FIFA challenging the FIFA DC Letter. The Statement of Appeal contained the following prayers for relief:

“The [Club] requests the immediate nullity of the [FIFA DC Letter], that asked [the SFA] to send immediately the proof of the points deduction, in particular the standings of the relevant division, on which can be seen that six (6) points have been deducted from the first team in the domestic league championship of the [Club], with the declaration that the said decision is void and with null effects, maintaining the [Club] the 6 points attained in the current or a future championship”.

24. In its Statement of Appeal, the Club nominated Mr Jacopo Tognon, Attorney-at-law, Padua, Italy, as arbitrator.

25. Separately, on the same date, the Club also filed a request for provisional measures, requesting as follows (emphasis added by the Panel):

*“The [Club] requests the immediate **suspension** of the execution of the [FIFA DC Letter], that asked [the SFA] to send immediately the proof of the points deduction, in particular the standings of the relevant division, on which can be seen that six (6) points have been deducted from the first team in the domestic league championship of the [Club]”.*

26. On 8 October 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, that the Club’s request for provisional measures was essentially moot given that the Club had finished its season and still finished first despite the 6 point deduction. Thus, FIFA invited the Club to withdraw its request for provisional measures.

27. On the same day, the Club wrote to the CAS Court Office confirming that it withdrew its request for provisional measures. Further, pursuant to Article R51 of the CAS Code, the Club requested that its Statement of Appeal be considered as its Appeal Brief.

28. On 12 October 2018, FIFA wrote to the CAS Court Office confirming that it nominated Mr Hendrik W. Kesler, Attorney-at-law, Enschede, the Netherlands, as arbitrator.

29. On 1 November 2018, 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 Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom

Arbitrators: Mr Jacopo Tognon, Attorney-at-law, Padua, Italy

Mr Hendrik W. Kesler, Attorney-at-law, Enschede, the Netherlands

30. On 5 November 2018, pursuant to Article R55 of the CAS Code, FIFA submitted its Answer to the CAS Court Office requesting the following prayers for relief:

- “1. *Primarily, to declare inadmissible the appeal lodged by the [Club].*
 2. *Subsidiary, should the Panel decide not to declare the appeal inadmissible, to reject the [Club’s] appeal in its entirety.*
 3. *To order the [Club] to bear all costs and expenses related to the present procedure”.*
31. On 6 November 2018, FIFA wrote to the CAS Court Office confirming that it did not consider a hearing necessary in this matter, and would prefer for the Panel to render an award solely on the written submissions.
 32. On 9 November 2018, the Club wrote to the CAS Court Office confirming that it preferred for a hearing to be held in this matter.
 33. On 26 November 2018, the CAS Court Office wrote to the Parties on behalf of the Panel and invited the Club to file its comments on FIFA’s objection to the admissibility of the Appeal. Further, the Club was invited to file written witness statements for any witnesses it intended to call.
 34. On 5 December 2018, the Club submitted its comments to the CAS Court Office regarding the issue of admissibility. Its submissions have been summarised in Section V of this Award. The Club also filed a witness statement from Dr. Ashraf Seid Ahmed Hussein, chairman of the Board of the Club.
 35. On 7 December 2018, the CAS Court Office, on behalf of the Panel, invited FIFA to submit its response on the issue of admissibility.
 36. On 16 December 2018, FIFA submitted its comments to the CAS Court Office regarding the issue of admissibility. Its submissions have been summarised in Section V of this Award.
 37. On 28 January 2019, the CAS Court Office informed the Parties that the Panel had decided to bifurcate this procedure to decide the issue of admissibility as a threshold matter in accordance with Article R55, par. 5 of the CAS Code. Further, the CAS Court Office confirmed that pursuant to Article R57 of the CAS Code, the Panel had deemed itself sufficiently well-informed to decide this matter solely on the Parties’ written submissions without the need for a hearing.
 38. On 19 February 2019, FIFA submitted a copy of the signed Order of Procedure.
 39. On 20 February 2019, the Club submitted a copy of the signed Order of Procedure.
 40. By the signature of the Order of Procedure the Parties expressly confirmed their agreement with the Panel to decide on sole the basis of their written submissions and that their right to be heard has been respected.

IV. JURISDICTION

41. Article R47 of the CAS Code provides as follows:

“An appeal against a decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

42. As noted by MAVROMATI/REEB (The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, 2015, at 383), “[i]f the ‘decision’ challenged before CAS is not a decision in the meaning of Article R47, CAS would have jurisdiction but the appeal would be dismissed”. Notwithstanding the issue of whether the FIFA DC Letter constitutes an appealable “decision” (considered further below), the jurisdiction of the CAS was not disputed, and derives from Article 58.1 of the FIFA Statutes (2016 edition) as it determines that:

“Appeals 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”.

43. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.

44. It follows that the CAS has jurisdiction to decide on the present dispute.

V. ADMISSIBILITY

A. The Club’s Submissions on admissibility

45. The Club submitted that the Appeal was admissible because the FIFA DC Letter was “*illegal and void, because it makes a wrong interpretation an application of the legal grounds to the present case*”.

46. The Club argued that the FIFA DC Letter could be appealed to the CAS due to the following provisions:

47. Article R47 of the CAS Code, which states:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.

48. Article 74 of the FIFA Disciplinary Code (“FDC”), which states:

“Certain decisions passed by the Disciplinary and Appeal Committees may be appealed against before the Court of Arbitration for Sport”.

49. Article 128 of the FDC, which states:

“The FIFA Statutes stipulate which decisions passed by the judicial bodies of FIFA may be taken before the Court of Arbitration for Sport”.

50. Article 58 of the FIFA Statutes, which states:

“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 receipt of the decision in question”.

51. Article 64(5) of the FDC, which states:

“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.

52. Moreover, the Club argued that it had paid USD 150,000 to the Coach on 27 September 2018. The Club argued that it did, in fact, abide by the FIFA DC Decision so no points should be have deducted. Accordingly, the Club argued that the FIFA DC Letter disrespects Articles 7 and 64, 1, a), c), d), 2, 3, and 6 of the FDC, as well as Articles 8, 53 and 60 of the FIFA Statutes.

B. FIFA’s Submissions on admissibility

53. FIFA submitted that the FIFA DC Letter was not actually a “decision” by FIFA. It was simply a notification / correspondence from the Secretariat of the FIFA DC. FIFA argued that there was only one decision which was passed by the FIFA DC regarding this matter – the FIFA DC Decision – the terms of which were notified to the Parties on 8 February 2018.

54. The FIFA DC Decision contained a *“clear and unambiguous note”*, as follows:

“[t]he judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. Any request for the grounds of the decision must be sent in writing to the Secretariat, within ten days of receipt of notification of the terms of the decision (art. 116 par. 1 of the FIFA Disciplinary Code). Failure to do so will result in the decision becoming final and binding and the party being deemed to have waived its right to file an appeal”.

55. As such, if the Club wished to appeal the FIFA DC Decision, in particular the points deduction if the Club continue to avoid paying its debt to the Coach, it should have requested the grounds of the FIFA DC Decision. However, the grounds were never requested. As such, the FIFA DC Decision became final and binding, and the Club was deemed to have waived its right to appeal.

56. Further, the FIFA DC Decision stated (emphasis added by FIFA):

- “4. *If payment is not made by this deadline, the [Coach] may demand in writing from the Secretariat that six (6) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, **the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee.** The order to implement the points deduction will be issued on the association concerned by the Secretariat”.*
57. FIFA argued that it was undoubted that the FIFA DC Letter was therefore a letter from the FIFA administration requesting the implementation of and execution of a component of a final and binding decision. To consider otherwise would be contrary to the system of enforcement of decisions implemented by FIFA to ensure that decisions are being complied with by the debtors. Moreover, FIFA noted that the FIFA DC Letter was sent “*well after the deadline of 30 days granted*” by the FIFA DC in the FIFA DC Decision had elapsed, and more than 6 months after having received the express request from the Coach.
58. FIFA also submitted that the FIFA DC Letter did not fall within what constitutes a decision under CAS jurisprudence. The Panel in CAS 2008/A/1633 performed an analysis of the general principles in this respect, and found that:
- “an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any ‘ruling’, cannot be considered a decision”.*
59. This same principle was ratified in CAS 2007/A/1241, CAS 2005/A/899 and CAS 2004/A/748.
60. It was clear therefore, that the FIFA DC Letter could not be considered a new decision. The “decision” to deduct the points was made in the FIFA DC Decision which clearly reflected the intention of the FIFA DC to decide on the matter, thus to produce legal effects (i.e. “*animus decidendi*”).
61. Further, FIFA argued that the FIFA DC Secretariat was not a FIFA judicial body entitled to pass a decision. Contrary to the Club’s position, the Secretariat can send informative correspondences, so its argument that the FIFA DC Letter is “*illegal and void, because it makes a wrong interpretation an application of the legal grounds to the present case*” was wrong. FIFA submitted that this portrayed the Club’s “*lack of understanding of the content of the [FIFA DC Decision], the [FIFA DC Letter] and of the tasks and responsibilities of the Secretariat*”.
62. For all the reasons stated above, FIFA requested at the appeal be deemed inadmissible.
- C. The Panel’s decision on admissibility**
63. An appeal arbitration procedure according to Article R47 of the CAS Code is only available for disputes whose subject matter concerns an appeal against a “decision”. This follows from Article R47 of the CAS Code, which provides as follows:

“An appeal against a decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

64. There is abundant CAS jurisprudence in relation to what constitutes a “decision” within the meaning of Article R47 of the CAS Code (see *inter alia*, CAS 2004/A/659; CAS 2004/A/748; CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2014/A/3744 & 3766). Accordingly, the characteristic features of a decision may be described as follows:

- the term “decision” must be construed in a broad sense;
- the form of the communication in question is irrelevant for its qualification;
- a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effects;
- an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an “*animus decidendi*”, i.e. an intention of a body of the association to decide on the matter.

65. In the case at hand, it was undisputed between the Parties that the FIFA DC Decision was final and binding, as the Club did not appeal it to the CAS when it was issued, nor even ask for the grounds. Further, the FIFA DC Decision clearly stated that (emphasis added):

***“... the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee.** The order to implement the points deduction will be issued on the association concerned by the Secretariat”.*

66. The FIFA DC Letter stated that:

“... the [Coach] requests that six (6) points be deducted from the [Club’s] first team in the domestic league championship. Consequently, we ask your association to immediately implement point 4 of the [FIFA DC Decision] and to deduct six (6) points from the [Club’s] first team in the domestic league championship.

As a member of FIFA, your association is responsible for implementing the decision, as stated in point 6 of [the FIFA DC Decision]. We therefore kindly ask you to send us immediately the proof of the points deduction, in particular the standings of the relevant division, on which it can be seen that six (6) points have been deducted from the first team in the domestic league championship of the [Club]. Please let us remind you that in case your association should fail to do so, the [FIFA DC] will pronounce an appropriate sanction against the [SFA]. This can lead to expulsion from all FIFA competitions”.

67. Accordingly, and in view of the CAS jurisprudence cited above regarding the characteristics of a “decision”, the Panel did not consider the FIFA DC Letter to be a “decision”. The FIFA DC Letter was merely an administrative correspondence sent by the Secretariat of the FIFA DC requesting the SFA to execute the points deduction pursuant to the findings of the FIFA

DC Decision. There was no “*animus decidendi*” (i.e. an intention to decide on the matter) in the FIFA DC Letter.

68. The Panel considers that debtors cannot simply appeal the execution of a points deduction (or transfer ban, relegation or any other applicable sanction) which is automatically applicable pursuant to a final and binding decision every time that sanction becomes enforceable. As FIFA noted, to consider as such “*would be contrary to the system of enforcement of decisions implemented by FIFA to ensure that decisions are being complied with by the debtors*”.
69. The Panel notes that it is the case with any disciplinary regime that a failure to comply with the sanctions imposed has to contain a mechanism for increasing those sanctions to bring about compliance. This is built into the FDC with greater sanctions only being engaged after failure to settle payment in the first instance. The legality and validity of the sanctions set out in Article 64 of the FDC have been considered and confirmed by the SFT (Decision of the SFT 4P.240/2006 dated 5 January 2007). The decision regarding which sanctions are applicable, and when (in the case of persistent failure to pay) is made by the FIFA DC at the time of issuing its decision. In the case at hand, this decision was made in the FIFA DC Decision. The enforcement of the increased sanctions do not constitute further “decisions” by the FIFA DC each and every time.
70. Moreover, the Panel notes that FIFA Circular 1628 (dated 9 May 2018 and which came into force on 23 May 2018 for all FIFA DC cases) stated as follows in relation to the procedure that must be followed by the FIFA DC with respect to points deductions (emphasis added by the Panel):

*“The member association concerned will be required to automatically implement such sanction as of the first day following the expiry of the granted deadline, unless the debtor provides evidence to both the secretariat to the FIFA Disciplinary Committee and the member association concerned that the amount due has been paid (i.e. proof of payment) **before the expiration of the final deadline**. In such case, the receipt of payment shall be confirmed by the creditor.*

It will not be possible to avoid the implementation of the point deduction (or to lift it, once implemented) even if the debtor complies with the decision after the expiration of the final deadline”.

71. For the completeness, the Panel notes that the Club may have had grounds to argue that the FIFA DC Secretariat unlawfully requested the SFA to deduct the points if it had actually paid the amounts due within the deadline set out in the FIFA DC Decision. In that regard, the Panel notes that the Club made substantial submissions regarding its alleged attempts to pay the Coach the amount it owed to him and its reasons for why it was unable to do so earlier. However, the Panel considered that all those submissions were, in essence, irrelevant. Pursuant to the FIFA DC Decision, the Club was granted a final grace period of 30 days from the notification of the decision to pay the Coach. The Club was notified of the FIFA DC Decision on 8 February 2018, however the amount owed to the Coach was finally only paid on 28 September 2018 – more than 7 months later. There is no ambiguity therefore, that the

Club failed to pay the Coach within the required deadline in the FIFA DC Decision and that the points deduction needed to be enforced.

72. In summary, for all the reasons stated above, the Panel concluded that the FIFA DC Letter was not a “decision” that could be appealed, and therefore the present appeal at the CAS should be dismissed as inadmissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Al-Hilal Club on 28 September 2018 is inadmissible.
2. (...).
3. (...).